

# “Do This! Do That! and Nothing Will Happen”: Executive Orders and Bureaucratic Responsiveness

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## **Abstract**

How effective is unilateral presidential power? Recent developments have shifted presidential scholarship in the direction of a more institutional approach, and one of the most important tenets of this work holds that the president has the ability to make policy on his own. However, there is significant anecdotal evidence suggesting that agency responsiveness to executive orders is not at all guaranteed. This study leverages a unique data set tracing the implementation of executive orders across 10 government agencies, and the results indicate that despite conventional wisdom, presidential directives are not universally implemented, and a host of factors come to bear on an agency's decision as to whether they will respond. This project represents among the first quantitative empirical assessments of the utility of unilateral power and suggests that the field may benefit most from shifting toward a bargaining-based model similar to those used in legislative scholarship.

## **Keywords**

presidency, bureaucracy, executive orders, unilateral powers

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## Introduction

In the early summer of 2013, President Barack Obama offered stern words<sup>1</sup> for those who would resist new initiatives to address climate change: “We don’t have time for a meeting of the Flat Earth Society,” the president said. “Sticking your head in the sand might make you feel safer, but it’s not going to protect you from the coming storm.” Several months earlier, in the first State of the Union Address of his second term, Obama (2013) made clear that he was not reluctant to take executive action:

... if Congress won’t act soon to protect future generations, I will. I will direct my Cabinet to come up with executive actions we can take, now and in the future, to reduce pollution, prepare our communities for the consequences of climate change, and speed the transition to more sustainable sources of energy.

These were not empty words; in June, the Obama Administration unveiled *The President’s Climate Action Plan*,<sup>2</sup> a multi-faceted document that includes various steps, among them, unilateral executive action, to deal with climate change.

The story is not an unfamiliar one; a president, facing a stubborn Congress, decides to use the powers of the executive to affect change that legislators are apparently unwilling to accept. Richard Nixon (1978), as “the first President in 120 years to begin his term with both houses of Congress controlled by the opposition party” (p. 414), took extensive steps to establish greater control of the bureaucratic process to push his agenda, although with decidedly mixed results (e.g., Campbell, 2005; Lewis, 2008). Facing serious opposition to his approach to apartheid in South Africa, Ronald Reagan circumvented Congress with an executive order designed to outflank legislative attempts at more drastic sanctions against that nation (e.g., Howell, 2003). When Republicans claimed control of Congress during Democrat Bill Clinton’s tenure, one of Clinton’s advisors, Paul Begala, indicated that the president was more than willing to take action on his own: ““Stroke of the Pen . . . Law of the Land. Kind of cool”” (as cited in Mayer, 2001, p. 7), Begala said. The picture painted is often the same: a bold leader taking decisive action in the face of an obstructionist, non-responsive Congress. The exercise of unilateral power has led to a dramatic increase in the study of the institutional capacities of the presidency, and may signal a shift in the study of executive politics.

But the increased attention paid to the politics of the unilateral presidency rests on a central foundation that, to this point, presidential scholars have not adequately established. The concern about unilateral power is self-evident: Should one individual have the ability to essentially direct the bureaucracy at his or her command? Numerous scholars have waded into this normative

debate (e.g., Cooper, 2002, 2005; Mayer, 2001), and although there are cases to be made for and against expanded presidential power, any discussion depends on the necessary condition that unilateral authority is *effective*. As others have noted (e.g., Mayer, 2009), this condition is far from given. Executive orders, and other forms of direct presidential action, are not self-executing. The question is, as Rudalevige (2012) has asked, “[when] agencies are told, ‘do this,’ do they ‘do that?’” (p. 157).

Clearly, presidential scholars recognize the need to follow the executive order process to its conclusion (or as close to that conclusion as one can come). The principal difficulty has been classifying what responsiveness actually *looks* like. How is it measured, and when do we know when the bureaucracy does not “do that?” This analysis represents the first attempt at tracking implementation and provides some clear answers to the issue of agency responsiveness. In brief, the answer to the question of whether agencies respond to executive orders is a firm, if somewhat unsatisfying, “sometimes.” An order given is not necessarily an order implemented, but the conditions under which agencies will forego responding to a presidential directive are multi-faceted.

## **The President, Congress, the Bureaucracy, and the Principal-Agent Problem**

The problem of non-responsiveness from bureaucratic officials is founded in principal-agent theory (PAT). Rooted in economic literature (e.g., Spence & Zeckhauser, 1971), political scientists began to apply these theories of organization to their own work beginning in earnest in the early 1980s (e.g., Fiorina, 1981; Moe, 1985; Weingast & Moran, 1983). The theoretical tenets of PAT concern the difficulty of overseeing the agent’s actions as well as the potential for different, and perhaps conflicting, incentives which could induce behavior that is not ideal for the principal (see Miller, 2005, for a summary of PAT and its contributions to political science). This problem is particularly relevant in studies of the bureaucracy, and scholars have endeavored to demonstrate how principals conflict with bureaucratic agents as well as the methods for establishing control over these agencies (e.g., Lewis, 2003, 2008; McCubbins, Noll, & Weingast, 1987, 1989; Moe, 1989).

In his seminal work on the bureaucracy, Wilson (1989/2000) illustrates the apprehension felt by newly elected leaders over concerns about entrenched bureaucrats:

When Richard Nixon became president in 1969, he was worried that the federal bureaucracy would sabotage his administration’s plans. To Nixon, the

government agencies over which he nominally presided were staffed by liberals . . . who would resist his conservative policies . . . . [Similarly,] [w]hen the Labour party came to power in Great Britain in 1945, its leaders suspected that the British civil service, most of whose members had been hired by Conservative administrations, would sabotage Labour plans to expand the welfare state and nationalize major industries. (p. 51)

Certainly, then, principals are aware of the problems they face when monitoring bureaucrats, and for presidents, this is no different. Persistent attempts to politicize government agencies (e.g., Aberbach & Rockman, 2000; Lewis, 2008; Maranto, 1993, 2004), determine bureaucratic structure (e.g., Lewis, 2003), put loyal agency heads in place (e.g., Aberbach & Rockman, 2000; Golden, 2000), and centralize agency processes (e.g., Moe, 1989) demonstrate the president's sincere awareness of the principal-agent dilemma.

The problem is further complicated by the bureaucracy's obligations to the Congress, introducing a dynamic of multiple principals (e.g., Aberbach & Rockman, 2000; Epstein & O'Halloran, 1999; Gailmard, 2009; McCubbins et al., 1987, 1989; Moe, 1985, 1989; Weingast, 2005; Whitford, 2005). Congress's role highlights just how nominal the president's control of the executive branch actually is, for although the president is ostensibly the head of the federal bureaucracy, agencies rely on Congress for their appropriations and much of the power that they are statutorily granted (e.g., Weingast, 2005; Weingast & Moran, 1982). As Moe (1989) notes, the motivations of these two actors (Congress and the president) are distinct, and they pursue different methods of achieving their goals. Agencies, Weingast (2005) explains, wind up "'caught in the middle' between Congress and the president" (p. 313).

The consequences for this particular problem can be vexing for all involved in the policymaking process. On one hand, answering to different principals carries with it the possibility that these principals will have distinct goals that will be virtually impossible for the agents to accomplish simultaneously (e.g., Hammond & Knott, 1996; McCubbins et al., 1987; Moe, 1984). This, in turn, guarantees that agents will have to compromise on their own in an attempt to perform a balancing act that will satisfy their principals, which can be a delicate task (e.g., Bertelli & Grose, 2009; Whitford, 2005). But, as Gailmard (2009) demonstrates, the simple presence of multiple principals (a function of the institutional structure under which agencies operate) "is sufficient to induce control loss" (p. 182). In other words, bureaucratic drift is likely to occur even under scenarios where the president and Congress have the same preferences.

This is to say nothing of the bureaucracy's preferences, however. Government agents are not mindless drones, and although different levels of constraints can work in tandem to reduce the amount of agency loss,

bureaucrats are still unique individuals with their own desired outcomes (e.g., Carpenter, 2001; Golden, 2000; Huber, 2007; Lewis, 2008). The question, as the title of Golden's (2000) book asks, is "what motivates bureaucrats?" Do agencies, as President Nixon and the Labour Party of the 1940s feared, deliberately sabotage principals with whom they do not agree? Such an outcome is possible, but evidence for it is anecdotal at best. Bureaucrats seem largely interested in focusing on their own tasks free from political meddling (e.g., Carpenter, 2001; Huber, 2007), and some evidence suggests that agencies respond to the wishes of their political principals without serious regard for their own ideology, choosing to dismiss the notion of deliberate manipulation out of hand (e.g., Aberbach & Rockman, 2000; Golden, 2000). Aberbach and Rockman (2000) even go so far as to claim "that the U.S. bureaucracy is now a quite flexible and responsive institution . . . Whatever is wrong with the higher civil service (and administrative system), it is not that it is unresponsive or insulated" (p. 132).

None of this is meant to imply that agencies answer every command with perfect compliance. Bureaucrats certainly *do* have ideological preferences (as Wilson, 1989/2000, notes, they are considerably more liberal than conservative in their leanings), but it is unclear what role ideology plays in governing agency responsiveness to directives from political actors such as the president. Still, political preferences need not govern the rate of agency response to various orders. As Niskanen (1975) points out, bureaucrats often act to maximize their agency budgets, and these concerns do not have to be ideologically based; at the same time, a sincere desire for expert control over policy can motivate agencies to resist political pressures (e.g., Bruff, 2010; Carpenter, 2001; Huber, 2007). These factors, and others, could help to explain why agencies are not universally responsive to the president's wishes as head of the executive branch.

## **Executive Orders: A Solution to the Principal-Agent Problem?**

At first blush, the conceptualization of unilateral presidential directives as a tool of control is an appealing one. Executive orders, one form of control, carry the force of law and require neither congressional nor judicial approval, save for potential *ex post facto* responses (e.g., Howell, 2003; Mayer, 2001). The utility of executive orders is dependent in large part on unitary executive theory (e.g., Bruff, 2010; Calabresi & Yoo, 2008; Rudalevige, 2012) which holds that the president, as head of the executive branch, has complete control over all agency actions. Assuming that unitary executive theory holds,

presidents need not persuade, as Howell (2003) argues; presidents can use executive orders to simply *tell* agencies what to do.

The potential ramifications of unitary executive theory are readily apparent; Cooper (2002) devotes an entire volume to discussing the consequences of a president's virtually unlimited power. This focus on institutional capacity heralded a shift in the study of the presidency from a more qualitative focus on the historical intricacies of individual administrations (e.g., Barber, 1977; Greenstein, 2004; Neustadt, 1960/1990; Skowronek, 1993) to a broader conceptualization of presidential power that endures from administration to administration (e.g., Canes-Wrone, 2006; Edwards, 2003, 2009; Howell, 2003; Lewis, 2003, 2008; Mayer, 1999, 2001). The classic Neustadtian (1960/1990) idiom that "Presidential power is the power to persuade" (p. 11) was in large part swept away in a flood of excellent empirical work indicating that presidential power need not involve any bargaining or convincing on the part of the executive; the president is, in a real sense, in command of the bureaucracy. Many were eager to conclude that President Truman's warning to his successor ("Do this! Do that! *And nothing will happen*" [as cited in Neustadt, 1960/1990, p. 10]) was not entirely relevant in the context of the modern presidency.

However, serious methodological doubts as to the true effectiveness of unitary executive theory were already beginning to emerge in the legal literature at the same time as political scientists were making such large strides in presidential scholarship (e.g., Bruff, 2010; Kagan, 2001; Shane & Bruff, 2011; Strauss, 2007). To many in the field of administrative law, the conceptualization of a unitary executive is neither theoretically nor practically sound (e.g., Shane & Bruff, 2011). As presidency-centered research continued to advance, political scientists began to openly acknowledge this dilemma; as Mayer (2009) writes in a comprehensive review of the state of unilateral scholarship, "the quantitative literature assumes that a unilateral order issued is a unilateral order carried out. It seems clear enough that on many issues a presidential assertion of unilateral power will be resisted" (p. 442).

Executive orders, then, are subject to the same kinds of principal-agent problems as other forms of presidential oversight. But, why, when executive orders are directives that carry the force of law, would bureaucrats be able to shirk or otherwise ignore them? The answer is multi-faceted. First, the legal basis of unilateral directives is not a settled issue (e.g., Raven-Hansen, 1983; Shane & Bruff, 2011; Strauss, 2007), and so there remains some "wobble room" in terms of implementation. The president has limited enforcement capabilities, so the ability of the president to make a credible commitment to retaliatory action is questionable.

Second, and more importantly, responding to an executive order is not a simple matter. At first blush it may seem as such; the president tells an agency what to do, and the agency has to decide whether to respond or not. But, as Rudalevige (2012) has documented, these orders are often part of a long and complex bargaining process, and what the agency is expected to do and how it is expected to enforce a directive are not always entirely clear. Furthermore, the dilemma of multiple principals is not absent in the executive order process. As discussed previously, agencies must also answer to Congress, which may have divergent preferences from those of the president. Bureaucrats also have loyalty to their agencies. Even when agency heads act in accordance with the president's commands, there is no guarantee that lower level bureaucrats, who are committed to their organization's mission and independence (e.g., Carpenter, 2001; Huber, 2007), will fall in line with the head of their agency (e.g., Golden, 2000; Kaufman, 1981).

And although an executive order is a supposedly "unilateral" action, the problem of multiple principals still emerges. Congress can countermand an executive order via statute, and although this process is rare (e.g., Howell, 2003), it can be used to great effect. A recent example is Executive Order 13492, which was President Barack Obama's (2009) attempt to satisfy a campaign promise to close the Guantanamo Bay detention camp. The president ordered the base's closure and made arrangements for relocating detainees, but he soon learned just how difficult a prospect this was, politically and practically. Congress was not nearly as enthusiastic as the White House and reacted in decisive fashion, refusing to appropriate the funds necessary for the executive order to be implemented (e.g., Johnson, Gibbons, & Gibson, 2010; Pfiffner, 2011). The camp remains open in early 2014, although in December of 2013, the president signed a law that included, in part, a loosening of regulations governing prisoner transfers, which Obama hailed as "a welcome step toward closing the facility" (as cited in Rucker, 2013). Nevertheless, even if the president should succeed in closing Guantanamo Bay, it will not have been as easy as issuing an executive order.

The executive order process is therefore a complex web, responsiveness heavily influenced by serious limitations on presidential enforcement as well as questions about any given order's legal basis. Unilateral power, it seems apparent, is only as effective as those who are on the receiving end of the instructions. This is not to suggest that presidents are powerless; although enforcement power is limited, it is certainly not completely absent. Furthermore, there is something to be said for the power and prestige of the office itself, as discussed by Neustadt (1960/1990). Evidence suggests that bureaucrats are committed to doing their jobs faithfully (e.g., Golden, 2000), and as such, presidents may get a response not because they hold any great

enforcement power, but because the agencies feel that responding to the president is part of their job. That being said, it is clear that responsiveness is far from universal.

Theorizing on what makes an agency responsive or not depends in part on an evaluation of the bureaucracy as it is structured. Given that agencies theoretically *can* avoid implementing executive orders, what factors would we expect make such avoidance more likely? A few answers are readily apparent: Not all orders require a response. When the president tells the executive branch, for example, that they are to cooperate with a particular advisory commission's requests for information, this requires no formal promulgation. Second, some executive orders are unclear in their targeting or in their intended effect. When President W. J. Clinton (1993) issued Executive Order 12862 requiring that agencies "be customer driven" and provide "service equal to the best in business," the implication is that government was somehow working to provide poor customer service before this directive (or at least not at all concerned with customer service). Furthermore, the order does not clearly specify what rules or regulations are necessary to give people better customer service, and so the following question remains: Did government service improve following this directive? Answering this general question (did they "do that?") has proven difficult.

Other factors may influence responsiveness beyond clear and concise language, however, including agency decentralization, ideology, and politicization. The argument for decentralization's effects is similar to the argument advanced by Epstein and O'Halloran (1999) and David Lewis (2003) with respect to agency insulation; more insulated agencies are further outside the government's control, and as such, we might expect the employees of these agencies to feel more secure in ignoring directives from the president. But, insulation as a useful methodological concept is questionable when considering a subset of agencies for which data are available or collectible. Therefore, I speak more generally of a concept called "decentralization," which I posit refers to agencies that are either more "far-flung" or whose membership has more discretion in implementation and the carrying out of their duties. This leads to Hypothesis 1.

**Hypothesis 1:** The more decentralized an agency is, the less likely that agency will be to respond to an executive order.

What of agency ideology? The linkage here, too, seems clear: Agencies should be less likely to respond to a given order when they do not share the president's preferences. The whole basis of unilateral power is built on the notion that the president can tell agencies to do what the president wants, but



when agencies do not want what the president wants, what is to stop the bureaucrats from ignoring these directives? This goes to the heart of the principal-agent problem: With the inability to perfectly monitor what his agents are doing, the president cannot guarantee responsiveness. This was the problem President Clinton referred to when expressing his frustration about executive orders: “you can never be 100 percent sure that they were implemented” (as cited in Rudalevige, 2012, p. 157). Although many speak of the benefits of a neutral and competent bureaucracy (e.g., Carpenter, 2001; Golden, 2000; Huber, 2007), the fact remains that agencies have their own ideological leanings (e.g., Bertelli & Grose, 2009, 2011; J. D. Clinton, Bertelli, Grose, Lewis, & Nixon, 2012; Lewis, 2008). Do these ideological leanings influence their responsiveness to the president? That has yet to be established.

**Hypothesis 2:** As agencies become more ideologically distant from the president’s ideal point, they will be less likely to respond to executive orders than agencies closer to the president’s ideal point.

Finally, what is the role of agency politicization in governing how responsive bureaucrats are to an executive order? Defining politicization as the proliferation of appointees in a government organization (e.g., Lewis, 2008), it seems logical to argue that politicized agencies are more likely to respond to presidential directives because the president’s appointees should be more loyal to the president than agency careerists (e.g., Aberbach & Rockman, 2000). The president’s hiring and firing power over the bureaucracy is highly variable and far from absolute, and although the president has substantial control over agencies in the Executive Office of the President (e.g., Rudalevige, 2012), as organizations become more and more insulated from political control, the president’s capacity to influence agency makeup diminishes (e.g., Lewis, 2003, 2008). The problem is evident: The president can tell an agency to “do this,” but with only limited enforcement capabilities, it is difficult for the president to make a credible commitment to follow through on retaliatory action should an agency fail to implement an executive order.

However, this view of politicization leading to responsiveness may be somewhat suspect. This is because the trade-off between politicized and non-politicized agencies is not a trade-off between presidential loyalty and presidential disloyalty. It is, in essence, a fundamental conflict between responsiveness and neutrality. As Huber (2007) adequately sums up, “[p]olitical control, in short, may come at the cost of capable public administration” (p. 13). This is to say that politicization and the agency’s competence are not mutually exclusive concepts. We know, as Moe (1989) writes, “that presidents want to control the bureaucracy” (p. 279; see also Lewis, 2008). At

the same time, we have been inundated with bureaucratic research describing the development of neutrality, competence, and the willingness of bureaucrats to do their jobs, regardless of what they think of the president's policies (e.g., Aberbach & Rockman, 2000; Carpenter, 2001; Golden, 2000; Huber, 2007). And so, Lewis's (2008) analysis of increased politicization serves as a cautionary tale, warning us of the possible losses in capability to which Huber alludes. I therefore posit that politicized agencies, because of a loss of bureaucratic competence, are less likely to respond to executive orders.

**Hypothesis 3:** Politicized agencies will be less likely to respond to executive orders than non-politicized agencies.

## Data and Method

Before discussing construction of the dependent variable (agency responsiveness), it is worthwhile to talk generally about the time period and structure of the data. The agency sample is based on the work done by J. D. Clinton et al. (2012), who estimate ideology scores for 24 separate organizations.<sup>3</sup> From this list, I randomly selected 10 for further evaluation.<sup>4</sup> This provides a starting point for which to collect other data for testing the hypotheses. Ten agencies were chosen because the data collection process for this project required a balance between generalizability and feasibility. Studying this subset allows me to keep construction of the data reasonable while still providing enough variation across agency tasks and characteristics to allow for reliable conclusions.

The next relevant point is the time period covered by the models. The analysis focuses on the years of 1989-2011 for numerous reasons. First, some of the most important data for testing the hypotheses are not available prior to 1988 (see Lewis, 2008, for a discussion of why earlier data provided by the federal government are potentially unreliable). Second, ideology estimates of various agencies only go back so far; the ideal point estimates that J. D. Clinton et al. (2012) provide were calculated for the period of 2005 to 2006, and although I argue that estimates of agency ideology should stay relatively constant for significant periods of time, going back too far would increase the likelihood of biased results. Third, Bertelli and Grose (2011) devise comparable ideology estimates for Presidents George H. W. Bush, Bill Clinton, and the first term of the George W. Bush administration, providing clear metrics by which to compare ideology scores.<sup>5</sup> Last, not all of the agencies included in J. D. Clinton et al.'s estimates were in existence before 1989 (or even *in* 1989; the Social Security Administration was, at this point, part of the Department of Health and Human Services, and there was no Department of Homeland Security until 2003).

There are, then, clear measures of agency ideology available to evaluate Hypothesis 2. The next task is to measure decentralization (in two ways) and politicization. Politicization data (the number of political appointees relative to the total employment of an agency) are made freely available by David Lewis ([my.vanderbilt.edu/davidlewis/data/](http://my.vanderbilt.edu/davidlewis/data/)) for the period of 1988-2005, and are easily constructed for the period of 2006-2011 using the Office of Personnel Management's (OPM) publicly available data ([fedscope.opm.gov](http://fedscope.opm.gov)). This variable is measured as the percentage of the agency's employees who are politically appointed. These same data sources were used to construct a measure of agency discretion, which indicates the percentage of employees in the agency who fall under either the professional or administrative classifications. The OPM has five classifications for the work done by employees of federal agencies operating under the General Schedule (GS). These categories are professional, administrative, technical, clerical, and other. OPM clearly defines the first two categories as requiring the exercise of discretion, whereas the other three categories provide no such guidelines.

Agency sub-elements are also relatively straightforward to determine. To do this, I looked at organizational charts for all 24 agencies as published in the U.S. Government Manual from 1989 to 2012. For agencies that did not publish their organizational structures, this variable is coded as "missing." Higher values indicate a more decentralized agency. To account for congressional preferences, I create an interaction between LPPC ("legislative potential for policy change," as defined by Howell, 2003, p. 209) and divided government, with the expectation that agencies will pay attention to how the legislature might react to a given order. Additional variables include presidential popularity, whether it is a presidential election year, whether the president is a Republican, whether a president is in the beginning of his term (the end of a president's term is perfectly collinear with whether it is a presidential election year), and controls for the total number of advisory and blanket orders issued in a year. The unit of analysis is structured as *executive order-agency*. In other words, a single order can include multiple observations. For example, an executive order to the Department of the Treasury, the Department of State, and the Department of Commerce would account for three observations. Finally, the models include fixed effects for each presidency in the data set.

Construction of the dependent variable involves an in-depth procedure. First, I identified every executive order on the basis of which agencies were expected to follow its provisions (orders were accessed at [presidency.ucsb.edu](http://presidency.ucsb.edu) [Peters & Woolley, 1999-2014]). Next, I matched the 10 agencies selected with every executive order applied to them. I then evaluated whether agencies implemented a rule in response to the executive order with the assistance

**Table 1.** Executive Orders and Responses by Agency.

	Total directives	Named in	Promulgation requested	Responses
Commerce	447	154	31	72
Energy	400	100	23	36
Education	395	88	20	13
Transportation	430	115	33	54
Treasury	430	184	91	88
VA	402	77	25	12
EPA	390	85	19	33
HUD	382	60	21	28
NRC	359	11	18	10
State	485	234	35	25
Total	4,120	1,108	316	371

Note. VA = Department of Veterans Affairs; EPA = Environmental Protection Agency; HUD = Department of Housing and Urban Development; NRC = Nuclear Regulatory Commission.

of two sources: the Federal Register (FR) and the Code of Federal Regulations (CFR). The FR website ([www.federalregister.gov](http://www.federalregister.gov)) allows users to search for rule promulgation by agency for the years of 1994 through the present. It was therefore a fairly straightforward procedure to see whether an executive order was used as the basis for a rule or rules by the agencies directed. Still, this search function does not cover any period before 1994, requiring a different data source for the years of 1989 through 1993. To do this, I accessed the CFR via HeinOnline ([heinonline.org](http://heinonline.org)) and searched for regulations that included a given executive order as at least part of the regulation's basis.<sup>6</sup> If an agency promulgated a rule using the executive order as a reference, the dependent variable is assigned a value of "1," and "0" otherwise.

There are, all told, 4,120 separate observations. Agencies responded via rule promulgation in 371 cases, or just around 9% of the time. At first blush, this might seem like a remarkable rate of non-responsiveness, but recall the earlier discussion on executive order type: Not all orders require, expect, or even need any kind of rule promulgation. When the president directs the entire government to close for a holiday, no rule is necessary. As such, I further classified the observations on both whether the agency was *named* in the executive order and whether the promulgation of rules was expressly requested. Table 1 provides some useful descriptive statistics.

This information clarifies that neither naming nor requests for promulgation guarantee the implementation of a rule. In some cases, agencies responded to fewer orders than the president requested or, as is the case with

**Table 2.** Responsiveness to Executive Orders (Models 1 and 2).

	1989-2011	1989-2008
Named in E.O.	1.347*** (0.292)	1.416*** (0.308)
Promulgation requested	3.102*** (0.288)	2.992*** (0.306)
Ideological distance (Pres./Agency)	0.223 (0.355)	0.185 (0.337)
Discretion	-1.258 (2.398)	-1.533 (2.579)
Sub-elements	-0.016 (0.017)	-0.016 (0.019)
Politicization	-29.007* (13.069)	-25.550* (12.948)
Presidential popularity	-0.001 (0.012)	0.002 (0.013)
LPPC × Divided Government	-7.860 (6.423)	-10.644 (7.926)
LPPC	2.463 (4.702)	4.175 (5.595)
Divided government	1.391* (0.695)	1.581* (0.760)
Presidential election year	-0.203 (0.253)	-0.142 (0.277)
Honeymoon	0.126 (0.262)	0.146 (0.269)
Advisory E.O.	-2.581*** (0.353)	-2.726*** (0.364)
Blanket E.O.	0.596* (0.271)	0.704* (0.273)
President-specific fixed effects		
GHW Bush	1.425 (0.847)	0.528 (0.955)
Clinton	0.856 (0.472)	-0.236 (0.218)
GW Bush	1.002 (0.564)	—
Constant	-3.470 (2.927)	-2.592 (3.263)
Pseudo R <sup>2</sup>	0.350	0.340
n	4,120	3,445

Note. Clustered standard errors in parentheses. E.O. = Executive Order; LPPC = legislative potential for policy change.

\* $p < .05$ . \*\* $p < .01$ . \*\*\* $p < .001$ .

the Department of Commerce, responded far more frequently than the president requested. The next task is to determine what other factors are relevant in determining rates of responsiveness from these 10 agencies. The following models are estimated using logistic regression with clustered standard errors both for each agency and for each executive order (Cameron, Gelbach, & Miller 2011).

## Results and Analysis

Table 2 presents the results for models covering two separate time periods: 1989-2011 and 1989-2008. The second model is estimated only to show that all variables retain their signs and significance when narrowing the time frame to before Barack Obama took office. This was done for two reasons:

First, it can take some time for executive orders to work their way into rules, so it might be unfair to include President Obama's orders, given that non-responsiveness at this point of his administration does not necessarily represent non-responsiveness. Second, the ideal point estimates for Obama are based on Poole and Rosenthal's NOMINATE scores, whereas the ideology estimates for George H. W. Bush, Bill Clinton, and George W. Bush's first and second terms are based on ideal points derived by Bertelli and Grose (2011) and J. D. Clinton et al. (2012). As such, these estimates might not be comparable, and so the second model serves to demonstrate that little changes when excluding President Obama's orders. The specific predicted probabilities I will discuss, then, are with respect to Model 1 (1989-2011).

As expected, the very best predictors of whether an agency responds to an executive order through the promulgation of a rule are whether that agency was explicitly named in the order or whether promulgation was specifically requested by the president. When an agency is not named in an executive order, and no promulgation is requested, the predicted probability of a rule response is approximately 2.36%, all else held equal. Simply naming the agency raises this predicted probability to 8.49%, an increase of 6.13%. Meanwhile, requesting promulgation (without naming the agency) raises this predicted probability to 34.92%. When the agency is named and promulgation requested, the probability of a response reaches 67.36%. So, when presidents say, "do this," does the agency do it? The evidence suggests they do *something* most of the time.

Perhaps most readily apparent from this table is the lack of agency factors that affect the probability of a response. Ideological distance between the agency and the president has no bearing on the outcome,<sup>7</sup> and neither do either of the measures of decentralization; thus, there is no support for Hypotheses 1 and 2. Politicization does have some noticeable effects, however. All else held equal, when politicization is at its minimum, the probability of a response is 2.86%. At its mean, that probability drops to 2.36%, and at one standard deviation above the mean, an agency's likelihood of responding is 1.77%. Recall that Hypothesis 3 posited that politicization would lead to less responsiveness, which seems to be borne out by the data in these models.

The politicization finding calls to mind the tension between bureaucratic responsiveness and efficiency. As Carpenter (2001) writes, "[b]ureaucratic autonomy requires *political legitimacy*, or strong organizational reputations embedded in an independent power base" (p. 14). And how is that legitimacy established? Refer again to Carpenter: "Autonomy arises when bureaucrats . . . ground [their] reputation in a diverse coalition . . . These coalitions, suspended in beliefs and in networks, and *uncontrollable by politicians*, are the

stuff of autonomous bureaucratic policy innovation” (p. 353, emphasis added). The author’s clear implication is that politicization comes at the cost of expertise and competence, although the evidence on this point is somewhat mixed (see Lewis, 2008). The lesson in Table 2, then, may be that more politicized agencies, *even by virtue of having a greater proportion of presidential appointees*, are less responsive because they are less competent. This complements Golden’s (2000) argument that, by and large, “[c]areerists were unwavering in their contention that their role was . . . to carry out the president’s or the appointee’s directives” (p. 155). In other words, it seems that many careerist bureaucrats do as they are instructed, a finding that seems to be supported based on the model’s results.

Other predictors of a response in the model include whether the order principally involved the creation of an advisory council or commission and whether there was a blanket order given. The probability that an agency will respond to an order dealing with an advisory organization is only 0.18%, all else held equal. Meanwhile, when considering an order that does not apply to all agencies of the federal government, the probability of a response drops from 2.36% to 1.31%. Finally, there does seem to be an effect of divided government when considered with LPPC. When government is unified, the probability of a response when LPPC is at its mean is 1.36%. In divided government, however, the predicted probability is significantly higher at 2.36%. When LPPC is held at one standard deviation below its mean, the probability that an agency will respond in unified government is 1.19%, whereas in divided government, the probability is 3.16%. Finally, when LPPC is held at one standard deviation above its mean, the probability of a response in unified government is 1.56%, whereas in divided government, it is 1.75%. These effects are modest but do support the notion that agencies react differently to executive orders depending on the makeup of Congress.

I estimated one additional model to allow for a different measurement of agency ideology. Golden (2000) has argued that careerists are responsive not just to the president but also to appointees. It makes some theoretical sense, then, to argue that it is not the agency’s ideology as a *whole* that is relevant but the ideology of the agency *head*. Helpfully, data made available by Bertelli and Grose (2011) allow me to test this hypothesis in a somewhat more limited setting. The authors compute ideal point estimates for the heads of the various cabinet agencies during the George H. W. Bush Administration, the Clinton Administration, and the first term of George W. Bush’s presidency. This variable is constructed in identically the same fashion as the ideological distance measure between the agency and the president, by taking the absolute value of the distance between the president and the agency head. All other variables from Table 2 are included, excluding a fixed effect for the

**Table 3.** Responsiveness to Executive Orders (Model 3).

	1989-2004
Named in E.O.	1.319*** (0.330)
Promulgation requested	3.169*** (0.311)
Ideological distance (Pres./Agency)	1.352 (1.014)
Ideological distance (Pres./Secretary)	-1.801* (0.744)
Discretion	-0.161 (2.999)
Sub-elements	-0.007 (0.020)
Politicization	-34.514** (11.057)
Presidential popularity	0.021 (0.028)
LPPC × Divided Government	-12.009 (11.915)
LPPC	2.997 (12.670)
Divided government	1.505 (1.280)
Presidential election year	0.082 (0.400)
Honeymoon	-0.029 (0.409)
Advisory E.O.	-2.706*** (0.502)
Blanket E.O.	0.493 (0.329)
President-specific fixed effects	
GHW Bush	0.572 (1.354)
Clinton	0.332 (0.527)
GW Bush	—
Constant	-4.826 (4.685)
Pseudo R <sup>2</sup>	0.346
n	1,959

Note. Clustered standard errors in parentheses. E.O. = Executive Order; LPPC = legislative potential for policy change.

\* $p < .05$ . \*\* $p < .01$ . \*\*\* $p < .001$ .

Obama Administration, and standard errors are clustered around the agency and executive order. Table 3 presents the results.

Immediately apparent is that previously significant and insignificant variables from the last models estimated in Table 2 largely retain their signs and (in)significance in Table 3.<sup>8</sup> As before, whether an agency is named and whether the president requests promulgation are both highly significant predictors of an agency response. The base probability of a response in this model is 4.38%. If an agency is specifically named, that probability rises to 14.61%. If promulgation is requested, even without naming the agency, the probability of a response reaches 52.12%. And if the president both names the agency *and* requests promulgation, the probability of a response reaches 80.28%.



These findings alone are instructive, because the models in Table 3 are only excluding 2 of the 10 agencies selected for analysis in Table 2: the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC).<sup>9</sup> The remaining eight agencies are all part of the cabinet, and, all else held equal, the predicted response rate for when an agency is named and promulgation is requested is a full 12.92% points higher in this model than in the model in Table 2. This is suggestive of two points: First, presidents are well-served in directing the vast majority of their executive orders to more centralized agencies than are those that are more insulated. Second, given that including only two independent establishments (the EPA and the NRC) for a time period that is only 7 years shorter induces such a stark contrast in terms of the probability of a response, more attention to how independent regulatory agencies and commissions implement executive orders is needed.

Notice also that the ideological distance between the president and the agency head is a significant predictor of a rule response. If we evaluate Hypothesis 2 in this context (ideological distance predicts lower levels of responsiveness), then Table 3 provides some support. The ideological distance between the president and the agency as a whole, however, still remains insignificant as a predictor. With respect to the agency of the ideology *head*, though, when ideological distance is held at one standard deviation below its mean, the probability of a rule response to an executive order rises by 1.86%, from 4.38% to 6.24%. At one standard deviation above the mean of ideological distance, the probability of a rule response drops to 3.25%.

This finding conveys two important points: First, ideology *does* matter, although not in the way originally hypothesized. What seems more relevant is the ideology of the agency head as compared with the president, as opposed to the ideology of the entire agency broadly construed. The second point pertains to the argument concerning politicization and bureaucratic competence. Recall Golden's (2000) assertion that careerists largely do as they are told by their politicized superiors (in this case, the president and any of the president's appointees). The heads of these cabinet departments represent, in many ways, the penultimate appointee, reinforcing Golden's finding that bureaucrats further entrenched the agency apparatus, those occupying careerist positions, do not seem to be motivated by ideology, but rather by a kind of service ethic that encourages them to "follow the leader."

As was the case in Table 2, the level of politicization and whether the order was principally dealing with an advisory council are significantly negative predictors of a rule response. When politicization is held at its minimum, the probability of a response is 5.49%, an increase from the mean of 1.11%. When politicization is increased one standard deviation above its mean, the

probability of a rule response drops from 4.38% to 3.25%. Furthermore, the probability of response to an advisory order, all else held equal, is 0.30%.

It is important to acknowledge the sample's limitations: Future research should expand to study not only the additional agencies included in J. D. Clinton et al. (2012) but also other agencies further outside the cabinet structure. The data herein include information from the EPA and NRC, but in-depth analysis of other independent bureaucratic entities is necessary to draw more generalizable conclusions. To add to this point, Maranto's (1993, 2004) research explores the extent to which the agency's mission contributes to the working relationships between political appointees and career bureaucrats. This study seeks to explore variation from a random selection of organizations, but clearly, future research must account for the significant variation in agency tasks to provide a more nuanced understanding of bureaucratic responsiveness.

Furthermore, the question of ideology should be examined more deeply by considerations of the ideology of lower level bureaucrats in the field. At this time, such estimates are unavailable. Agency-wide ideal points give us a sense of the general orientation of bureaucrats in any given organization, but without reliable estimates for lower level bureaucrats, who must often take on the task of implementation from higher level appointees, drawing conclusions about employees who work, as President Gerald Ford said, "out in the grass roots" (as cited in Lewis, 2008, p. 57) is difficult. Until this problem is rectified, offering conclusions about the motives of individual bureaucrats with respect to executive order implementation is purely speculative.

## Discussion and Conclusion

William Howell's (2003) book *Power Without Persuasion* is framed so as to put it in direct contrast to Richard Neustadt's (1960/1990) seminal work on presidential power, the chief contention of which is that "[p]residential power is the power to persuade" (p. 11). Howell, and others (e.g., Cooper, 2002; Lewis, 2003, 2008), cautioned against this approach, instead pointing to the range of unilateral powers at the president's disposal that enable the White House to drive policy, at times with seemingly no check from the other branches of government. However, this assumes that the bureaucracy itself is not a check on the president's power, that bureaucrats do precisely as they are told, and that presidential directives are self-executing. This is decidedly not the case.

It is the case that when presidents say "do this," the agency often does *something*, but even that is not a certainty. Heavily politicized agencies are less likely to respond to directives than are their more career-oriented counterparts, and the ideology of the agency head does seem to affect the

likelihood that an agency will implement a rule in reaction to an executive order. It is not wholly accurate to classify executive orders as powerful in and of themselves, nor is it accurate to say that power and persuasion are identical terms. Presidential scholars would likely agree with these sentiments—there are, after all, rarely absolutes in the world of political science. But, this work has clarified some of the circumstances under which presidents can *expect* their orders to carry some weight, and circumstances under which presidents (or their agents) may wish to pay closer attention to the implementation of unilateral directives. Ultimately, executive orders *can* be powerful, but they are not so by definition. They must be carried out by willing bureaucrats, and as the results herein demonstrate, different factors can have an impact on the level of willingness of the various agencies of the government. Presidential power is still the power to persuade, in part, if not in whole.

There are also policy lessons to learn. If the president wants an agency to do something, he or she needs to say, clearly and directly, what is expected of each agency. When executive orders are unclear in their requirements, this gives bureaucrats much more wiggle room when it comes to how they should respond (if they respond at all). But, the most urgent need is a way to track how executive orders are implemented. This study has provided some indication of agency responsiveness, but it cannot be said with any statistical certainty that when the president says “do this,” his agents “do that,” because we cannot yet be sure what “that” looks like. When President Reagan signed executive Order 12291 calling for new rules to include various impact statements on the costs of regulations to reduce perceived regulatory burdens, most agencies did so. But, has this actually *changed* how agencies implement rules? They now often include a section indicating their compliance with Executive Order 12291; but is the fact that agents say they are complying evidence of compliance? Certainly, agencies *responded* to the order, but it is more difficult to determine whether they *complied* with its intentions. Future research on executive orders and other unilateral powers must find additional ways to monitor compliance as a concept, as this will be an absolute requirement in evaluating the effectiveness of presidents who decide to “go it alone.”

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## **Notes**

1. Transcript available at <http://www.bloomberg.com/news/2013-06-25/-we-need-to-act-transcript-of-obama-s-climate-change-speech.html>
2. Available online at <http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf>
3. The organizations are the Department of the Army, the Department of Commerce, the Department of Homeland Security, the Department of Defense, the Department of Energy, the Department of Education, the Department of Justice, the Department of Labor, the Department of Transportation, the Department of the Treasury, the Department of Veterans Affairs, the Environmental Protection Agency, the General Services Administration, the Department of Health and Human Services, the Department of Housing and Urban Development, the Department of the Interior, the National Aeronautics and Space Administration, the Department of the Navy, the National Labor Relations Board, the Nuclear Regulatory Commission, the Social Security Administration, the Department of State, the Department of the Air Force, and the Department of Agriculture.
4. The Department of Commerce, the Department of Energy, the Department of Education, the Department of Transportation, the Department of the Treasury, the Department of Veterans Affairs, the Environmental Protection Agency, the Department of Housing and Urban Development, the Department of State, and the Nuclear Regulatory Commission.
5. President Obama's ideal point estimates are obtained from Poole and Rosenthal's NOMINATE scores.
6. Because I only searched for final rules in the Federal Register (FR), these data are comparable given that final rules are subsequently made part of the Code of Federal Regulations (CFR).
7. I also ran the models with a "team" measure, reflecting whether the agency was classified as traditionally liberal, moderate, or conservative (Lewis, 2008), then comparing the agency's ideological position with the president's (where Presidents George H. W. Bush and George W. Bush were classified as conservative and Presidents Clinton and Obama as liberal). This did not produce any substantive changes in the results presented in Table 2.
8. The exceptions are divided government and whether the executive order was directed to all agencies of the federal government, both of which were significant predictors in Table 2.

9. These agencies are excluded because there are no ideal point estimates for their heads.

## References

- Aberbach, J. D., & Rockman, B. A. (2000). *In the web of politics: Three decades of the U.S. federal executive*. Washington, DC: Brookings Institution Press.
- Barber, J. D. (1977). *The presidential character: Predicting performance in the White House* (2nd ed.). Englewood Cliffs, NJ: Prentice Hall.
- Bertelli, A. M., & Grose, C. R. (2009). Secretaries of pork? A new theory of distributive public policy. *The Journal of Politics*, *71*, 926-945.
- Bertelli, A. M., & Grose, C. R. (2011). The lengthened shadow of another institution? Ideal point estimates for the executive branch and congress. *American Journal of Political Science*, *55*, 766-780.
- Bruff, H. H. (2010). Presidential power meets bureaucratic expertise. *Journal of Constitutional Law*, *12*, 461-490.
- Calabresi, S. G., & Yoo, C. S. (2008). *The unitary executive: Presidential power from Washington to Bush*. New Haven, CT: Yale University Press.
- Cameron, A. C., Gelbach, J. B., & Miller, D. L. (2011). Robust inference with multi-way clustering. *Journal of Business & Economic Statistics*, *29*, 238-249.
- Campbell, C. (2005). The complex organization of the executive branch: The legacies of competing approaches to administration. In J. D. Aberbach & M. A. Peterson (Eds.), *The executive branch* (pp. 243-282). New York, NY: Oxford University Press.
- Canes-Wrone, B. (2006). *Who leads whom? Presidents, policy, and the public*. Chicago, IL: University of Chicago Press.
- Carpenter, D. P. (2001). *The forging of bureaucratic autonomy: Reputations, networks, and policy innovation in executive agencies, 1862-1928*. Princeton, NJ: Princeton University Press.
- Clinton, J. D., Bertelli, A., Grose, C. R., Lewis, D. E., & Nixon, D. C. (2012). Separated powers in the United States: The ideology of agencies, presidents, and congress. *American Journal of Political Science*, *56*, 341-354.
- Clinton, W. J. (1993). Executive order 12863-President's foreign intelligence advisory board. In G. Peters & J. T. Woolley (Eds.), *The American presidency project*. Retrieved from <http://www.presidency.ucsb.edu/ws/?pid=59355>
- Cooper, P. J. (2002). *By order of the president: The use and abuse of executive direct action*. Lawrence: University Press of Kansas.
- Cooper, P. J. (2005). George W. Bush, Edgar Allan Poe, and the use and abuse of presidential signing statements. *Presidential Studies Quarterly*, *35*, 515-532.
- Edwards, G. C., III. (2003). *On deaf ears: The limits of the bully pulpit*. New Haven, CT: Yale University Press.
- Edwards, G. C., III. (2009). *The strategic president: Persuasion & opportunity in presidential leadership*. Princeton, NJ: Princeton University Press.
- Epstein, D., & O'Halloran, S. (1999). *Delegating powers: A transaction cost politics approach to policy making under separate powers*. Cambridge, MA: Cambridge University Press.

- Fiorina, M. P. (1981). Congressional control of the bureaucracy: A mismatch of incentives and capabilities. In L. Dodd & B. Oppenheimer (Eds.), *Congress reconsidered* (2nd ed., pp. 332-348). Washington, DC: CQ Press.
- Gailmard, S. (2009). Multiple principals and oversight of bureaucratic policy-making. *Journal of Theoretical Politics*, 21, 161-186.
- Golden, M. M. (2000). *What motivates bureaucrats? Politics and administration during the Reagan years*. New York, NY: Columbia University Press.
- Greenstein, F. I. (2004). *The presidential difference: Leadership style from FDR to George W. Bush* (2nd ed.). Princeton, NJ: Princeton University Press.
- Hammond, T. H., & Knott, J. H. (1996). Who controls the bureaucracy? Presidential power, congressional dominance, legal constraints, and bureaucratic autonomy in a model of multi-institutional policy making. *The Journal of Law, Economics, & Organization*, 12, 119-166.
- Howell, W. G. (2003). *Power without persuasion: The politics of direct presidential action*. Princeton, NJ: Princeton University Press.
- Huber, G. A. (2007). *The craft of bureaucratic neutrality: Interests and influence in governmental regulation of occupational safety*. New York, NY: Cambridge University Press.
- Johnson, A. D., Gibbons, M., & Gibson, T. T. (2010, Spring). Rethinking unilateral powers in the Obama administration. *PRG Report: Newsletter of the Presidency Research Group of the American Political Science Association*, 32(2), 13-15.
- Kagan, E. (2001). Presidential administration. *Harvard Law Review*, 114, 2245-2385.
- Kaufman, H. (1981). *The administrative behavior of federal bureau chiefs*. Washington, DC: The Brookings Institution.
- Lewis, D. E. (2003). *Presidents and the politics of agency design*. Stanford, CA: Stanford University Press.
- Lewis, D. E. (2008). *The politics of presidential appointments: Political control and bureaucratic performance*. Princeton, NJ: Princeton University Press.
- Maranto, R. (1993). *Politics and bureaucracy in the modern presidency: Careerists and appointees in the Reagan administration*. Westport, CT: Greenwood Press.
- Maranto, R. (2004). Bureaus in motion: Civil servants compare the Clinton, G. H. W. Bush, and Reagan presidential transitions. *White House Studies*, 4, 435-451.
- Mayer, K. R. (1999). Executive orders and presidential power. *The Journal of Politics*, 61, 445-466.
- Mayer, K. R. (2001). *With the stroke of a pen: Executive orders and presidential power*. Princeton, NJ: Princeton University Press.
- Mayer, K. R. (2009). Going alone: The presidential power of unilateral action. In G. C. Edwards, III & W. G. Howell (Eds.), *The Oxford handbook of the American presidency* (pp. 427-454). New York, NY: Oxford University Press.
- McCubbins, M. D., Noll, R. G., & Weingast, B. R. (1987). Administrative procedures as instruments of political control. *The Journal of Law, Economics, & Organization*, 3, 243-277.
- McCubbins, M. D., Noll, R. G., & Weingast, B. R. (1989). Structure and process, politics and policy: Administrative arrangements and the political control of agencies. *Virginia Law Review*, 75, 431-482.

- Miller, G. J. (2005). The political evolution of principal–agent models. *Annual Review of Political Science*, 8, 203-225.
- Moe, T. M. (1984). The new economics of organization. *American Journal of Political Science*, 28, 739-777.
- Moe, T. M. (1985). Control and feedback in economic regulation: The case of the NLRB. *The American Political Science Review*, 79, 1094-1116.
- Moe, T. M. (1989). The politics of bureaucratic structure. In J. E. Chubb & P. E. Peterson (Eds.), *Can the government govern?* (pp. 267-329). Washington, DC: The Brookings Institution.
- Neustadt, R. E. (1990). *Presidential power and the modern presidents* (3rd ed.). New York, NY: The Free Press. (Original work published 1960)
- Niskanen, W. A. (1975). Bureaucrats and politicians. *Journal of Law and Economics*, 8, 617-643.
- Nixon, R. M. (1978). *RN: The memoirs of Richard Nixon*. New York, NY: Grosset & Dunlap.
- Obama, B. (2009). Executive order 13492-Review and disposition of individuals detained at the Guantanamo Bay naval base and closure of detention facilities. In G. Peters & J. T. Woolley (Eds.), *The American presidency project*. Retrieved from <http://www.presidency.ucsb.edu/ws/index.php?pid=85670>
- Obama, B. (2013). Address before a joint session of congress on the state of the union. In G. Peters & J. T. Woolley (Eds.), *The American presidency project*. Retrieved from <http://www.presidency.ucsb.edu/ws/?pid=102826>
- Peters, G., & Woolley, J. T. (Eds.). (1999-2014). *The American presidency project*. Santa Barbara: University of California. Retrieved from <http://www.presidency.ucsb.edu>
- Pfiffner, J. P. (2011). Decision making in the Obama White House. *Presidential Studies Quarterly*, 41, 244-262.
- Raven-Hansen, P. (1983). Making agencies follow orders: Judicial review of agency violations of executive order 12,291. *Duke Law Journal*, 1983, 285-353.
- Rucker, P. (2013, December 26). Obama signs defense law, calls it a “welcome step” toward closing Guantanamo Bay prison. *The Washington Post*. Retrieved from [http://www.washingtonpost.com/politics/obama-signs-defense-law-calls-it-a-welcome-step-toward-closing-guantanamo-bay-prison/2013/12/26/ba07e1d4-6e5c-11e3-b405-7e360f7e9fd2\\_story.html](http://www.washingtonpost.com/politics/obama-signs-defense-law-calls-it-a-welcome-step-toward-closing-guantanamo-bay-prison/2013/12/26/ba07e1d4-6e5c-11e3-b405-7e360f7e9fd2_story.html)
- Rudalevige, A. (2012). The contemporary presidency: Executive orders and presidential unilateralism. *Presidential Studies Quarterly*, 42, 138-160.
- Shane, P. M., & Bruff, H. H. (2011). *Separation of powers law: Cases and materials* (3rd ed.). Durham, NC: Carolina Academic Press.
- Skowronek, S. (1993). *The politics presidents make: Leadership from John Adams to George Bush*. Cambridge, MA: Harvard University Press.
- Spence, M., & Zeckhauser, R. (1971). Insurance, information, and individual action. *The American Economic Review*, 61, 380-387.
- Strauss, P. L. (2007). Overseer, or “the decider”? The president in administrative law. *The George Washington Law Review*, 75, 696-760.

- Weingast, B. R. (2005). Caught in the middle: The president, congress, and the political-bureaucratic System. In J. D. Aberbach & M. A. Peterson (Eds.), *The executive branch* (pp. 312-343). New York, NY: Oxford University Press.
- Weingast, B. R., & Moran, M. J. (1982, May). The myth of runaway bureaucracy: The case of the FTC. *Regulation*, 6, 33-38.
- Weingast, B. R., & Moran, M. J. (1983). Bureaucratic discretion or congressional control? Regulatory policymaking by the federal trade commission. *The Journal of Political Economy*, 91, 765-800.
- Whitford, A. B. (2005). The pursuit of political control by multiple principals. *The Journal of Politics*, 67, 29-49.
- Wilson, J. Q. (2000). *Bureaucracy*. New York, NY: Basic Books. (Original work published 1989)

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