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Unilateral Action Reconsidered: Congressional Responses to Presidential Directives

By

Annis Benn

A dissertation submitted in partial satisfaction of the

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in

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of the

University of California, Berkeley

Committee in charge:

Professor Sean Gailmard, Chair
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Abstract

Unilateral Action Reconsidered: Congressional Responses to Presidential Directives

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Doctor of Philosophy in Political Science

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Professor Sean Gailmard, Chair

Political scientists typically view unilateral action as the president "going it alone" in opposition to Congress. However, implementation of unilateral action relies on the cooperation of administrative agencies. In this dissertation, comprising three papers, I start with this premise that unilateral actions should be considered acts of delegation. First, I conceptualize delegation and discretion for the executive branch context and provide novel measures of those concepts to facilitate empirical research. I then turn to applying these measures to empirical questions, studying both potential determinants of variation in delegation and discretion, and consequences of this variation for inter-branch politics.

The first paper, "The Administrative Politics of Unilateral Action: Measuring Delegation and Discretion in the Executive Branch," introduces novel measures of executive-branch delegation—the extent of agents' authorization for action—and discretion—the flexibility offered to agents in defining how to use that authority. The paper provides evidence of the reliability and validity of these measures, which are substantive and rely on textual analysis rather than structural proxies. The main contribution of the paper is the introduction of the Administrative Delegation Dataset, which provides scores for 1,641 presidential unilateral directives; including executive orders, memos, and proclamations; issued between 1936 and 2021. To my knowledge this is the first such measure of executive-branch delegation, and it promises to be a useful tool for researchers of executive-branch politics.

In the second paper, "Delegation by Executive Order: Discretionary Windows in Presidential Unilateralism," I leverage these new scores to consider the president's ability to constrain bureaucratic behavior in the context of executive orders. In particular, I examine the relationship between the role of agencies in the formulation of an executive order, and the order's associated discretionary window. The paper uses data from Rudalevige (2021), identifying the origins of more than 500 executive orders as either emanating from within the White House, or originating in executive branch agencies. Using my delegation and discretion scores, I find that agency development of an order is associated with a narrower grant of discretion relative to development by White House staff, even when controlling for order significance and extent of delegated

authority. Moreover, this relationship does not seem to have changed over time, and does not appear to vary by party. This finding sheds new light on the use of discretion within the executive branch.

In the final paper, "Participatory Unilateralism: Understanding Congress's Role in Presidential Unilateral Policymaking," I advance my principal argument: that Congressional committees can use oversight to shape the implementation of executive orders by administrative agencies. Using a dataset of 1,420 executive orders issued between 1970 and 2021, as well as all Congressional committee hearings pertaining to oversight of executive orders conducted over the date range (n = 362), I find that higher delegation and discretion scores are associated with more Congressional hearing activity. This relationship is generally not conditioned by partisan division but persists during periods of both unified and divided government. The implication is that when agents are given the authority and latitude to execute unilateral directives, Congress has an opportunity to shape the implementation of those orders through committee oversight.

To Alex, who enabled this and many other good outcomes.

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ACKNOWLEDGEMENTS

Writing acknowledgements for a dissertation is a challenging exercise, because the dissertation is not just a research project, but a representation of many years of learning, effort, and personal growth. The past six years have featured an awful lot of learning and growing, much of it difficult, most of it rewarding, and all of it enabled by many friends, colleagues, and loved ones.

First, I would like to thank the members of my dissertation committee; Sean Gailmard, Eric Shickler, Sarah Anzia, and Rob Van Houweling; not only for offering useful professional guidance and feedback, but for being kind and supportive, fostering a positive and productive environment for me learn and to do my work. I am particularly fortunate in having Sean as my chair. Sean has been a generous and supportive advisor, encouraging me to pursue my ideas, offering insights about my work in progress, and pushing me to think about what "good work" should look like. He has taught me not only how to think about politics, but how to center my own judgements and take pride in my work. Sean models the pursuit of ideas for their own sake, and finding joy in the effort. As he has said many times, reading, writing and thinking about politics "beats working!" We should all be so lucky to find personal and intellectual fulfillment in our work.

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Most of all, I would like to thank my husband, Alex. Moving across the country with our toddler for me to pursue this career change required a huge leap of faith from him, and this turned out to be more of a family project than I think either of us anticipated. For the many (many) bedtimes, loads of dishes, loads of laundry, weekend playground trips, diaper changes, grocery runs, other people's kids' birthday parties ... thank you. You held everything together so I could make this happen, and I am so grateful. I also want to acknowledge my daughters: Tessy, who grew up into

1 The Administrative Politics of Unilateral Action: Measuring Delegation and Discretion in the Executive Branch[1,2]

1.1   Introduction

The expansion of presidential power has been a major development over the last century of American politics. Scholars point to the use of unilateral policy mechanisms as having "radically impacted how public policy is made in America today" (Howell 2003, 7). To date, the unilateral action literature has focused mostly on what Lowande and Rogowski (2021) describe as the "macro-politics of unilateral power." That is, existing empirical scholarship accounts for variation in the number of executive orders over time, or "significant" orders, by identifying explanatory variables in the relationship between the president and Congress. This existing literature can be thought of as focusing on unilateral action as a separation of powers problem: the president tries to "go it alone," and Congress constrains the ability of the president to do so, usually by imposing post-hoc sanctions or taking post-hoc legislative action to reverse the president's move.

An emerging area of research, and the area that this project contributes to, considers unilateral action as an agency problem,[3] bringing the challenges of bureaucratic responsiveness and control into the exercise of unilateral powers. As Lowande and Rogowski explain, "[t]aken literally, 'unilateral' power is only unilateral with respect to Congress, the Judiciary or other non-executive actors. Every presidential directive is an order to an administrator. We suspect few researchers would disagree with these points, but how they ought to inform theories of unilateral power is contestable. To date, they mostly have not" (2021, 8). This paper represents a step towards addressing this gap, by facilitating empirical investigation of the administrative politics that underlie presidential unilateral actions.

The paper introduces novel measures for what I refer to as "administrative delegation." Administrative delegation is distinct from legislative delegation, in that it refers not only to delegations of a president's own executive or statutorily granted powers, but also to the direction of agency activity in the utilization of their authority, whether that authority comes from statute or from an inherent executive power. These directives have two dimensions: the type of activity that is being ordered (the "delegation dimension") and the flexibility that agencies have in defining the objectives and details of that activity (the "discretion dimension"). Employing novel measures for these two dimensions, I create a dataset of unilateral actions: the Administrative Delegation Dataset. This dataset can be used to investigate important empirical questions about the administrative politics of unilateral action. For example, what conditions inform the extent to which presidents provide broad grants of administrative authority to agencies? How has presidential reliance on agency implementation changed over time or across policy areas? When are presidents more likely to provide detailed directives, and when are they more likely to offer more discretionary flexibility to their agents? Investigating these questions will help scholars to develop new theories of unilateral power that center administrative politics.

In the next section, I situate the Administrative Delegation Dataset within existing literature and highlight similarities and differences to previous studies of delegation in the

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[3] The terminology of separating unilateral action into a "separation of powers problem" and an "agency problem" comes from Lowande and Rogowski (2021).

legislative context. I then describe the measures for the delegation and discretion dimensions in more detail, as well as the data used in constructing the dataset. A discussion of the reliability of the measures follows. Finally, I present a preliminary analysis of empirical patterns in administrative delegation. In particular, I find that while the proportion of unilateral actions that rely on high degrees of administrative delegation has not meaningfully changed, there has been a clear shift in which types of documents presidents employ to issue these directives: executive orders are more likely to be high scoring on the two dimensions of administrative delegation, but this increase reflects a shift away from administrative delegation via memos. I further find that, while the president is generally accepted to have more discretion and authority in issues of foreign policy, that additional discretion is not passed down to agencies: presidents use less administrative delegation in executive orders pertaining to foreign policy than in those pertaining to domestic policy.

1.2 Administrative Delegation in Context
<u>Unilateral Action in Existing Scholarship</u>

Existing unilateral action scholarship generally takes the frame of the president acting strategically to either thwart or incentivize Congressional action. From that perspective, scholars have investigated how many executive orders are issued under different conditions such as unified or divided government, timing within the president's administration, periods of Congressional gridlock, and the ability of the president to influence his co-partisans in Congress (cf. Waterman 2009). In short, what we know about executive orders is mostly how many are issued; and which macro-political variables, primarily in Congress, can explain that variation. This literature tends to focus predominantly on executive orders, which are only one mode of presidential unilateral action. Moreover, the literature generally makes the simplifying assumption that presidents act unilaterally in a more-or-less literal sense, bracketing any intra-branch executive politics that come prior to presidential action.

Although the focus is often macro-political variables, there is recognition that not all unilateral actions are created equal, and scholars have taken different approaches to categorizing or distinguishing amongst them. For example, Warber (2006) classified every executive order issued between 1936 and 2001 as symbolic (e.g., establishing symbols or medals), routine (administrative tasks), policy-related, or some combination. Mayer (2003) categorized a sample of executive orders by subject matter, including executive branch administration, civil service, public lands, defense and military policy, labor policy, and domestic policy. Rottinghaus and Maier (2007) identified three types of proclamations: ceremonial or hortatory, determinations of fact pursuant to the exercise of a statutorily granted power (e.g., declaring a state of emergency), and policy pronouncements. More recently, Belco and Rottinghaus (2017) challenged the standard frame of the president acting in opposition to Congress, highlighting that while presidents do act independently to pursue their policy objectives, many unilateral directives are administrative in nature and are in fact intended to implement legislation.

Additionally, there have been efforts to measure the "significance" of individual orders. While there is some scholarly consensus as to which orders are "significant," this consensus is perhaps not as strong as one might think. Different coding approaches yield different results. Warber et al (2018) identified 39 "landmark" executive orders through interviews with presidency scholars. Howell coded an executive order as "significant" if it was mentioned either in the appendix of the Congressional Record or in the federal court opinions of at least two different cases, the logic being that "congressional representatives and judges will only mention

an executive order if, by some measure, they consider it important" (2003, 79–84). Howell also employs mentions by the New York Times, and journalistic mentions of executive orders as a proxy for their significance is a common approach used by other scholars as well. One frequently-cited measure of significance comes from Chiou and Rothenberg (2017). Those authors identified 19 raters, including historical overviews, law reviews, and mentions in weekly magazines and daily newspapers. They then used an IRT model to create an aggregate significance score from these disparate raters for each order.

These approaches enrich studies of inter-branch politics, but do not illuminate political dynamics within the executive branch. A new direction in this literature is to shift focus to the intra-branch *administrative* constraints on the use of unilateral power. For example, Lowande (2018a) developed a formal model of unilateral action as delegation, showing that the discretion granted to agencies in the implementation of unilateral directives provides an opportunity for Congressional overseers to influence policy outcomes. In another recent example, Rudalevige (2021) identified the role of administrative agencies in developing and crafting unilateral actions in the first place. These perspectives on the administrative politics of presidential unilateralism represent an exciting new pathway for the study of executive power. The Administrative Delegation Dataset will facilitate further research in this direction.

<u>Understanding Delegation and Discretion</u>
As developed further in the following section, the concept of administrative delegation has two dimensions: delegation and discretion.[4] These concepts are central to the study of political institutions, and their definitions tend to follow similar lines: delegation refers to delegated authority, or empowering agents to take actions; while discretion refers to the latitude agents have in choosing how to take those actions. In the legislative context, Congress delegates its constitutional legislative authority to administrative agencies. When Congress passes a bill changing policy, they often delegate the task of "filling in the gaps" to expert administrative agencies. The considerations that inform the extent of this delegated authority, as well as the discretionary flexibility that agents are granted in making these final decisions, are the subject of extensive literature (e.g. Epstein and O'Halloran 1999; Huber and Shipan 2002; Volden 2002; Wiseman 2009).

Several approaches have been taken to conceptualize and measure delegation and discretion in the legislative context. One commonly-used proxy measure for discretion is document length (e.g., Huber and Shipan 2002). The theoretical motivation is that, conditional on subject matter, longer statutes contain more specific and detailed instructions and are thus likely to be more constraining on the agent. Variations on this theme have also been used: for example in studying Congressional appropriations, Bolton and Thrower (2019) use a ratio of new budgetary authority to document length, reasoning that budgetary authorization represents a delegation of authority, and the length of the appropriations language represents constraints on that authority.

Another frequently-cited approach comes from Epstein and O'Halloran (1999), who developed measures of delegation and constraint. Their "delegation ratio" represents the proportion of provisions in a bill that grant authority to the executive branch (as opposed to the courts or some other government entity). The "constraint ratio" represents the proportion of 14 possible types of constraints (e.g., time limits, spending limits, reporting requirements) that are

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[4] Throughout, I use "delegation" to refer only to the delegation dimension, and "administrative delegation" to refer to the combined two-dimensional concept.

present in a bill. While the underlying concepts of delegation and discretion are analogous in the legislative and executive contexts, there are important differences. First is that, while some presidential powers are inherently executive in nature, the president does not have legislative authority to delegate. Lawmaking authority is either delegated directly from Congress to the various administrative agencies, or to the president who then passes that legislative authority to an agent. As a practical matter, however, we can think of administrative delegation as the president directing agencies in deploying their powers, whether those powers came from the president or from Congress. As the head of the executive branch, the president defines administration priorities, and directs agencies as to the pursuit of those objectives (Kagan 2001). While the origin of agency policymaking authority lies with Congress, for the purposes of this paper I use "delegation" to refer to the president's directives to agents about whether and to what extent that power ought to be deployed.[5] Discretion in this context describes any constraints or guidance about how the agency's policymaking authority ought to be utilized and to which particular ends.

There is a rich theoretical literature on delegation to administrative agents, and the associated discretionary windows (Bendor and Meirowitz 2004; Gailmard and Patty 2012). However, empirical work on the president-as-principal has tended to focus on the president's use of the tools of the administrative presidency (e.g., Lewis 2003, 2008; Rudalevige 2002). As far as I am aware, explicit empirical measures of delegated authority and discretionary windows have thus far been limited to Congressional principals.

The conceptual differences between administrative and legislative delegation, as well as differences in the practical operation of the two branches, present a challenge for applying existing measures of legislative delegation and discretion to the executive-branch context. Proxy measures such as word count may not apply in the same way in the executive context as they do in the legislative context, and the procedural constraints identified in the Epstein and O'Halloran measures may likewise be ill-suited to the procedures of the executive branch. Instead, I propose measures of *substantive* delegation and discretion that are tailored to executive-branch politics. These measures are introduced in the next section.

1.3   Measures and Data

The two dimensions of administrative delegation are "delegation" and "discretion." Delegation refers to a president's direction to an agency to take an action, for example to issue permits, make determinations, or promulgate rules. Discretion refers to how much flexibility agents have in determining which policy ends to pursue through the exercise of that authority, for example by increasing or decreasing the stringency of regulations. Some brief examples highlight the importance of this distinction.

Documents creating presidential advisory commissions are typically high-scoring on discretion. For example, Executive Order 12501 created the "Arctic Research Commission," whose members were directed to "develop and recommend an integrated national Arctic research policy." While the order contains procedural details regarding commission membership and reporting deadlines, the substantive nature of the recommendations and even the aims of the Arctic research program are not indicated. The members of the commission, in consultation with

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[5] This is a similar conception to the one used by Belco and Rottinghaus: "Unilateral orders are a means by which presidents delegate the statutory authority granted by Congress to a division or agency within the executive branch or to the presidents themselves" (2017, p. 26)

several agencies, are given broad latitude to develop national policy in this area. On the delegation measure, however, the document receives a low score: the commission is not authorized to move policy directly, but only to make recommendations.

Compare this example to President Clinton's "Memorandum on Protections for Human Subjects of Classified Research." The memorandum requests that the heads of several agencies promulgate rules updating the federal government's guidelines for using human subjects in classified scientific research. This example is high scoring on delegation because the agencies are explicitly authorized to change federal policy through rulemaking. However, the document is low scoring on discretion: the memo details particular guidelines that should be present in the rule. Agencies do not have discretion to set policy direction, though they are authorized to make policy.[6]

It is difficult to draw meaningful comparisons between these two documents on a single dimension, hence the importance of treating delegation and discretion separately. A third example underscores the utility of this two-dimensional coding. Executive Order 10579 directs the Administrator of General Services to explore establishing interagency motor-vehicle pools. The grant of discretion is narrower than in the Arctic research example, because a particular policy is under consideration, rather than a more general request for "agency vehicle policy." But discretion is broader than in the human subjects research example, because the order does not include specific language, or even a determination as to whether the pools should be established. The document is also between the previous examples on delegation: while the order requests recommendations, it also provides for the implementation of those recommendations in the event that the Administrator determines the pools should be established. The directive falls short of a change to national policy, but the implication is clearly that agencies will be implementing a change that will have implications for agency budgets and operations.

To measure these two distinct dimensions of presidential directives, I developed the following scales. The measures rely on close reading of the content of the directive, rather than proxy measures based on the form of the document. A drawback of this approach is of course that data collection is time intensive and not easily replicable. The benefit, however, is that the measures are well-suited to the context, and they can measure *substantive* rather than *procedural* constraints.[7]

Delegation

Delegation describes the type of action that the president is directing an agent to take. Lower-scoring documents request actions that may influence policy only indirectly, while higher-scoring documents request actions that directly enact policy change. These scores are assigned as follows (see **Error! Reference source not found.**):

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[6] Note that policy salience or importance is a separate dimension from the dimensions of delegation and discretion. Within this conceptual framework, knowing how much authority an agent has been delegated does not tell us how much the policy outcome will change from the status quo in a spatial sense, or how much that policy change matters practically or politically. A discussion of the possible relationship between these measures and existing measures of significance is included below.

[7] A copy of the codebook for raters can be found in 4A.1. Additional examples of scored documents are provided in Appendix 4A.2.

Table 1.1: Delegation Scale

Delegation Score	Description
1	Definition or Determination
2	Low - agency input in decision-making
3	Medium - limited or conditional agency empowerment
4	High - general policymaking authority

- **Score 1:** These documents do not provide explicit authorization for agency action. They tend also to score 1 on the discretion variable, as they contain definitions or presidential determinations. For example, Executive Order 10943 designates the "Coffee Study Group" as an organization pursuant to the definition in the International Organizations Immunities Act such that the organization is granted the privileges, exemptions, and immunities conferred by that designation. This changes a definition, but does not itself request agency action.[8]

- **Score 2:** This score applies to documents requesting agency input, but not requesting action on proposed policy changes. Most of the documents receiving this score are requests for policy recommendations. Directives that ask agencies to make determinations under pre-existing criteria also fall into this category. The Arctic research order, above, is an example of this score.

- **Score 3:** This score applies to documents granting limited or conditional policymaking authority. These types of documents include: requests for a single task or discrete action such as implementing an asset freeze for a certain entity, narrowly-defined internal programs such as agency internships, actions that an agency must take on a case-by-case basis such as issuing permits under pre-existing guidelines, or implementing federal policy at a particular location such as a particular tract of federal land. The policy impact of these actions is more direct than the recommendations that are characteristic of score 2, but narrower in scope than the general policymaking authority of score 4.

- **Score 4:** This score is assigned to documents that authorize not only particular actions, but general rulemaking or policy-setting authority. This could mean implementing a national program, as in the creation by executive order of the Peace Corps, or implementing a major policy change within the executive branch, as in the case of orders pertaining to equal opportunity in federal hiring.

Discretion
Discretion refers to the ability of the agent to set the direction in which policy should move, and is separate from their ability to move it in that direction. Low-scoring documents on this variable allow for little to no decision-making flexibility, and the directive clearly delineates how the policy ought to be carried out. High-scoring documents on this variable typically provide a policy objective but leave it to the agency to determine how best to pursue it. These scores are

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[8] An important note is that the Delegation score reflects requests made in the document itself. With this example, the fact of the definition change does not itself direct agency action. However, the agent may need to take action under the International Organizations Immunities Act. In this case, such action is considered authorized by the Act, not by this directive.

assigned as follows (see Table 1.2):

Table 1.2: Discretion Scale

Discretion Score	Description
1	Definition or Determination
2	Low - narrow discretion
3	Medium - some flexibility for definition of tasks
4	High - broad flexibility

- **Score 1:** These documents provide a definition or statement but do not include any decision for an agent. These documents tend to be determinations or definitions that apply existing policy to a new group or entity. The example from Delegation Score 1, above, is also an example of Discretion Score 1.
- **Score 2:** These documents typically direct agents to perform narrowly-defined tasks. The memo cited above about guidelines for classified human subjects research falls into this category: there is minimal flexibility in how agents can execute the directive (promulgate the specified rule), but they do have to take action and there is some minimal decision making involved.
- **Score 3:** These documents are, as with Score 2 documents, limited to the execution of a task, but in these cases there is a higher level of flexibility as to how to execute it. An interesting example of this type of document is Executive Order 13169, which directs agencies to provide assistance to small businesses taking advantage of international trade opportunities. The order includes a detailed list of tasks, including creating an educational outreach campaign for affected workers and establishing a national toll-free help line. Agents have significant flexibility in how to perform these tasks (What hours should the help line have? How helpful should it really be?) but there is no flexibility as to which tasks to perform. Agents cannot decide that a different set of activities would be a more appropriate approach to the issue of small businesses access to international trade. While Score 2 documents tend to involve the execution of a task for a particular case, Score 3 documents tend to involve the execution of tasks towards a general policy objective.
- **Score 4:** In documents receiving this score, the agency has the discretion to select the best means of pursuing the objective. For example, Executive Order 12320 directed the Secretary of Education to develop a program to increase participation of historically Black colleges and universities (HBCUs) in federally-sponsored programs. The order does not define means to achieve this goal, or even set a participation target, but rather directs the agency to define objectives and devise the means of attaining them.

<u>Data</u>
The sampling frame for this project includes executive orders, proclamations, and memos issued between 1936 and 2021.[9] The motivation for including a variety of document types is to avoid

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[9] The full text for these directives was provided by the American Presidency Project at UC Santa Barbara. The dataset contains all observations coded in the American Presidency Project repository as "Executive Orders," "Proclamations," "Letters," "Memoranda," and "Determinations." The latter three categories are categorized as the "Memo" document type for this project. Note that data availability through 1945 is imperfect, and some observations are missing from the Roosevelt administration.

any possible selection effects from looking only at executive orders. The focus on executive orders in the existing literature is mostly for empirical tractability. However, Relyea (2007) identifies more than a dozen distinct types of "presidential directives" including administrative orders, executive orders, presidential announcements, proclamations, and others. The Federal Register, too, publishes several types of presidential directives: on the Federal Register website, researchers can search for determinations, executive orders, memorandums, notices, and proclamations.

The existing focus on executive orders would not be a problem for understanding unilateral action so long as they are the primary mechanism by which presidents influence policy unilaterally. However this is not likely to be the case. Indeed, scholars have repeatedly found that executive orders can be difficult to distinguish functionally from other, lesser-studied, types of presidential documents. Lowande (2014), for example, found that in many cases executive orders are indistinguishable from presidential memoranda, and argues that presidents might strategically elect to use memoranda as a less-visible alternative to executive orders. Similarly, Warber found that, while the distinction between executive orders and proclamations is typically taken to be that the former direct the federal bureaucracy while the latter are addressed to non-government actors, in reality "it is extremely difficult to completely separate an executive order form a proclamation, since many are very similar both in purpose and in the way they are constructed" (2006, 140). Moreover, presidents themselves have ascribed different purposes to the different modes of unilateral action available to them, and even the definitions of the different document types are fluid over time (Lowande 2014).

The difficulty of differentiating executive orders from other types of presidential action suggest that a complete picture of the use of presidential unilateralism must consider a wider variety of types of such action. Indeed, if presidents are choosing strategically between different types of actions to pursue their goals, then a focus on a single type of unilateral action as a stand-in for all unilateral action can lead to measurement error which threatens inference (Lowande and Rogowski 2021).

For these reasons, I collected a broader set of presidential directives for this project. In selecting which documents and types of documents to include, I modify the definition of unilateral action proposed by Lowande and Rogowski (2021). According to their definition, unilateral action must 1) produce a new policy outcome, 2) be a substitution for a legislative enactment, and 3) have a first-mover character. I follow a similar definition, however I require only that a directive must be policy-related rather than that it produce a new policy outcome. Thus directives intended to entrench the status quo are considered unilateral actions. This definition helpfully distinguishes unilateral action—the intention of which is to implement policy—from other types of presidential activities such as the use of signing statements or the use of appointments outside the advice and consent process. The definition also distinguishes unilateral action from reactive or indirect presidential policymaking influence via the presidential veto or mobilizing public opinion. While these other types of activities can influence policy, they do not have the direct legislative character that the term "unilateral action" suggests. While it is possible that some documents that would be rightly considered unilateral action have fallen outside my collection strategy, I expect those cases to be rare. There are, however, documents in my dataset that are *not* unilateral actions, and are thus excluded from analysis. I discuss these cases in further detail below.

1.4 Measure Reliability

Having introduced the measures and data, I turn now to a discussion of measurement validity and reliability. This first section focuses on the inter-coder reliability, or replicability of these measures in practice. I developed the final measures through an iterative process of training, testing, and refinement (Neuendorf 2017). After the initial measures were developed, a team of four undergraduate research assistants underwent extensive training during the Spring of 2022. The team met to discuss appropriate scores for a small sample of documents each week. Points of confusion and disagreement were noted, and the codebook revised accordingly. Interim testing of previous versions of the scales led to further refinement of the measure. The final measures were tested using a sample of 185 documents. Each coder reviewed the documents independently, and then I calculated inter-coder reliability metrics.[10]

Inter-coder reliability metrics are meant to capture the extent to which judgments about scoring for individual observations are replicable. A high-quality measure is one for which, after training, different readers looking at the same document will draw similar conclusions about how to score it. There are not universally-accepted standards for which reliability metrics to employ, nor for threshold values that should be obtained to conclude satisfactory reliability. From her review of the literature on reliability, Neuendorf suggests that "reliability coefficients that account for chance ... of 0.80 or greater would be acceptable to all, 0.60 or greater would be acceptable in most situations, and below that, there exists disagreement" (2017, 168). With this advice in mind, Table 3 reports reliability coefficients using two different methods: Krippendorff's alpha and Gwet's AC2.

These statistics represent chance-corrected measures of rater agreement. They reflect the observed agreement between raters relative to the agreement that would be expected if all raters were scoring randomly. This expected agreement is a function of the size of the scale, the number of raters, and the distribution of scores in the sample.[11] These chance-adjusted measures provide a better picture of the reliability of the Delegation and Discretion measures than would raw agreement between raters.[12] Table 1.3 reports these coefficients.

Table 1.3: Multi-Rater Inter-coder Reliability

	Delegation	Discretion
Krippendorff's alpha	0.772	0.797
Gwet's AC2	0.760	0.830

The metrics provide good evidence for the reliability of the measures. Krippendorff's alpha is 0.772 for delegation and 0.797 for discretion, and Gwet's AC2 is 0.760 for delegation and 0.830 for discretion. Note that the coding task is highly interpretive, based on close reading and careful judgement. One would not expect the reliability of these measures to be as strong as the metrics for a simpler coding task. Overall, the results provide sufficient evidence of the replicability of the coding scheme.

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[10] Coders include the four research assistants and the author.

[11] I used the `irr` and `irrCAC` packages in R to calculate these coefficients. Weights were applied for ordinal data rather than the default nominal weights.

[12] Additional discussion of the measures' reliability, including raw agreement scores, can be found in Appendix 3.

A related concern to reliability is validity: does the measure capture the intended concept? There is significant precedent in the literature for the conceptual and face validity of these measures. Previous attempts to measure delegation and discretion in the legislative context have taken a similar approach to separating authorization of action from discretion as to policy preferences (Bolton and Thrower 2019; Epstein and O'Halloran 1999; Huber and Shipan 2002). Ideally, additional validity checks would test both the extent to which the two measures identify the intended concept, as well as the extent to which the measures are different from one another.

Unfortunately, testing the validity of these measures is difficult because of the lack of existing validated measures to compare to. Moreover, validating the measures through theory-testing is complicated by the reality that many existing theories of administrative delegation have not been empirically tested. This makes it difficult to disentangle whether a result is (dis)confirming the theory, the measure validity, or both. While I am thus unable to provide explicit validity tests, the following section describes trends in the data that lend support to the validity of the measures.

1.5 Descriptive Statistics

After testing was completed, raters reviewed a sample of 4,036 documents, representing roughly 20% of the documents over this period. More recent executive orders were slightly over-sampled, but otherwise sampling from the population was random. The sample was representative of the population of documents on observable characteristics including distribution of document types, distribution of documents over time, and document length.[13]

For the 4,036 documents in the sample, raters assigned delegation and discretion scores where appropriate. However, 2,395 documents were not scored, typically because they fell outside the scope of this investigation. There were four reasons a coder might not be able to assign delegation and discretion scores, given by the following flags:

- **Ceremonial:** this category includes proclamations of national holidays or other days of official observance, approvals of designs of seals and flags, and memorials or requests to lower flags to half-staff. Because such ceremonial proclamations fall outside the definition of unilateral action described above, they are removed from the analysis.
- **Appended Constraints:** these documents generally do fall under the definition of unilateral action, but coding them for delegation and discretion scores is not feasible. This is typically because the interpretation of the document relies heavily on another document. For example, a directive that requests agents implement a plan, but does not include the text of the plan, cannot be coded. The plan itself might include grants of delegation and discretion, but the directive does not indicate how much. Amendments to previous directives also sometimes fall into this category if the reader is unable to determine whether the amendment changes the original grant of delegation or discretion.
- **Administrative:** these documents pertain to administrative management and include reorganization of executive agencies without assigning new government functions, reassignment of functions from one government entity to another, changing the order of succession within a particular department, or individual personnel issues such as exemptions from retirement. While these directives could influence policy outcomes, such influence is indirect: they do not themselves request policy-related activity from agents.

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[13] Further discussion of the sample characteristics is provided in Appendix A.4.

- **Not Executive Action:** these documents are not related to executive-branch policymaking. These are primarily presidential private letters or letters to Members of Congress. They are included in the full dataset for the logistical reason that both private and policy-related letters and memos are sorted into the same category by the American Presidency Project. Because they are not directives to executive-branch agents, they are excluded.

Table 1.4 illustrates how these flags were assigned by document type. If a document was not assigned a flag, it was scored on delegation and discretion. As shown in Table 4, most executive orders were scored: of the 4,966 executive orders in the complete data provided by the American Presidency Project, 1215 (24.4%) were sampled and 989 (81% of the sample, about 20% of all EOs) received scores. The most frequent reasons for an executive order's exclusion was because it was administrative in nature, or because the coder could not identify appropriate scores without consulting additional documents. Documents in the "Memo" category were also frequently excluded because they were administrative in nature. But by far the most common reason for the exclusion of a "Memo" was that it was actually a private letter or a letter to a Member of Congress (about half of the sampled documents). These documents clearly fall outside the scope of this investigation. Finally, the large majority of Proclamations (about 87%) were excluded for being Ceremonial rather than policy-related.

Despite these exclusions, grants of administrative delegation were identified in all documents. Figure 1 illustrates the distribution of Delegation and Discretion scores for these 1,641 documents. Note that while executive orders tended to have more high-scoring documents than the other document types, all three document types had at least some documents at the higher end of the scale range on each variable.

Table 1.4: Use of Flags by Document Type

	Executive Order	Memo	Proclamation
Ceremonial	15	1	1253
Appended Constraints	103	44	4
Administrative	108	169	0
Not Executive	0	694	0
Scored	988	470	181
Total	1214	1378	1438

Using these scored documents, we can investigate the extent to which the measures for delegation and discretion are distinct from one another. Conceptually, the two dimensions measure different underlying features of a directive. This is consistent with previous work distinguishing delegation of authority and constraints on decision-making, as discussed above. When scoring the documents on delegation, raters ask "what is the agent being asked to do?" When scoring on discretion, raters ask "how much flexibility do agents have to do it?"

While conceptually distinct, delegation and discretion are not necessarily statistically independent. It is likely that when the president issues a unilateral directive, the two dimensions are co-determined. One might expect that the two measures should be inversely related: when presidents ask agents to do more, for example promulgate rules, they will want to more narrowly tailor how agents do it. Surprisingly, this does not appear to be the case at first glance. The

overall correlation coefficient is quite high: 0.81 with $p < .01$. That is, larger grants of authority tend to come with broader grants of discretion.

Figure 1.1: Distribution of Scores by Document Type
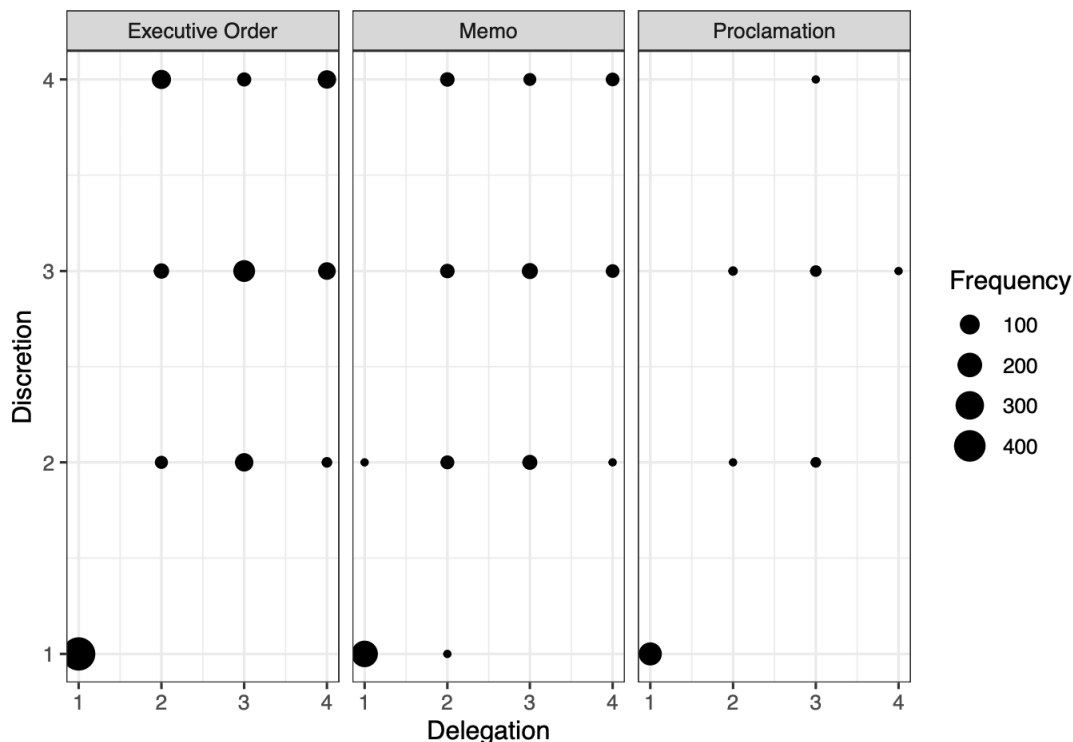
However, as suggested by Figure 1.1, this high degree of correlation is driven by the large number of documents scoring 1 on both dimensions. These documents make determinations or definitions and are relatively common. It is important to note that the documents scoring 1-1 are not ceremonial or unrelated to policy: they reflect policy-related definitions or presidential determinations. While they do impact policy, they do so in a narrow and detailed manner. It is conceptually reasonable that documents scoring 1 on one dimension will score 1 on the other as well: if an agent is not granted explicit policymaking authority, it is not possible for them to exercise discretion in the use of it. Similarly, if an agent is not granted any discretionary flexibility, they cannot be granted authority: even a small grant of authority gives agents the flexibility to determine how faithfully to execute it.

It is the prevalence of these 1-1 documents that drives the high correlation between the two dimensions of administrative delegation. When these documents are excluded, the correlation coefficient falls to 0.06, with $p < 0.1$.[14] At scores above 1, then, there is no correlation between the two dimensions. This indicates that, while it is still most likely that delegation and discretion are co-determined, different combinations of delegation and discretion will be used in different situations. Possible determinants of these choices are discussed below.

An additional concept that readers may find intuitively similar to delegation is

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[14] The frequency of these documents and how easily identifiable they are to coders raises the concern that these documents may also be driving the reliability of the measure. This does not seem to be the case. A discussion of this possibility is provided in Appendix A.3.

significance. As discussed previously, existing scholarship has made progress in distinguishing "significant" executive orders from the many routine directives that characterize the modern administrative state. Existing measures of significance perform well at identifying orders that have sparked interest or discussion in academic or legal circles, or have led to Congressional or judicial activity. But the idea is somewhat under-conceptualized, in that we are not certain *why* a given order is significant. For example, significance could reflect the extent of policy change, the salience of the policy issue, separation of powers concerns, or other legal or political characteristics of interest.

Despite this ambiguity in what measures of significance capture, it is clear that significance is conceptually and operationally distinct from administrative delegation. First, the extent of delegation is not equivalent to movement of a policy in a spatial sense: scores on delegation indicate the agent's role in policymaking (e.g., promulgating rules, developing plans, or issuing permits). But this activity is separate from the extent to which the policy moves: a new rule could be used to entrench the status quo.

Delegation is also not equivalent to issue salience. In some cases a high-salience policy may be associated with a greater degree of delegation, but it need not be the case. For example, Executive Order 11130 appointed a commission to report on the assassination of President Kennedy. The Chiou-Rothenberg (2017) significance of this order is 1.864, which is higher than the significance score for 97.5% of executive orders.[15] But this order received a score of only 2 on delegation, because the agents are not empowered to shift policy, but only to provide a report based on a fact-finding operation. This appears to be a case where the significance of the order is driven by its substantive salience to the public rather than a major change to the status quo.

Overall, the correlation coefficient between significance and delegation is 0.47, and 0.44 for discretion, with $p < .01$.[16] This degree of correlation suggests that while significance does move with administrative delegation, they are not equivalent. It is also not clear how they relate to one another theoretically. If significance is primarily driven by issue salience, and salience influences delegation, then we can use significance as a predictor of delegation. If, however, significance is primarily a reflection of separation of powers concerns, then delegation might be a predictor of significance. As our understanding of significance improves, scholars can further examine this relationship.

1.6   Patterns of Administrative Delegation

The Administrative Delegation Dataset facilitates investigation of a number of important questions in the study of executive politics. To provide researchers a descriptive baseline for future work, this section explores variation in presidential use of administrative delegation over time and by policy area. In particular I show that, while the number of directives with high scores for both Delegation and Discretion has grown over time, this growth is proportional to expanded use of unilateral directives overall. However, when broken out by document type, I the use of administrative delegation has been growing for executive orders, and this increase is offset by a decrease in administrative delegation in memoranda. Finally, I break the trends down by policy area, and find that presidents use less administrative delegation in foreign policy than in domestic policy.

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[15] Significance scores over Chiou and Rothenberg's complete dataset of executive orders range from -0.994 to 3.491.

[16] Correlation falls to 0.19 for Delegation and 0.04 for Discretion when the 1-1s are removed. The coefficient remains statistically significant for Delegation, but not for Discretion.

Administrative Delegation and Expanding Executive Power

While presidents have significantly expanded their power in the modern era, they nonetheless still rely on administrative agencies to implement their policy proposals. How has expanded presidential power affected the relationship between the president and the administrative state? When presidents are granted by Congress (or otherwise take upon themselves) more policymaking authority and discretion, to what extent do they share that responsibility and flexibility with agencies? The Administrative Delegation Dataset enables researchers to better understand the intra-branch contours of executive power.

First, how has the use of administrative delegation evolved over time? As Moe (1985) articulated, as public expectations of presidential activity mount, and legislation becomes politically more difficult to attain, presidents increasingly rely on the administrative state to pursue their policy objectives. One possible expectation, then, is that because the president has a full policy agenda and finite time in which to accomplish his goals, he will delegate more policymaking responsibility to administrative agencies. At the same time, the increasing technical complexity of contemporary policymaking suggests that expert bureaucrats should be granted more discretion in developing and executing policy. These two trends combined — the increased workload of executive-branch policymaking and the increased reliance on bureaucratic expertise — both point in the direction of increased use of administrative delegation over time. This logic leads to the *Expanding Delegation Hypothesis:*

Expanding Delegation Hypothesis: Because of the increased policymaking expectations placed on the president and the increasing technical complexity of executive-branch policymaking, we expect administrative delegation to *increase* over time.

One important consideration that cuts against this prediction is the importance to presidents of bureaucratic control or responsiveness (Moe 1985). One tool for enhancing bureaucratic responsiveness is to keep a tighter rein on policymaking by centralizing policymaking activity within the White House Office (Rudalevige 2002, 2021). By making major policy decisions in-house, presidents can maintain tighter control over policymaking and avoid granting authority and discretion to executive-branch agencies that are potentially less ideologically aligned with the administration's priorities. Under this logic, we would expect *less* administrative delegation in policy areas where the president can leverage a more centralized policymaking apparatus. The president's in-house staff will develop the policy, and narrowly tailor a directive for its execution to the relevant executive-branch agencies. This prediction is formalized in the *Presidential Control Hypothesis:*

Presidential Control Hypothesis: For policy areas where the president has more centralized control, we would expect to see *less* administrative delegation relative to policy areas that are more decentralized.

Testing the Expanding Delegation Hypothesis

To test the Expanding Delegation Hypotheses, I use the full set of 1,641 unilateral directives in the Administrative Delegation Dataset; including executive orders, proclamations, and memoranda. As described previously, the inter-dependence of delegation and discretion present a challenge for empirical analysis. To investigate how the delegation dimension has changed over

time, I would need either to control for discretion, which could introduce post-treatment bias, or keep discretion out of the right-hand side, which would introduce omitted variables bias. To address this issue, I define a "high-scoring" directive as one scoring 3 or 4 on both delegation and discretion. While an imperfect solution, this definition allows us to explore the role of delegation and discretion over time with more confidence.[17]

Figure 1.2 illustrates how the use of high-scoring documents has evolved over time. The top panel shows the number of high-scoring documents per year, and the bottom panel shows the proportion of documents in a given year that are high-scoring. While the *number* of high-scoring documents has been increasing, the *proportion* of high-scoring documents as a percentage of total unilateral directives has remained relatively stable. The Expanding Delegation Hypothesis is therefore supported inasmuch as the use of high-scoring documents has increased in absolute terms, however this increase is commensurate with an overall increase in the use of unilateral directives. This pattern is reflected in the bivariate regressions in Table 1.5.[18] Specification 1 predicts the number of high-scoring documents as a function of years since 1936, and finds a positive and statistically significant relationship. Specification 2 predicts the proportion of high-scoring documents in a given year and, while the relationship remains positive, the effect size is quite small and the effect fails to achieve statistical significance. Specification 3 estimates the probability of a given document being high-scoring and, as with Specification 2, finds a positive relationship but one that does not attain statistical significance. Overall, then, the use of delegation has kept pace with the expanded use of unilateral power.

Figure 1.2: High-Scoring Documents Over Time

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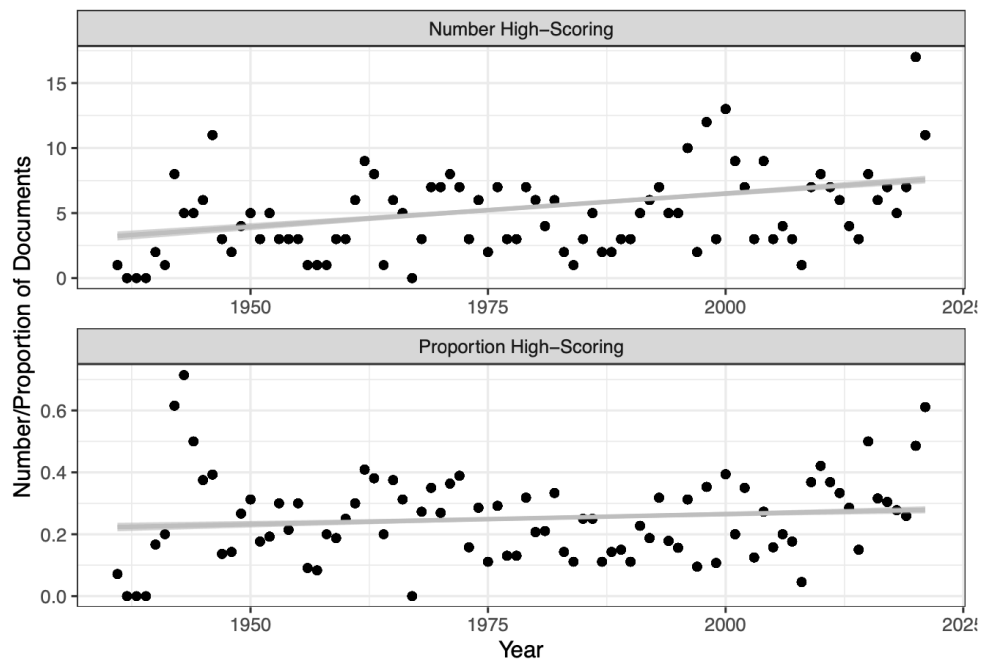
[17] For interested readers, Figures 2, 3, and 4 are replicated in Appendix A.5 with delegation and discretion considered separately.

[18] All models in Table 1.5 are estimated using OLS. Logit replications for specifications 2-4 are provided in Appendix A.6. The results are generally unchanged.

Although this first-cut time trend is an oversimplification of the politics of administrative delegation, it nonetheless gives researchers a useful starting point for investigating factors that inform variation in administrative delegation. One such factor might be changes in the way that presidents use different types of presidential directive. While executive orders are the focus of most literature on unilateral action, recent scholarship has recognized the importance of examining other types of unilateral directives, including proclamations and memoranda (Lowande 2014; Lowande and Rogowski 2021; McLain 2022; Rottinghaus and Maier 2007). Because these measures of delegation and discretion can be applied to any type of executive-branch directive, the Administrative Delegation Dataset facilitates systematic investigation of how presidents' use of different directives has varied over time.

Table 1.5: High-Scoring Documents Over Time

	Dependent variable:				
	Number High-Scoring	Proportion High-Scoring		High-Scoring	
	(1)	(2)	(3)	(4)	(5)
Year	0.051***	0.001	0.001	0.002***	0.002***
	(0.013)	(0.001)	(0.0005)	(0.001)	(0.001)
Memo				0.049	0.054
				(0.066)	(0.066)
Proclamation				−0.225***	−0.228***
				(0.074)	(0.074)
Total					−0.002*
					(0.001)
Year x Memo				−0.003**	−0.003**
				(0.001)	(0.001)
Year x Proclamation				−0.0004	−0.0004
				(0.001)	(0.001)
Constant	−96.041***	−1.142	0.223***	0.236***	0.285***
	(25.359)	(1.191)	(0.024)	(0.029)	(0.040)
Observations	86	86	1,639	1,639	1,639
Adjusted R^2	0.149	0.004	0.001	0.034	0.035

Note: *p<0.1; **p<0.05; ***p<0.01

Indeed, the time trends observed in Figure 1.2 are masking significant differences in how administrative delegation has changed by document type, as shown in Specifications 4 and 5 of Table 1.5. Specification 4 estimates the likelihood of a directive being high-scoring, using an interaction between *Year* and *Document Type* to allow the association with time to differ by type of directive. Specification 5 repeats the analysis, including a control for the total number of documents issued that year. Results of the two models are very similar and show that while the likelihood of an executive order being high-scoring has increased over time, the same is not true for memos and proclamations.

For ease of interpretation, Figure 1.3 plots these relationships descriptively. The left panel shows the number of high-scoring documents each year, differentiated by document type,

and the right panel shows the proportion of high-scoring documents each year by document type. From the figure, it is clear that both the number and proportion of high-scoring Executive Orders has been increasing over time. For memos, while the number of high-scoring directives has been increasing, the proportion of all memos that tare high-scoring is decreasing. The proportion of Proclamations that are high-scoring is also increasing, but the overall number of high-scoring proclamations remains low. This finding adds nuance to our understanding of how presidents use different directives, and underscores the risk of extrapolating findings based on executive orders to discussions of unilateral power more generally.

Figure 1.3: Administrative Delegation By Document Type
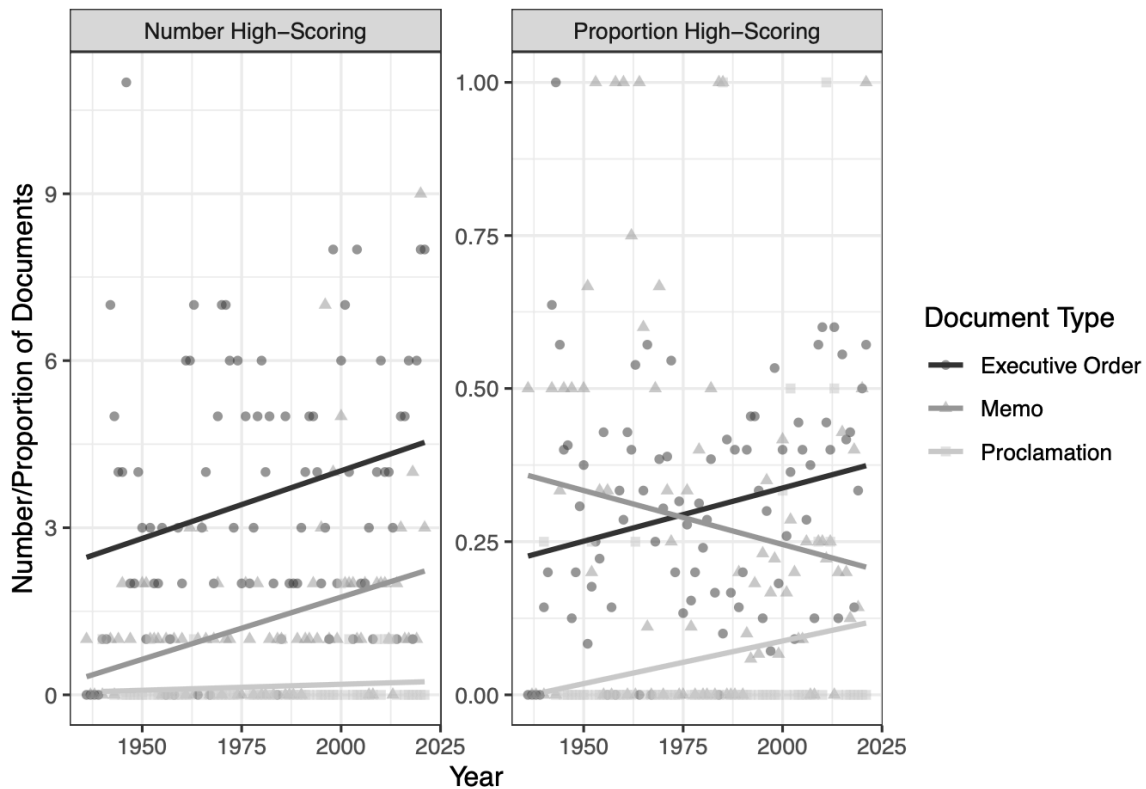
Testing the Presidential Control Hypothesis

The second theoretical expectation described above is that presidents are *less* likely to use administrative delegation when they have more in-house policy expertise. Existing research on centralization shows that presidents are more likely to centralize policy-making when the policy area is high salience or otherwise of particular agenda importance, and when in-house policymaking capacity is sufficient (Rudalevige 2002, 2021). When this happens, in-house policymaking staff will make many of the key decisions, and when the policy is passed to agencies for implementation it should be more narrowly-tailored and thus less likely to be high-scoring on the two dimensions of administrative delegation.

To test this hypothesis I compare administrative delegation in foreign and domestic affairs. Foreign affairs is broadly held to be an area where presidents have significant advantages relative to Congress, and thus greater policymaking independence (Canes-Wrone, Howell, and

Lewis 2008; Lowande and Shipan 2022). Part of the president's strength in foreign affairs is the centralized national security bureaucracy. Because of this in-house policymaking apparatus, the Presidential Control Hypothesis predicts that presidents should use less administrative delegation in foreign affairs than in domestic policy, relying on in-house expertise rather than activation of agency authority. For this analysis, I add a control for policy area. Using policy area codes from the Comparative Agendas Project, I coded each executive order in the dataset as pertaining to either domestic or foreign policy.[19] I then compare the use of administrative delegation for each policy area over time.

Figure 1.4 illustrates initial support for the hypothesis. The left panel plots the number of high-scoring executive orders per year, and the right panel plots the proportion of executive orders in a year that are high-scoring. In both cases, more (a higher proportion of) executive orders pertaining to domestic policy are high-scoring on administrative delegation than orders pertaining to foreign policy. This indicates that in foreign affairs, where the president has significant in-house expertise, activation of agency authority for implementing unilateral directives can be more constrained. In domestic policy, where expertise is more diffusely located in executive-branch agencies, presidents allow agencies more latitude in exercising their statutory authority, as reflected in a higher likelihood of high-scoring directives.

Figure 1.4: Administrative Delegation By Policy Area

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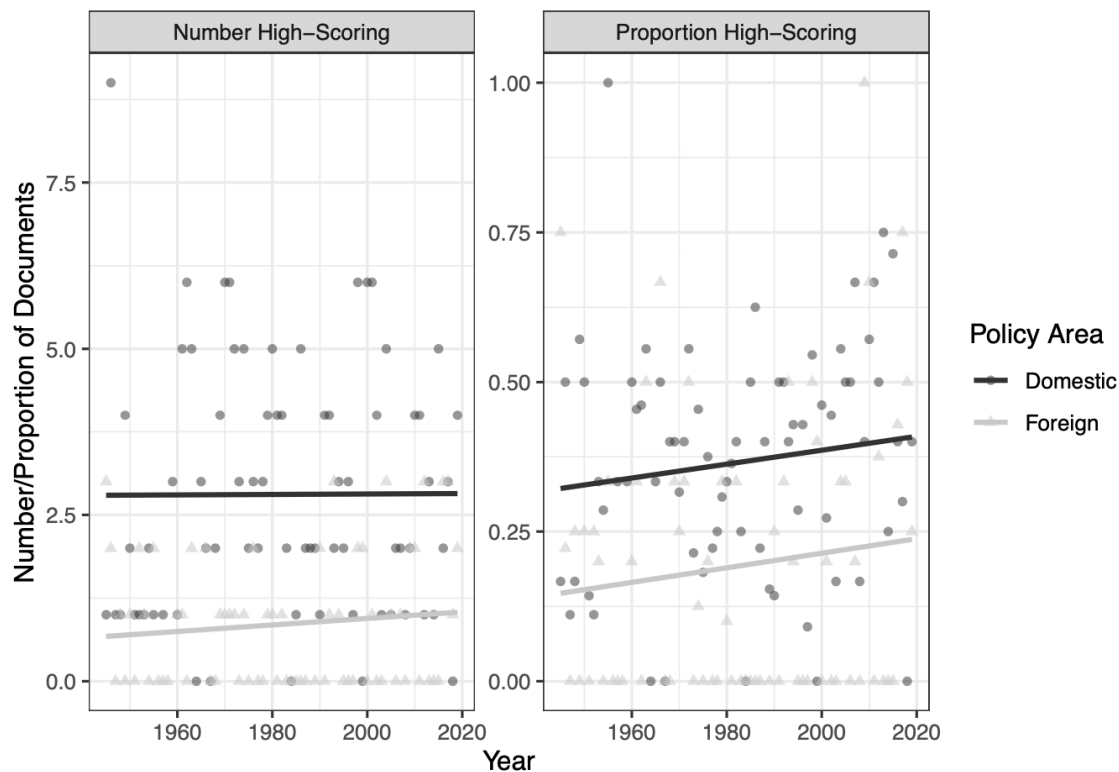
[19] The CAP policy codes are limited to Executive Orders. This data limitation is unfortunate given the previous discussion of different types of unilateral directive. The analysis is nonetheless interesting, but readers should note that the external validity of these findings are limited to executive orders. Future research should investigate the role of policy area in administrative delegation across different types of directives.

These results are corroborated by the regressions in Table 1.6. The data used for Specifications (1) and (2) are organized at the policy-year level, so each observation includes the number of high-scoring documents in a given year for a given policy area (either "foreign" or "domestic"), as well as the proportion of all documents for that policy area in that year that are high-scoring. Specification 3 shows the probability of a given document being high-scoring as a function of its policy area, and Specification 4 predicts the probability of a document being high scoring as a function of both policy area and year.[20] In all specifications, there is a statistically significant negative relationship between *High-Scoring* and *Foreign*. That is, presidents use *less* administrative delegation in foreign affairs than in domestic policy.

Table 1.6: Trends By Topic

	Dependent variable:			
	Number High-Scoring	Proportion High-Scoring	High-Scoring	
	(1)	(2)	(3)	(4)
Foreign	−1.949***	−0.173***	−0.152***	−0.153***
	(0.253)	(0.036)	(0.032)	(0.032)
Year				0.001*
				(0.001)
Constant	2.808***	0.366***	0.352***	−2.033
	(0.178)	(0.025)	(0.019)	(1.432)
Observations	144	144	889	889
Adjusted R^2	0.289	0.135	0.024	0.026

Note:	$^*p<0.1$; $^{**}p<0.05$; $^{***}p<0.01$

Interestingly, Lowande and Shipan (2022) find that there is scholarly consensus across disciplines that presidents have more discretion—relative to Congress—in areas of foreign affairs than domestic policy. The result here indicates that, while Congress may give more latitude to presidents in foreign affairs, that latitude is not passed on to executive-branch agencies in the direction of their authority. Instead, the deference granted to the president by Congress is maintained within the White House.

To summarize, this preliminary analysis shows that 1) presidents' use of administrative delegation has been increasing, but only proportionate to their use of executive unilateralism; 2) the way that presidents use administrative delegation is not consistent across document types, and is in fact increasing within executive orders and decreasing in memos, and 3) presidents delegate less to agencies in foreign policy than in domestic policy. These findings provide a useful descriptive baseline for future research on executive-branch delegation. Opportunities for expanding on these analyses are discussed in the concluding section.

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[20] All models in Table 1.6 are estimated using OLS. Logit replications for specifications 2-4 are provided in Appendix A.6.

1.7 Discussion

The Administrative Delegation Dataset is a valuable new tool for empirical investigation of executive-branch policymaking, allowing researchers to test theories of intra-branch bargaining and executive delegation more directly than has previously been feasible. One of the primary benefits of these new measures is that they are text-based and substantive in nature. While this approach is time consuming and less readily replicable than other potential approaches, the benefit is that the scales directly measure the concept of interest, rather than relying on proxies which may be associated with the concept.

As a preliminary illustration of the utility of this dataset, I have shown that the period of expanding executive power coincided with a shift in the types of documents that presidents use to delegate to their agents. Executive orders today are more likely to represent larger grants of delegation and broader discretionary windows than those of previous decades. However, this pattern represents a mode shift rather than of an overall increase in executive-branch delegation: administrative delegation is decreasing as a proportion of all memos and increasing only slightly for proclamations. Additionally, executive orders are less likely to contain higher degrees of administrative delegation when they pertain to foreign policy topics, relative to domestic policy. This finding is consistent with previous research on centralization: because of presidents' robust in-house national security apparatus, they choose to keep a tighter rein on policymaking in the sphere of foreign affairs.

These findings provide a descriptive baseline for future research. Such future work should include focus on the determinants of variation in administrative delegation, the consequences of such variation, and improvements to the measure itself. I outline several suggestions for further research in this section.

First, while the preceding analysis provided some sense of how administrative delegation has varied over time and by policy area, much more work can be done to understand determinants of variation. For example, current literature on presidential control of the bureaucracy often considers ideological congruence between the president and agencies. Future work could investigate the extent to which discretionary windows vary in ideological misalignment with the implementing agencies.

Similarly, an extensive literature investigates the ways that presidents use appointments both to shape policymaking outcomes, and to satisfy patronage demands (e.g., Kinane 2021; Lewis 2008). How does politicization of agency personnel inform the extent of administrative delegation directed at that agency? Do presidents grant more delegation and discretion to agencies who are staffed with loyalists? Relatedly, how does administrative delegation vary in policy salience and technical complexity, which are themselves determinants of appointments?

Finally, how is administrative delegation shaped by inter-branch politics? Belco and Rottinghaus (2017) argue that in issuing unilateral directives, presidents can act "independently," pursuing their own policy objectives; or "administratively," implementing policies determined by Congress. Does the president use administrative delegation differently when acting independently or administratively? Similarly, does the source of authority for a directive (e.g., specific statutory delegations to either the president or to an agency, general executive or constitutional powers) shape the use of administrative delegation?

In addition to work that investigates determinants of administrative delegation, future work can use the Administrative Delegation Dataset to better understand consequences of delegation for other political phenomena. For example, a question that has received surprisingly little attention in the literature on presidential unilateral action is the implementation of such

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actions by bureaucratic agents. One exception is Kennedy (2015), who found that orders are not always fully implemented. One drawback of Kennedy's approach is that he focused on rulemaking as an indication of whether the order was implemented. However, rulemaking is only one of many possible actions that agencies can take in implementing an order, such as changing guidelines agencies use in issuing permits, providing reports and recommendations, or coordinating pre-existing activities across agencies. Part of a more complete picture of directive implementation could include investigation into how the extent of administrative delegation is associated with the likelihood that a directive is implemented.

Administrative delegation may also shed light on important inter-branch dynamics. For example, how does administrative delegation shape oversight of agency activities by Congress and the Judiciary? Lowande (2018a) theorized that discretionary windows associated with executive orders provide an opportunity for Congressional influence. When presidents delegate to agencies, Congress can use their oversight function to shape implementation of the orders. This theoretical claim can be invested empirically using the Administrative Delegation Dataset. Similarly, the extent to which the courts review agency implementation of executive orders, and agency success in defending their position before the courts, may similarly be a function of the extent of administrative delegation.

Finally, future work can continue to improve upon and validate these measures. For example surveys of experts, such as those utilized by Lowande and Shipan (2022) to assess presidential discretion or by Warber et al (2018), to understand order significance, could be used to develop alternative measures of administrative delegation against which these measure could be validated. Alternatively, recent advances in large language models could be leveraged to score documents more quickly. In both cases, however, efforts should be taken to maintain careful conceptualization. One drawback of expert ratings is that experts may substitute their own judgement for the definition provided by the researcher. Similarly, AI-based scoring may not be transparent to the researcher. One benefit of the hand-coding approach taken here is that the conceptualization of the topic under investigation is clear and consistent.

The Administrative Delegation Dataset opens exciting opportunities to further our understanding of executive branch politics. As a dependent variable itself or as an explanation for inter-branch political phenomena, administrative delegation is a useful concept for efforts to understand the administrative politics of executive power.

2 Delegation by Executive Order: Bureaucratic Discretion in Presidential Unilateralism[21]

2.1   Introduction

Executive unilateralism is a central element of American policymaking, particularly in the contemporary landscape of a gridlocked Congress. Popular narratives of presidential use of executive orders paint a picture of expanding executive power, with presidents issuing decrees to pursue their preferred policies. In his first term, President Biden has issued important executive orders dealing with abortion, gun control, childcare costs, and commercial spyware (Hickey et al. 2021). Given the high salience and potential impact of this mode of policymaking, as well as its implications for separation of powers and democratic accountability, it is critical that we understand the extent and nature of constraints on this power.

Existing research on presidential unilateral power has focused primarily on inter-branch dynamics, and in particular on constraints from Congress. In much of this literature, the frequency of executive orders is taken as an indicator of potential executive overreach, and scholars (and the public) are preoccupied with the ability of a gridlocked Congress to respond to an expanding executive. Less attention, however, has been paid to how the administrative politics of the executive branch inform presidential unilateralism. Important recent work has begun to address this gap. For example, Rudalevige (2021) identifies conditions under which agencies themselves take the lead on formulating executive orders. Turner (2020) identifies that agencies are necessary for order implementation, and argues that agency capacity investments in that implementation are a potential constraint facing the president. Nonetheless, in their review of the existing literature, Lowande and Rogowski (2021) identify several persistent gaps in our understanding of the administrative politics of unilateral action. In particular, they argue that while most scholars would agree that presidential directives are orders to administrators, this consideration has been largely omitted in existing studies of unilateral power.

In light of the important role for bureaucrats both before and after the executive order is signed, how much control does the president really have over unilateral policymaking? In this paper, I explore this question by investigating the agency discretion associated with presidential executive orders. In particular, I ask whether executive orders formulated by administrative agencies contain narrower or broader grants of discretion than orders formulated by the White House. To explore this question, I employ data from Rudalevige (2021) on executive order origins. I also use a measure of discretion that captures the extent of administrative flexibility contained in an executive order (Benn 2023). Theory predicts that the orders formulated by agencies would deal with more technical issue areas, and thus be associated with broader grants of discretion. However, I find the opposite relationship: orders originating in the White House contain broader grants of discretion, even when controlling for order significance, policy area, and the extent of delegated authority. Moreover, this relationship does not appear to vary by party or over time.

This counter-intuitive finding sheds new light on the nature of discretion within the executive branch. While discretion is typically understood as a top-down choice from principal to agent, the dynamic described here involves an agent selecting a degree of discretion for itself. The finding that in this situation agents choose to constrain themselves is an empirical pattern that invites further theoretical development. For example, agents may select levels of discretion

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in a given order not only to avoid presidential censure with respect to policy choice, but also to pursue other objectives such as minimizing implementation risk, or avoiding scrutiny from the White House Office.

In the next section, I summarize relevant literature on centralization and discretion, generating a theoretical expectation of the relationship for the context of unilateral action. I then introduce the data I will be using, before explaining my empirical approach and the results of the analyses. Finally, I provide a discussion of the results before concluding.

2.2   Theoretical Framework

The literature exploring grants of discretion in principal-agent relationships is extensive.[22] A seminal paper in this literature is Holmstrom (1984), who demonstrated formally that agents receive broader grants of discretion as the preferences between principals and agents converge, and as their level of expertise increases. Epstein and O'Halloran (1999) employed a similar theory in their study of Congressional delegation to the executive branch. Those authors developed empirical measures of delegation and constraint. Their "delegation ratio" represents the proportion of provisions in a bill that grant authority to the executive branch (as opposed to the courts or some other government entity) (pp. 93-98). The "constraint ratio" represents the proportion of 14 possible types of constraints (e.g., time limits, spending limits, reporting requirements) that are present in a given bill (pp. 103–104). Using these measures, they found that Congress grants increased discretion to the executive under unified government, and greater discretion for more informationally-intense issue areas.

These findings are analogous to Holmstrom's: under unified government, the legislative and executive branches are controlled by the same party, and thus ideological alignment between Congress and the bureaucracy is likely to be closer. The finding about informational intensity is related to Holmstrom's finding about bureaucratic expertise: for more informationally complex issue areas, Congress is more willing to rely on agency expertise in formulating policy. Volden (2002) builds on Epstein and O'Halloran's contribution, developing a formal model of delegation with the addition of status quo policies, agency preferences separate from those of the president, and the existence of an executive veto. In this model, too, bureaucratic expertise and ideological alignment between players emerge as critical drivers of discretionary latitude.

In related work, Huber and Shipan (2002) find again that key determinants of grants of discretion include the level of policy conflict between politicians and agents, and the capacity of politicians to write detailed statutes. This latter point is analogous to the expertise element above: when issue areas are informationally complex, a legislature may lack the in-house capacity to make detailed policy decisions effectively. Huber and Shipan argue additionally that the bargaining environment (e.g., the presence of veto players or bicameral conflict) and actor expectations about non statutory factors (e.g., oversight from the judicial branch) inform the dynamics of delegation.

Ideological alignment and bureaucratic expertise are thus consistently cited as central predictors of grants of discretion in acts of delegation from political principals to bureaucratic agents. A similar dynamic emerges in the literature on presidential control of the executive branch. For example Lewis (2008), in his comprehensive study of presidential appointments, argues that presidents use their appointments power to attempt to control agency policy-making.

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[22] The discussion of relevant literature in this section is necessarily abbreviated, however an excellent review of the theoretical literature on bureaucratic politics, including on the choice of delegation and discretionary windows, is provided by Gailmard and Patty (2012).

Agencies that are ideologically misaligned with the president receive more appointees all else equal, while fewer appointees are used in agencies where maintaining competence is a priority.

Centralization is another key tool of presidential control, and a key area of focus for the analysis below. Centralization refers to "the shift of duties and functions from the wider executive branch to the White House staff" (Rudalevige 2002 p. 6). In his "contingent centralization" framework, Rudalevige (2002) identifies a number conditions that inform the extent to which presidents will centralize the formulation of legislative proposals. For example, presidents are more likely to centralize proposal development when they want to move swiftly, when the policy area is cross-cutting across agency jurisdictions, and when proposing executive-branch reorganization. On the other hand, presidents are less likely to centralize the formulation of legislative proposals when, for example, the issue area requires significant technical expertise, and when the agency formulating the policy is more ideologically aligned with the president.

Discretion, Centralization, and Unilateral Action

This brings us to the relationship between discretion and centralization in the formulation of executive orders. Much of the literature on presidential unilateralism rests on the implicit assumption that unilateral actions represent the president "going it alone." From this premise, the focus is the inter-branch politics of presidential unilateralism.[23] Rather than characteristics of individual directives, the focus is generally on how the quantity of directives is informed by inter-institutional variables such as the proportion of presidential co-partisans in Congress, or presidential approval ratings.

In the analysis here, I shift focus from these macro-political considerations to political dynamics within the executive branch. In making this shift, I follow an emerging trend in the literature on executive unilateralism emphasizing the administrative politics of unilateral action, particularly that executive orders are not self-executing, but rely on agency implementation (e.g., Benn 2023; Lowande and Rogowski 2021; Turner 2020). Beyond implementation of orders, Rudalevige (2021) demonstrates that agencies are also central players in the formulation of executive orders in the first place. The central question of his analysis is when orders are formulated centrally in the White House Office, and when order formulation is left to agencies. Similar political dynamics inform this decision as the dynamics informing the centralization of legislative proposal formulation. In his archival analysis of the origins of over 500 executive orders, Rudalevige finds that presidents are more likely to develop an executive order in-house—that is, to centralize order development—when an order cuts across multiple jurisdictions, carries out reorganizational functions, or has high significance. Consistent with the patterns described above, he also finds that order formulation is more likely to be decentralized—to occur within an agency—when the order deals in a complex policy area, or when the president is ideologically close to the agency in question.

In this study, I gather together these various threads. Because agencies are responsible for their implementation, executive orders are associated with grants of agency discretion. While some orders are highly specific, others provide broad grants of authority to agencies to make decisions about how best to carry out the intentions of the order. At the same time, agencies are sometimes involved in the formulation of executive orders, meaning that they play a direct role in selecting the extent of their own discretion. This leads to the central question addressed here: How does agency involvement in the formulation of an executive order shape the extent of discretion associated with it?

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[23] For an excellent review of this literature, see Lowande and Rogowski (2021).

In theorizing an answer to this question, the literatures on discretion and centralization point in the same direction: agencies are more likely to be involved in formulating executive orders when 1) the order pertains to a policy area that is relatively low-salience and/or not a presidential priority, and 2) the order pertains to informationally-intense or complex policy areas. In other words, agencies are more involved in order formulation when leveraging their expertise and judgement is most important relative to other considerations. These are the same conditions under which presidents are likely to be more willing to grant broader discretion. The overall expectation with respect to discretion is summarized in the *Expertise Hypothesis*:

Expertise hypothesis: Orders with less centralized origins are likely to be associated with higher levels of discretion. Thus, we should observe discretion *decreasing* in centralization.

Empirical investigation of the intermediate premises that decentralized order formulation is associated with lower salience and higher technical complexity is not the focus of this paper; rather evidence for those claims was provided by Rudalevige (2021). For the analysis that follows, I build on those empirical patterns to test their implications for discretion in particular.

2.3   Data and Descriptive Statistics

To test the *Expertise Hypothesis*, I draw on several sources of data as described in this section. The key explanatory variable of interest is the extent of centralization of the executive order's formulation. To measure this, I use Centralization scores developed by Rudalevige (2021). Rudalevige began with a sample of 544 executive orders issued between 1937 and 2004, stratified by presidential administration. He then conducted extensive archival research, drawing on executive order files maintained by the Office of Management and Budget. These files contain records of proposed executive orders, "documenting the formulation and clearance of each proposal" (Rudalevige 2021 p. 76). Based on review of the documents in these files, the author was able to determine whether each directive in his sample originated in the White House Office (WHO)/Executive Office of the President (EOP), in an agency, or some combination. He then assigned centralization scores as follows:

0. Decentralized. These orders are the product of cabinet departments.
1. Mixed origins, departments preponderant.
2. Mixed origins, WHO/EOP preponderant.
3. Centralized. These orders are predominantly the product of centralized staff, within the WHO or EOP.

Starting with these scored Executive Orders, I then assign scores for the dependent variable of interest, *Discretion*.[24] To measure discretion, I employ scores developed by Benn (2023). These Discretion scores are assigned using a 4-point ordinal scale, which measures the decision-making flexibility granted in the order as follows:

1. Minimal discretion, for example a change to a definition, or making a determination
2. "Low" discretion, reflecting detailed instructions with narrowly proscribed flexibility

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[24] In total, my final dataset includes 507 executive orders. The full text of the documents was provided by the American Presidency Project. Of Rudalevige's sample of 544 documents, 507 had full text available through the American Presidency Project and were thus included in this analysis. The omitted documents are from the earliest years of the dataset, reflecting incomplete data availability through the end of the Roosevelt administration.

3. "Medium" discretion, when agents have flexibility in how to approach a task and what types of policy correctives to propose, but the scope of the task and the variables that agencies should consider are clearly delineated in the directive
4. "High" discretion, reserved for cases that provide agents with broad latitude in pursuing policy objectives.

Each document in the sample was reviewed by a trained coder, who determined the degree of discretion granted in each case.[25] The distribution of scores for Discretion by Centralization Score is illustrated in Figure 2.1. There is a large concentration of directives that are decentralized in their formulation (*Centralization* = 1) and low-scoring on Discretion (*Discretion* = 1). Other than this, there is a reasonably good distribution of scores across all category combinations, with no empty cells.

Figure 2.1: Distribution of Discretion and Centralization Scores
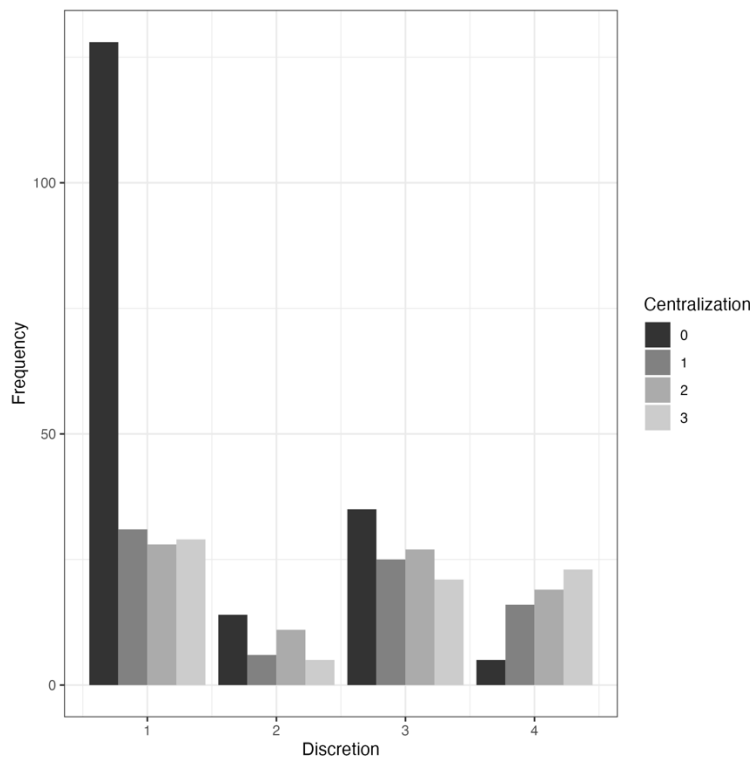
Of the 507 documents I reviewed in the sample, Discretion scores were assigned to 420. Of the omitted documents, 42 were excluded for being ceremonial (10) or administrative (32) in nature. These executive orders covered topics such as changing the design of an official seal or exempting an individual from mandatory retirement. An additional 45 documents were excluded because the extent of Discretion could not be determined from the text of the directive. This was typically the case for amendments to previous executive orders, where the amending order did not contain sufficient information about the substance of the change to make a clear

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[25] Krippendorff's alpha is 0.797 for this variable. Further detail about this coding scheme, including examples and a discussion of reliability and validity, can be found in Benn (2023).

determination about the effect on Discretion. Despite this attrition, the resulting sample is broadly representative of the full collection of orders from the Rudalevige dataset (see Table 2.1, below).

In addition to the key variables of Centralization and Discretion, I employ several controls. The first of these is *Delegation*. In the literature on discretionary windows, discretion is assigned through an act of delegation. The extent of this delegation can vary, as in the delegation ratio constructed by Epstein and O'Halloran (1999). In the executive-branch context, I use "delegation" to refer not only to delegated presidential authority, but also to the request by the president that agencies use their statutorily-granted authority. Delegation for the executive branch is scored using a four-point scale from Benn (2023).[26]

A score of 1 reflects minimal or no delegation, as in the case of a definition or determination that does not explicitly request agency action. A score of 2 indicates "low" delegation, which is assigned when agents are asked for recommendations but the agency is not itself authorized to pursue policy changes. A score of 3 indicates "medium" delegation, which allows an agent to take case-by-case action. Finally, a score of 4, "high" delegation, is reserved for directives that empower agents to implement a broad, national policy change. Note that these Delegation scores were developed in coordination with the Discretion scores described above. Delegation and Discretion are two separate dimensions of a directive: Delegation describes the *extent of authority* for agency action, while Discretion describes the *flexibility* that agents have in deploying that authority.

A second important control variable is executive order *Significance*. Significance is a commonly-used control variable in studies of executive unilateralism, and is included as a control here using scores from Chiou and Rothenberg (2017). Significance conveys the extent to which an order generated significant interest in legal or academic circles, was discussed in the press, or was the subject of Congressional or judicial activity. It is important to note that Delegation is conceptually distinct from executive order significance: Delegation measures the extent of agency authority, but is agnostic as to the salience or policy consequence of that authority. Significance, in contrast, reflects the policy relevance and salience of a directive, but does not directly measure agency involvement. While Delegation and Significance scores do not measure the same underlying concept, they are associated with one another, with a correlation coefficient of 0.42. Delegation is also associated with Discretion, with a correlation coefficient of 0.79. Finally, the correlation coefficient between Discretion and Significance is 0.38. These measures are conceptually distinct, but they do tend to move together.[27] I address these associations in the analyses that follow.

Finally, I employ the following additional control variables:

- **Presidential partisanship:** The variable Republican indicates whether the president issuing the executive order was a Republican.
- **Time in office:** As presidents spend more time in office, they may learn more about how to do their job, or become more/less trusting of their administrators, and the types of policies that are on the agenda may also shift. Thus time in office is captured by the variable Hundred Days, which indicates whether an order was issued in the first 100 days of the president's administration.[28]

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[26] Krippendorf's alpha for Delegation is 0.772. Further detail about this measure is available in Benn (2023).

[27] Further discussion of the association between Delegation, Discretion, and Significance is provided in Benn (2023).

[28] For two-term presidents, the first hundred days of the second term are also considered "hundred days."

- **Unified government:** Presidential behavior with respect to bureaucratic management differs depending on whether they share or are opposed to Congressional priorities. The variable Unified Government captures whether both chambers of Congress share the president's partisanship.
- **Policy Area:** The extent of discretion depends on the technical complexity and salience of the particular policy area. Fixed effects for policy area are included using Major Topic codes from the Policy Agendas Project.[29]

Table 2.1 presents the means of the control variables included in the sample. The Full Sample column presents means for the full Rudalevige sample, and the Coded Subsample column presents means for the subsample of orders that were coded on Discretion and Delegation. The two groups are broadly similar.

Table 2.1: Sample Means of Control Variables

	Full Sample	Coded Subsample
Centralization Score	1.196	1.139
Delegation	–	1.986
Significance	0.121	0.194
Republican	0.527	0.508
Hundred Days	0.078	0.083
Unified Gov	0.469	0.48

2.4   Testing the Expertise Hypothesis

To test the expectation described above, I use a proportional odds model, or ordered logistic regression. Proportional odds models estimate the log odds of an observation receiving a given score or lower relative to receiving a higher score. In the equation below, the left-hand side is the log odds of the outcome (*Discretion*) being below a certain score, j (in this case, $j \in [1, 4]$). On the right hand side, α is an intercept specific to that level of Discretion, and β is the coefficient on the explanatory variable of interest (*Centralization*). So for each level of Discretion, the model estimates a separate intercept, but the levels share a coefficient on Centralization, β.

$$logit[P(Y \leq j)] = \alpha_j - \beta x, j = 1, \dots, J - 1$$

Table 2.2 presents the results of this baseline model. Column (1) of Table 2.2 shows the main specification including all controls, fixed effects for policy area, and president fixed effects. Column (2) replaces the president fixed effects with a control for Republican. The remaining specifications are meant to address the collinearity between Discretion, Delegation, and Significance, as discussed above. To confirm the robustness of the significance on Centralization, I first drop Delegation (Column (3)), then Significance (Column (4)), then both (Column (5)) from the analysis. In all cases, the coefficient on *Centralization* remains positive and statistically significant at the 0.01 level.

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[29] Results hold when excluding these fixed effects; see Appendix B.1.

Table 2.2: Baseline Specifications (Ordered Logit)

	Dependent variable:				
	Discretion				
	(1)	(2)	(3)	(4)	(5)
Centralization	0.489***	0.490***	0.434***	0.545***	0.639***
	(0.134)	(0.130)	(0.117)	(0.122)	(0.106)
Delegation	1.919***	1.867***		1.903***	
	(0.161)	(0.153)		(0.150)	
Significance	0.038	0.057	0.538***		
	(0.156)	(0.152)	(0.129)		
Republican		−0.333			
		(0.387)			
100 Days	−0.174	−0.207	−0.157	−0.220	0.007
	(0.471)	(0.466)	(0.420)	(0.442)	(0.386)
Unified Government	0.522	0.132	−0.320	0.842	0.187
	(0.590)	(0.388)	(0.482)	(0.557)	(0.454)
President FE	Y	N	Y	Y	Y
Policy Area FE	Y	Y	Y	Y	Y
Observations	381	381	381	409	409
Note:			*p<0.1; **p<0.05; ***p<0.01		

While the estimated association between *Centralization* and *Discretion* is statistically significant, its sign is the opposite to the one predicted by theory. Decentralized orders, rather than being associated with broader grants of discretion as predicted by the *Expertise Hypothesis*, are associated with *narrower* discretion. Put another way, the more centralized an order's formulation, the more discretion granted to agencies. This result is confirmed in the robustness checks in Appendix B.1, which repeat this analysis omitting policy-area fixed effects and using a different construction of the outcome variable. The relationship is thus robust to changes in modeling choices.

We can gain a better understanding of this association by looking more closely at the proportional odds model in column (1) of Table 2.2. Figure 2.2 illustrates the association between Centralization and the probability of receiving each discretion score.[30] Each panel shows the probability of a document receiving a given score for Discretion at different levels of Centralization. For example, the probability of a document scoring 1 on *Discretion* is decreasing

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[30] Covariates are held at their means. Regression results including intercept estimates are presented in Appendix B.2.

in *Centralization*, from around 0.65 when formulation is fully decentralized to approximately 0.3 for fully centralized documents. From the figure, it appears that much of this decline is offset by an increase in the probability of receiving a score of 3, which increases from approximately 0.15 for decentralized orders to nearly 0.4 for centralized ones. The probability of receiving scores of 2 and 4 are increasing only modestly in Centralization.

Figure 2.2: Association Between Centralization Score and Discretion
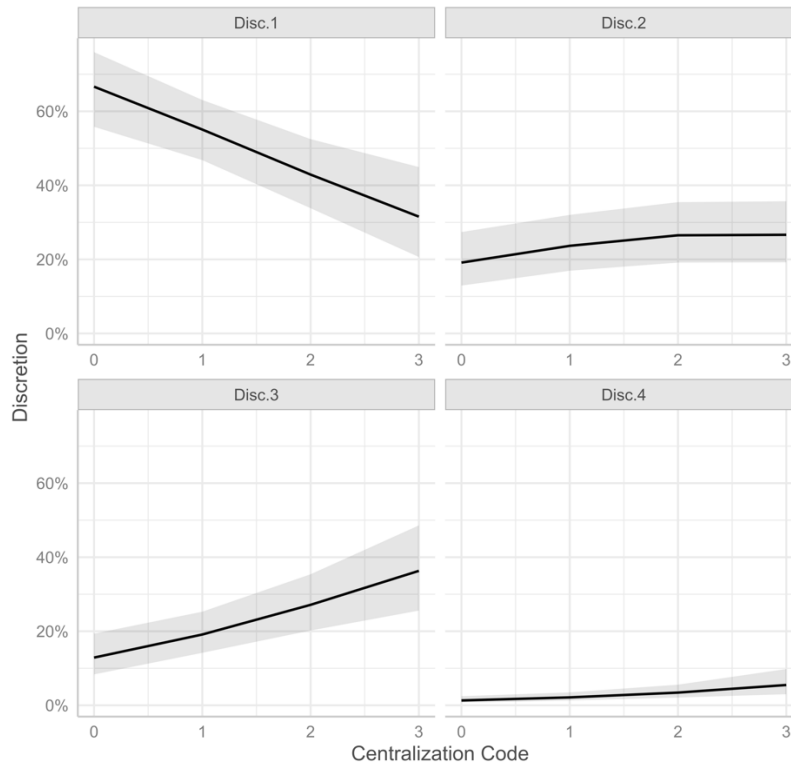
The figure adds additional information about the positive coefficient on Centralization. While the probability of all scores greater than 1 is increasing in Centralization, the positive association between Centralization and Discretion seems to be driven primarily by an increase in the probability of receiving a score of 3 on discretion, and a decrease in the probability of receiving a score of 1. That is, centralized orders are less likely to be orders making narrow definitional changes, and more likely to be orders that offer the agency flexibility to determine how to pursue a specified policy objective.

Interestingly, this relationship does not seem to have changed over time. To test whether the relationship between Centralization in Discretion has evolved temporally, I construct a dichotomous variable *Post-Reagan*, which indicates whether a given order was issued during the Reagan administration or later.[31] There is strong evidence that the tools and strategies of presidential management over the executive branch evolved significantly during the Reagan administration, motivating this administration as a reasonable cut-point (e.g., Nathan 1983). For robustness, I have also estimated the model with the alternative cut-point *Post-Nixon*. The results

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[31] I construct this dichotomous variable to accommodate the small number of available observations.

of this analysis are presented in Table 2.3. The model using the Reagan cut-point is reported in Column (1), and the Nixon cut-point in Column (2). In both specifications, the coefficient on *Centralization* remains positive and statistically significant. And in both cases, the interaction term is not statistically significant, suggesting that the relationship between Centralization and Discretion has remained relatively stable over time.[32]

Table 2.3: Interaction Effects Models

		Dependent variable:	
		Discretion	
	(1)	(2)	(3)
Centralization	0.415**	0.450***	0.493***
	(0.180)	(0.149)	(0.167)
post-Reagan	−0.425		
	(0.368)		
post-Nixon		−0.396	
		(0.386)	
Republican			0.449
			(0.362)
Delegation	1.890***	1.901***	1.860***
	(0.153)	(0.155)	(0.151)
Significance	0.047	0.044	0.045
	(0.147)	(0.147)	(0.146)
Centralization x Reagan	0.114		
	(0.220)		
post-Nixon		0.073	
		(0.223)	
Centralization x Republican			−0.018
			(0.216)
Policy Area FE	Y	Y	Y
Observations	381	381	381
Note:			*$p<0.1$; **$p<0.05$; ***$p<0.01$

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[32] Note that with this relatively small sample, we cannot claim with certainty that the interaction is not statistically significant. However, from the size of the coefficients, and from the similarity of the plots in Figure 2.3, I argue that these differences are nevertheless unlikely to be *substantively* significant.

We can see the stability of this relationship in Figure 2.3. As in Figure 2.2, each panel represents the probability that a document receives the indicated Discretion score. The blue line shows the probabilities estimated for the orders issued prior to the Reagan administration and the red line shows the probabilities estimated for the orders issued during the Reagan administration or later. In all panels, the slopes of the two lines are very similar.

Figure 2.3: Effect of Centralization on Discretion Over Time
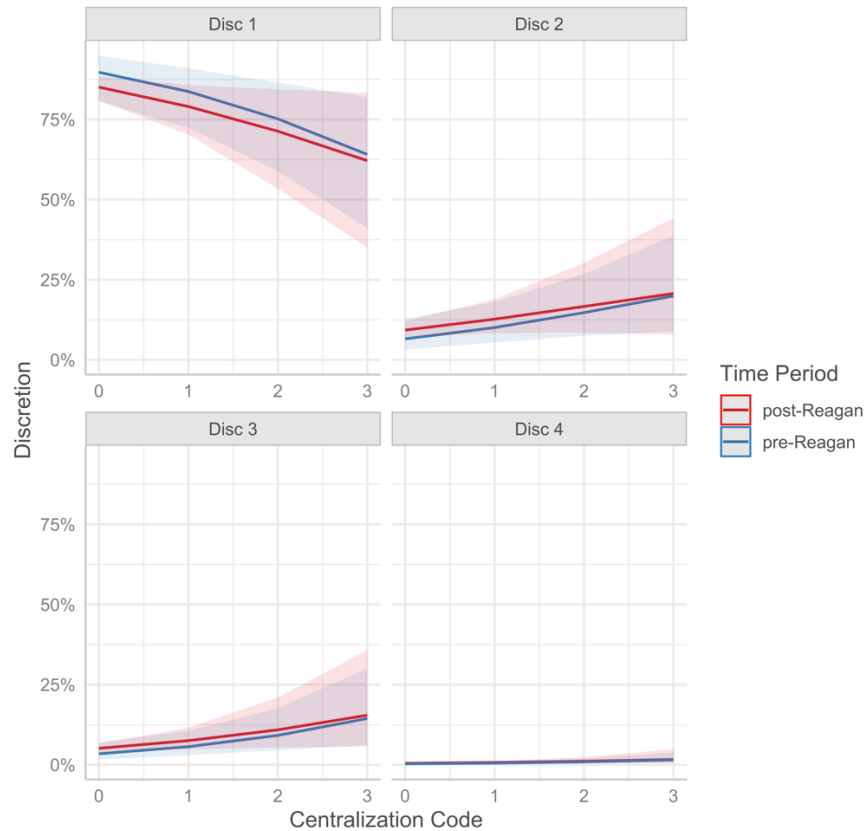
Similarly, the relationship seems to be consistent across presidents of different parties. Column (3) of Table 2.3 estimates Discretion interacting Centralization with Republican. This model allows the relationship between Centralization and Discretion to vary by presidential party. So, for example, if presidents of one party are systematically more likely to assign narrow discretion for centralized orders, we would expect to see this reflected in the coefficient estimates. However, as in the first two columns, the effect of Centralization remains positive and statistically significant, and the interaction term is not statistically significant, suggesting that presidential partisanship does not mediate the relationship between Centralization and Discretion. The marginal effects are displayed in Figure 2.4. As in Figure 2.3, the lines have similar slopes, suggesting the effect is relatively consistent regardless of the party of the president.

Figure 2.4: Centralization and Discretion by Party
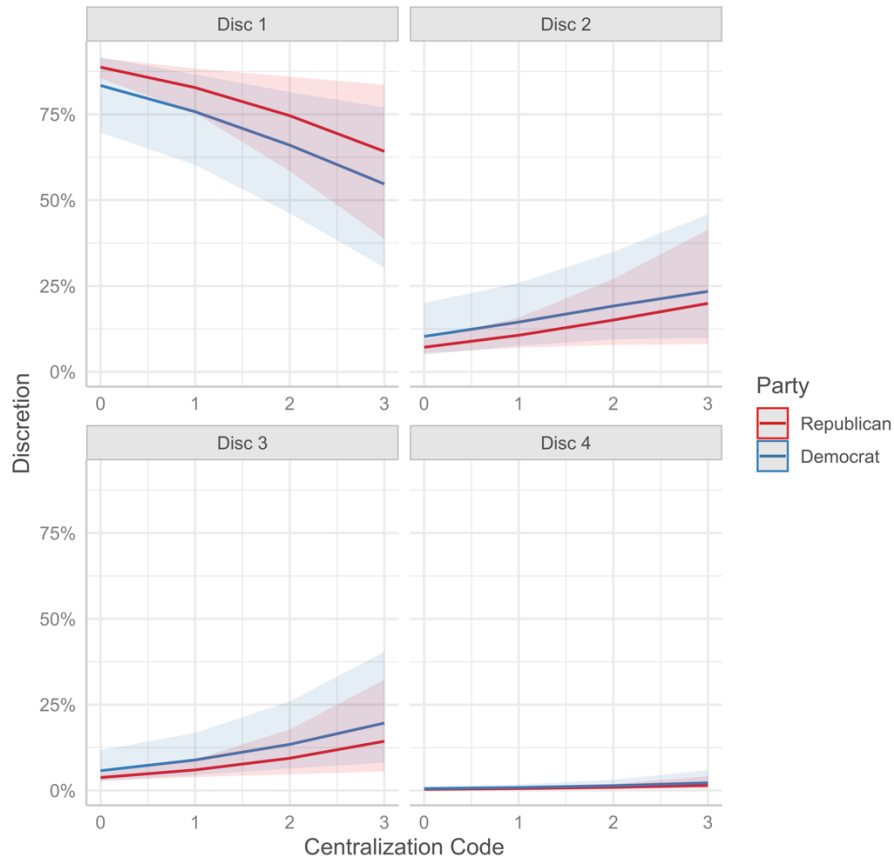
2.5   Discussion

The analyses in the previous section indicate that there is a robust positive association between centralization of executive order formulation and the extent of discretion the order grants to agencies. This is in contradiction to theoretical expectations. As discussed above, existing scholarship on discretion and centralization suggests that directives developed by agency personnel—as opposed to White House staff—would be more likely to pertain to highly technical or complex subject matter. These are the same types of policy choices that are typically associated with broader discretion. So, while the literature would suggest that decentralized order formulation should be associated with broader discretion, I instead find the opposite relationship. Directives that are highly centralized in their development, and thus more likely to be of high political salience or otherwise presidential priorities, are associated with broad grants of discretion, and the directives developed by agencies are much narrower.

To better contextualize this finding, I turn to the content of the documents themselves. A large number (though by no means all) of the documents with centralized origins establish presidential advisory boards or commissions. These entities can have broad grants of discretion to develop recommendations or serve a coordinating function across agency activity in a given policy area. For example, Executive Order 13035, from 1997, establishes the "Advisory Committee on High-Performance Computing and Communications, Information Technology, and the Next Generation Internet." The committee is composed of representatives from the "research, education, and library communities," as well as representatives of relevant industries.

It is tasked with providing "advice and information" pertaining to these topics to the National Science and Technology Council. While this type of executive order is often a request for plans or advice rather than a directive to implement policy changes, such orders allow agents significant latitude to develop their recommendations.

The large number of presidential advisory boards and commissions is consistent with Rudalevige's (2021) finding that centralization is associated with policy areas of cross-cutting jurisdiction. Coordination of many agencies is easier to do from a central position, and these centralized orders often direct advisory boards to consult with personnel from different agencies, or are staffed with various agency appointees. These presidential commissions and advisory boards that are given sweeping latitude for policy development and recommendations, even if those policies are not implemented.

Turning to the orders with decentralized origins, these are indeed more technical in nature. Many of these orders provide definitions, make determinations, or offer narrow technical amendments to previous executive orders. For example, Executive Order 12189 from the Carter administration amends a previous executive order to adjust the effective dates of exemptions from price controls of certain crude oils.

While these examples do not provide a systematic review of the content of directives in this sample, they do offer some clues as to how we should interpret these results. In particular, the results encourage a reconceptualization of the act of delegation. Delegation is typically understood as a top-down choice: the president wants something to be done, and delegates the task, with some discretionary flexibility, to an agent. The dynamic under investigation here, however, turns this relationship on its head: the *agencies* want something done, and formulate an executive order that, in a sense, asks the president for an allowance of discretion. The question then becomes, what strategic considerations guide the agency's request?

One possibility is that agencies would prefer to maintain control of the policy at issue, and do not want to spark White House interest or involvement. If requests for more discretion would raise eyebrows at the White House, and trigger further follow-up and involvement by White House personnel, then agencies may prefer to narrowly tailor the directive in anticipation of this dynamic. Agencies may also want to limit the extent of uncertainty stemming from the directive. For example, if agents are uncertain about the boundaries of the discretionary window that the president would find acceptable (Kim 2021), they may choose to narrowly tailor their request to fit comfortably within the window and avoid presidential censure. Similarly, if the agency personnel developing the executive order are not the same staff (or even agency) that will be implementing it, agencies may want to manage uncertainty of order implementation.

The empirical patterns identified in this paper do not point towards one strategic consideration over another. Rather, the analyses presented here invite further theoretical and empirical development of the question of how we ought to understand the nature of delegation and discretion in directives formulated by agents.

Conclusion

Recent scholarship on the politics of presidential unilateralism has shifted focus from the inter-branch dynamics of unilateral action to the administrative politics of such action. Rather than making the simplifying assumption that the president is "going alone," such scholarship takes seriously the role of bureaucrats in formulating and implementing executive orders.

In this article, I contribute to this emerging trend by investigating the role of agencies in formulating executive orders. In particular, I test whether agency involvement in executive order

development shapes the extent of discretion that implementing agencies are granted. Existing theories of centralization and delegation suggest that decentralized order development should be associated with broader grants of discretion, as those orders are more likely to deal in technical issues, while orders with centralized origins are more likely to be associated with high-salience presidential priorities, and thus narrower grants of discretion.

To test this hypothesis, I leverage data on the origins of individual executive orders from Rudalevige (2021) and measures of executive-branch discretion from Benn (2023). I find the opposite relationship to the one hypothesized: centralized executive order development is associated with broader grants of discretion, and narrower grants of discretion come from orders that were developed by administrative agencies. These findings invite further research. For example, limited data availability prevent a fine-grained analysis of how the relationship between order origins and discretion may have evolved over time, or within presidencies. Additional work could also be done to systematically investigate the policy content of directives with different score combinations. Future theoretical and empirical scholarship of executive power should continue to center the administrative politics of presidential unilateralism, to clarify the dynamics of how executive power is realized within the executive branch.

3 Participatory Unilateralism: Understanding Congress's Role in Presidential Unilateral Policymaking

3.1   Introduction

In June of 2002, during George W. Bush's first term as president, the Republican-controlled House Subcommittee on Fisheries Conservation, Wildlife and Oceans held an oversight hearing on coral reef conservation. A primary focus of the hearing was the implementation of a Clinton-era executive order establishing a Coral Reef Task Force.[33] The order was far-reaching, coordinating agency efforts in conservation and restoration of reefs, mapping and monitoring efforts, and engagement with the scientific research community.[34] As Republican subcommittee chair Wayne Gilchrest stated in his opening remarks, the committee was "seeking to examine what activities have been conducted and, importantly, the level of success that they have achieved."[35]

The hearing transcript reveals members of both parties deeply engaging with agency witnesses about their efforts to implement the executive order, asking questions about agency reef mapping efforts, international coordination, and funding for research programs. One line of questioning focused on how Congress could help with agency implementation efforts: Democratic Representative Neil Abercrombie of Hawaii pushed a witness from the Department of the Interior on what types of legislative action Congress could take to facilitate their work, and whether the requested budget was sufficient for the undertaking. The general tone of the hearing was substantive and collaborative, and the hearings were followed by a report to Congress detailing Task Force and agency activities.

This example highlights two points about the role of presidential unilateral action in the US separation of powers system. First, "unilateral actions" are not, generally speaking, literally "unilateral." Rather, they are directives to executive agencies, requiring agency cooperation for their implementation. Clinton's executive order establishing the Coral Reef Task Force did not itself constitute a national coral reef conservation strategy; rather the work of developing and implementing such a strategy was devolved to the Task Force and the agencies of the executive branch. Second, unilateral action does not always cut Congress out of the policymaking process. Even when Congress is not directly involved in the development of an executive order, the fact of such orders requiring agency implementation creates an opportunity for Congress to shape that implementation. These two points—that unilateral action is an act of delegation to administrative agencies, and that this delegation creates an opening for Congressional influence—are the focus of this paper.

Existing scholarship often considers the exercise of presidential unilateralism as itself a sign of expanding executive power. For example, Howell notes that while the total number of executive orders has somewhat declined since 1940, the number of "significant" executive orders has ballooned, "reflect[ing] the general growth of presidential power in the modern era" (2003, 84). Moe and Howell (1999) argue that the ambiguity of the president's constitutional powers invite "imperialism" by the president, and note that the Judiciary and Congress lack the

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[33] Implementation of the Coral Reef Conservation Act of 2000 was also covered during the hearing. Importantly, however, the executive order pre-dated the Act, and implementation of the order was covered in detail in its own right.

[34] Executive Order 13089, June 11, 1998

[35] U.S. Congress. House. Committee on Resources. "The Coral Reef Conservation Act of 2000, Executive Order 13089, and the Oceanic Conditions Contributing to Coral Reef Decline". 107th Cong., 2nd sess., Jun 27, 2002.

incentives and abilities to stop this expansion of power. Rudalevige finds that this "imperialism" is more contingent and less inevitable than previously assumed, but nonetheless argues that Congress has "endemic weaknesses" (2005, 265) relative to the president.

In this light, the use of executive unilateralism raises important questions about the appropriate role of the executive branch in a contemporary separation-of-powers system, especially in the context of high polarization. Some scholars applaud expanding executive prerogative, arguing that the parochialism and collective action problems inherent in Congress make the presidency a more appropriate agent of policymaking for today's complex political environment (Howell and Moe 2016). Others, however, view the growth of presidential power with some trepidation, not least because the current order is so clearly different from the one intended by the constitutional framers. The appropriate balance of policymaking authority between the executive and legislative branches remains salient not only among scholars, but among the general public as well. For example, both Presidents Obama and Trump met alarmed opposition from the opposing party when employing executive powers to pursue their policy objectives in the area of immigration. More generally, in survey experiments Reeves and Rogowksi (2018) find that respondents gave more negative ratings to policy enacted unilaterally than through legislation.

Most literature exploring these issues takes as a premise that unilateral action represents the president "going it alone" in pursuit of his policy objectives, and thus focuses on institutional-level conflict between the president and Congress. In their review of this literature, Lowande and Rogowski (2021) highlight that much of the literature on the exercise of unilateral powers has focused on the "macro-politics of unilateral power." That is, existing empirical scholarship tries to account for variation in numbers of executive orders over time (or "significant" executive orders) by identifying explanatory variables in the relationship between the president and Congress. Much of this literature takes the frame of the president acting strategically to either thwart or incentivize Congressional action. From that perspective, scholars have investigated how many executive orders are issued under different conditions such as unified or divided government, timing within the president's administration, periods of Congressional gridlock, and the ability of the president to influence his copartisans in Congress (cf. Lowande and Rogowski 2021; Waterman 2009). In short, what we know about executive orders is mostly how many are issued; and which macro-political variables, primarily in Congress, can explain that variation.

Building on this important work, recent scholarship on unilateral action complicates the story by calling into question the extent to which unilateral action is truly "unilateral" at all. For example, Belco and Rottinghaus (2017) argue that many executive orders are issued not in opposition to Congress, but rather simply to direct the implementation of legislation. Another stream of literature draws attention to the administrative politics of executive unilateralism, highlighting the intra-branch politics between presidents and bureaucratic agencies in the development and execution of executive orders. Rudalevige (2021), for example, demonstrates how administrative agencies are involved in the development of executive orders before they are issued, shaping the resulting policy directives. The execution of these presidential directives is also an important area of recent focus: as Lowande and Rogowski explain, "[t]aken literally, 'unilateral' power is only unilateral with respect to Congress, the Judiciary or other non-executive actors. Every presidential directive is an order to an administrator. We suspect few researchers would disagree with these points, but how they ought to inform theories of unilateral power is contestable. To date they mostly have not" (2021, 8).

This paper builds on this emerging area of research by investigating how the administrative politics of unilateral action shape inter-branch political dynamics. The argument begins with the premise that executive orders are directives to executive-branch agents. Because agencies are subject to oversight not only by the president but also by Congress, this opens the possibility that Congress can shape policy outcomes by exercising oversight of the *implementation* of executive orders. The conventional expectation is that Congress can pass legislation in direct response to executive orders with which they disagree. This paper, on the other hand, focuses on an *indirect* response: by exercising oversight over implementing agencies, Congressional committees can shape policy outcomes at the agency level. This possibility was explored theoretically by Lowande (2018a), and this paper expands on that work with empirical analysis.

In particular, I test the hypothesis that *how* presidents delegate in unilateral actions—the amount of authority they grant to agents ("delegation"), and the flexibility they provide in the use of that authority ("discretion")—informs Congress's oversight activity. I find that when presidents delegate more authority to agents to implement directives, and when that authority comes with a broader grant of discretion, Congress is more likely to engage in oversight of that implementation. Overall, I demonstrate a larger role for Congress in shaping and overseeing the implementation of unilateral policy than has previously been appreciated.

In the next section, I will describe in more detail the theoretical framework for this analysis. In particular, I will discuss how delegation and discretion can be understood in the executive branch context, and provide theoretical expectations for the anticipated relationship between delegation and discretion, on the one hand, and Congressional oversight activity on the other. I then describe the data and empirical approach that I employ in the analysis, including the measures of delegation and discretion. Results of the analysis follow, and a discussion of these results and next steps for research concludes the paper.

3.2 Theoretical Framework

Delegation and Discretion in the Context of Unilateral Action

The related concepts of delegation and discretion are the subject of extensive literature. Definitions of the two concepts tend to follow similar lines: delegation refers to delegated authority, or empowering agents to take actions; while discretion refers to the latitude agents have in choosing *how* to take those actions.

A number of approaches have been taken to studying delegation and discretion empirically in the legislative context. One commonly-used proxy measure for discretion is document length (e.g., Huber and Shipan 2002), which reflects the theory that, conditional on policy area, longer statutes contain more specific and detailed instructions, and thus narrower grants of discretion. Bolton and Thrower (2019) take a similar approach, using a ratio of new budgetary authority to document length. The budgetary authorization represents a delegation of authority, and the length of the appropriations language represents constraints on that authority. Another frequently-cited approach comes from Epstein and O'Halloran (1999), who developed measures of delegation and constraint. Their "delegation ratio" represents the proportion of provisions in a bill that grant authority to the executive branch, while the "constraint ratio" represents the proportion of 14 possible types of procedural constraints that are present in a given bill.

In the executive branch context, there is a rich theoretical literature on delegation to administrative agents and the associated discretionary windows (e.g., Bendor and Meirowitz

2004; Gailmard and Patty 2012). However, empirical work on the president-as-principal has tended to focus on the president's use of the tools of the administrative presidency, such as appointments and centralization, to shape bureaucratic incentives more generally (e.g., Lewis 2003, 2008; Rudalevige 2002). Explicit empirical measures of delegated authority and discretionary windows have thus far been limited to Congressional principals.

The underlying concepts of delegation and discretion are analogous in the executive and legislative context. The primary difference is of course that legislative authority rests solely in Congress, and can be delegated to administrative agencies by Congress. In the executive context, delegation can refer to delegations of executive authority (either constitutionally granted or delegated to the president by statute), but also presidential authorization or activation of agencies' statutory authority. The original authority for agency action may stem from Congress but, as a practical matter, presidents can shape how agencies use it. This characterization of the *political* role of the president in activating and directing agencies' statutory authorization is consistent with Kagan's *legal* argument that "Congress generally should be understood to have left authority in the President to direct executive branch officials in the exercise of their delegated discretion" (2001, 2246).

For this analysis, delegation refers to the scope of the agent's authorized actions; for example issuing permits, making determinations, or promulgating rules that affect whole industries. Importantly, it does not refer to how much policy is expected to move in a spatial sense: agencies can promulgate a rule that codifies the status quo, for example. Discretion refers to how much flexibility agents have in determining which policy ends to pursue through the exercise of that authority, and how to pursue those ends. I discuss how I operationalize these concepts into usable measures below.

Congressional Tools for Influencing Policy Outcomes
Having introduced the idea of executive orders as acts of delegation, I turn now to the Congressional response. The mechanisms by which Congress is able to shape executive branch activity are numerous, and go well beyond direct legislation. Indeed, it is unlikely that legislation is a particularly frequent response, due to the difficulties associated with its utilization. As Kriner and Schickler explain, "[i]nformation asymmetries, steep transaction costs in coalition building, and the looming threat of a filibuster or presidential veto all suggest that legislative efforts to constrain presidents will often fail, even when a strong majority of members opposes the president's action" (2016, 5). We must cast a wider net in the search for Congressional modes of shaping and responding to agency behavior.

There is a wide variety of tools, both formal and informal, that Congress can use to shape agency behavior. Indeed, Feinstein (2018) notes that almost all Congressional activity could be considered "oversight" in the sense of shaping bureaucratic activity. Lowande and Potter (2021) categorize tools of oversight on two dimensions: whether the Congressional action is *ex ante* or *ex post*, and whether the action should be considered substantive or procedural. Selin and Moore define oversight as "the process of reviewing, monitoring, and supervising the implementation of public policy by the executive branch" (2023, 187), and identify a wide range of overlooked oversight mechanisms including program evaluation; staff review of executive programs and policies; and ad hoc intervention, such as letters to federal agencies.

Recent scholarship on Congressional oversight and engagement with the bureaucracy has focused on these types of "informal" oversight mechanisms. For example, Ritchie (2023) analyzes communications between members of Congress and rulemaking agencies, arguing that

when legislative policymaking is infeasible, members can pressure agencies to enact their preferred policies administratively. Similarly, Lowande (2018b) uses agency correspondence logs to identify patterns of member communications with agencies. Bolton (2022) identifies committee reports issued by House and Senate appropriations committees as an additional vehicle through which members can influence bureaucratic policymaking during periods of legislative gridlock.

For this analysis, I follow extensive precedent in using Congressional hearings as a measure of oversight activity (e.g., Aberbach 1990; Kriner and Schickler 2016; MacDonald and McGrath 2016). Transcripts of Congressional hearings enable me to clearly link oversight activity to particular executive orders. This linkage, which is critical for my analysis, is unfortunately not feasible with currently available data on other types of oversight such as correspondence logs and committee reports.

Caution is warranted when extrapolating from hearings to Congressional oversight more generally, because patterns of oversight vary across modalities (Aberbach 1990; Selin and Moore 2023). However, in this case I argue that hearing activity should be taken as a "hard test" of my theory. Hearings are extremely costly to participants — both to agencies and to members. Given the array of other modes of oversight available to members, it is thus likely that hearings represent only a small fraction of the oversight activity that Congress engages in for a given policy issue. Evidence to support this idea can be found in the transcripts themselves: members frequently reference reports they requested, letters they sent, or conversations they had with agency personnel when giving remarks during a hearing. For example, in 1973 a House subcommittee held a hearing about two executive orders issued by President Nixon that allowed the Department of Agriculture to inspect farmers' tax returns for statistical purposes.[36] Members were concerned that the IRS regulations implementing the order did not put sufficient limits on the amount or type of information that would be released. Representative Jerry Litton testified that, because of this concern, he "began a personal investigation" which included "several off-the-record conversations with Department of Agriculture officials," and provided quotations from letters between agency personnel and committee members.

An additional concern is whether hearings are used only for position taking, or if they really can be used to influence agency policy outcomes. The hearings in this dataset are fundamentally different from the high-profile investigative hearings that would be likely vehicles for grandstanding. Many of the hearings under consideration in this study deal with narrowly-defined policy issues relevant to only a small group of affected constituents, limiting the political value of position taking. And members themselves believe these hearings to be effective at shaping agency behavior: in interviews with committee members, Aberbach found consistent evidence that "attention to details by Congress often yields results from administrators" (1990, 197).

Hearings can influence policy outcomes both directly, because the hearing itself publicly informs agencies of Congressional preferences and likely consequences; and indirectly, because agencies will make choices to avoid inducing a costly hearing. Hearings give members the opportunity to better understand agency objectives and activities, as well as to investigate the policy and political consequences thereof. Moreover, because hearings are costly to agencies, they have the incentive to avoid them, making the *threat* of a hearing a valuable tool for

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[36] US Congress. House. Committee on Government Operations. "Executive Orders 11697 and 11709 Permitting Inspection by the Department of Agriculture of Farmers' Income Tax Returns". 93rd Cong., 1st sess., May 9 and August 3, 1973.

influencing policy outcomes. Hearings are costly to agencies in that they require staff and other agency resources to prepare statements and other materials, and to attend the hearing. They can also expose the agency to scrutiny by the public and/or the media, which can be an additional form of cost. While costly, hearings are also informative for agencies, in that they give agencies a sense of both Congressional preferences and the strength with which those preferences are held. As Selin and Moore observe, hearings can "operate as a signal to other political actors of committees' (or their members') underlying willingness to use their political capital to prompt policy change" (2023, 200).

The strategic behavior of agencies in seeking to avoid hearings, as well as the long time horizons for policy change, complicate efforts to empirically demonstrate the policy effects of individual hearings. Nonetheless, there is sufficient reason to expect that hearings are used to shape policy. Thus, while future research should expand the analysis to other forms of oversight, hearings are a reasonable proxy for oversight activity for the purposes of the current study.

Theoretical Expectations
In light of the foregoing discussion of the role of hearings as oversight and of the nature of delegation and discretion in executive unilateralism, I present the following hypotheses about the relationship between them. The theoretical expectation for delegation is as follows: if agencies are granted more authority to move policy, then Congress should have increased interest in what those new policy outcomes will be. Because hearings are costly not only for agencies but for Congressional committees as well, committees will prefer to focus their efforts in areas where agencies are exercising their authority more broadly. When the president has delegated only narrow case-by-case permit-granting authority, for example, Congress will be less likely to aggressively oversee implementation than when agencies are asked to promulgate major new regulations affecting an important sector of the economy. This expectation is formalized in the *Delegation hypothesis*:

> **Delegation hypothesis:** Oversight activity is *increasing* in the amount of delegated authority. This is because when agents have more authority to move policy, their Congressional overseers will be more attuned to their choices and making sure they are moving policy in the direction members would prefer. A small potential move is less cause for concern than a major new program.

For discretion, the theoretical expectation is less clear. The relationship between the discretionary window set by the president and the oversight activity engaged in by Congress will depend on how bureaucratic agencies use their flexibility to navigate between presidential preferences, Congressional preferences, and their own agency preferences. On the one hand, agencies may be motivated to avoid costly hearings, and thus they will avoid making policy choices that they think will induce aggressive oversight. A broad discretionary window gives the agents the flexibility to maneuver between presidential and Congressional preferences while avoiding censure from either. On the other hand, an agency may have its own ideological priorities, and be less concerned with Congressional preferences. In this case, the agency can use the flexibility granted by a broader discretionary window to move policy further from Congressional preferences than a narrower window would allow. These two competing hypotheses are presented as the *Anticipating Congress* hypothesis and the *Window of Opportunity* hypothesis, respectively:

Anticipating Congress hypothesis: When the president grants more flexibility to an agent, the agent can use that flexibility to select policies that will be palatable to their Congressional overseers. We should thus expect to see oversight activity *decreasing* in the amount of discretion granted to agents. That is, more discretion gives agents more maneuverability to anticipate Congressional responses, and thus decreases the likelihood that agency activities trigger Congressional hearings.

Window of Opportunity hypothesis: When the president grants more flexibility to an agent, there is more opportunity for Congressional influence on agency outcomes. This is because the agent is given wider latitude to make policy choices, and thus there is more latitude for policy change as a result of Congressional pressure. We would thus expect oversight activity to be *increasing* in the amount of discretion granted to agents, as agents have more flexibility to move policy according to the preferences articulated by Congress.

The data used to examine these hypotheses are discussed in the following section.

3.3 Data and Empirical Approach

<u>Data on Unilateral Actions</u>

The empirical analysis draws on two novel datasets: a set of unilateral actions, and a set of Congressional hearings. The unilateral actions dataset comprises a sample of 1,421 executive orders issued between 1970 and 2021. These actions were sampled randomly from the 2518 executive orders issued over that date range. Each document was reviewed by a trained coder, who determined the degree of delegation and discretion granted in each case, using measures developed by Benn (2023).[37] Both variables are measured employing separate 4-point ordinal scales.[38]

The Delegation score is assigned based on how much authority to act the agent is granted by the directive. Higher scores are associated with orders that request agencies implement programs, or authorize general policymaking authority. Lower scores are associated with orders that grant agencies only indirect policymaking authority, such as those requesting recommendations, or orders that make presidential determinations without explicitly authorizing agency action. The scores on the Delegation dimension are:

1. minimal or no delegation, for example definitions or determinations
2. "low" delegation, for example requests for policy recommendations, without the authority to implement the recommendations.
3. "medium" delegation, typically empowering an agency to take case-by-case actions, or to implement a limited one-time project or activity.
4. "high" delegation, reserved for directives that empower agencies to implement a broad, national policy change.

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[37] A total of 1,627 executive orders were reviewed. Of these, 17 were excluded for being ceremonial rather than policy-related, 78 for dealing with narrow administrative matters such as individual personnel issues, and 112 were excluded because coders could not make a determination with the available information. Further detail on the coding scheme, including these omitted cases and measure reliability, can be found in Benn (2023), as well as in Appendix C.1.

[38] Throughout, capitalized "Delegation" and "Discretion" refer to the measures, while lower-case delegation and discretion refer to the underlying concepts.

Discretion scores are assigned similarly, but based on the decision-making flexibility granted in the order rather than on the extent of agency empowerment to act. Orders with narrowly-defined policy objectives receive lower scores, as there is minimal space for agencies to exercise policy discretion. Orders receiving higher scores request agencies to develop policies and plans, and can even leave the objective of policy action open-ended. The scores on the Discretion dimension are:

1. minimal to no discretion.
2. "low" discretion, reflecting detailed instructions and guidelines for action.
3. "medium" discretion, providing less detailed guidelines, but with a clearly-defined scope for action.
4. "high" discretion, reserved for documents providing agents with broad latitude in pursuing policy objectives.

Table 3.1provides general descriptions of the types of orders that receive various combinations of scores. Documents that score low on both dimensions are typically revisions to definitions, minor amendments to previous orders (for example changing a date), or presidential determinations without separate requests for action. Documents that score high on both dimensions typically request agencies to both design and then implement large-scale policy programs. Documents that score high on Discretion but low on delegation provide broad flexibility to agents to design policy approaches, but the agent is not granted authority to implement any programs. Instead, these orders are most often associated with the creation of advisory commissions, whose function is to make policy recommendations. Finally, orders scoring high on Delegation but low on Discretion request agency action, typically rulemaking, but the order narrowly defines the policy objectives and details of the program to be implemented, thus severely limiting implementation flexibility.

Table 3.1: Typical Directives By Score Combination

	Delegation	
	Low	High
Discretion		
Low	Definitions, presidential determinations	Requests for specific rulemaking
High	Presidential commissions	Develop and implement federal policies

Table 3.2 presents frequencies of unilateral actions in the sample by Delegation and Discretion scores. A large number of observations received a score of 1 on both Delegation and Discretion. It is worth noting that the low-scoring documents are *not* ceremonial. The scores assigned to individual orders reflect only grants of delegation and discretion made *by the order itself.* If an order makes a presidential determination that activates the provisions of a statute, any subsequent exercise of agency authority is considered to flow from the statute, not from the

executive order. For example, in Executive Order 12444[39] President Reagan declared a "national economic emergency" upon the expiration of the Export Administration Act of 1979. Accordingly, the directive orders that the provisions of that Act stay in effect despite its expiration. This is clearly a consequential executive order, directly impacting national export control regulations. However, the order does not itself constitute a grant of delegation or discretion: it makes a determination, and agencies continue to exercise whatever delegation and discretion was originally granted by the Export Administration Act. The order represents the exercise of presidential authority, and will likely lead to agency action to implement, but because the order does not itself grant authority or discretion, it receives a score of 1 on both dimensions. Most orders in this category are not nearly as consequential, but this example serves to highlight that a document's being low-scoring on delegation and Discretion is a separate consideration from whether the order is consequential for policy.[40]

Because of the nature of such determinations, it is logical that the scores of "1" move together: if an agent is not granted explicit policymaking authority, it is not possible for them to exercise discretion in the use of it. Similarly, if an agent is not granted any discretionary flexibility, they cannot be granted authority, as even a small grant of authority gives agents the flexibility to determine how faithfully to execute it. Thus, while these documents seem distinct at first glance, they do represent a difference of degree of Delegation/Discretion, not a difference of kind.

Table 3.2: Sample Distribution of Delegation and Discretion Scores

	Del.1	Del.2	Del.3	Del.4
Disc.1	622	0	0	0
Disc.2	0	19	127	7
Disc.3	0	68	150	141
Disc.4	0	169	27	91

As evident in Table 3.2, although there is a large number of executive orders scoring 1 on both dimensions, there is otherwise substantial variation across score combinations. However, the extent of Delegation is not likely to be determined separately from the extent of Discretion. Presidents may assign Discretion in light of the extent of Delegation requested, or vice versa. In general, scores on the two dimensions are most likely co-determined. This challenge and my approach to addressing it are discussed further in the "Empirical Approach" section, below.

Data on Congressional Hearings
The executive orders described in the previous section are the unit of analysis for this project, and Delegation and Discretion the primary explanatory variables of interest. The second dataset, comprising Congressional hearings, provides the oversight activity outcome variable. The hearings dataset is composed of all hearings pertaining to oversight of executive orders between 1970 and 2021 (n = 522). To identify these hearings, I searched the ProQuest Congressional

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[39] October 14, 1983.
[40] Additional discussion of executive order "significance" is provided in Appendix C.2.

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database for the term "executive order" anywhere but the full text of the hearing.[41] This includes the title of the hearing, the hearing summary/abstract, the titles of included evidentiary exhibits, and the summaries of testimony content.

Each hearing transcript was then reviewed to confirm that an executive order was discussed during the hearing, and to identify which order(s). Of the 522 hearings identified in my search, I determined that 362 hearings were pertinent to my analysis. The excluded hearings were captured by my keyword search but upon inspection did not fit the criteria for this project. A common example of this type was a series of hearings regarding land disputes and other land use issues among Native American tribes, whose original reservations were defined by various 19th-century executive orders. The 362 hearings remaining in the dataset discuss 432 executive orders, as some hearings cover more than one order.

Of the 362 relevant hearings, 145 were focused exclusively or primarily on an executive order. For example, in June of 1995 the House Committee on Economic and Educational Opportunities held a hearing entitled "Executive Order 11246 and Its Implementing Regulations, As Administered by the Office of Federal Contract Compliance Programs (OFCCP)." Executive Order 11246 mandated nondiscrimination in employment by the federal government, including federal contractors. Witnesses at the hearing included representatives of the Department of Labor and the Equal Employment Advisory Council. Questioning and testimony focused on the implementation of the executive order, including testimony from both government witnesses and relevant non-governmental stakeholders.

More commonly, hearings had a broader focus but included some meaningful discussion of an executive order (n = 217). Hearings in this category were generally not focused predominantly on a given directive, but instead were focused on legislation, or reviewing a policy area generally, or had an otherwise different focus. However, during the course of the hearing there was some meaningful discussion of an executive order and its implementation. It was not sufficient for an executive order to be mentioned only in passing; I coded hearings in this category only if there was at least some meaningful exchange during the hearing about the order or its implementation. A frequent example of this type occurred during hearings regarding supplemental appropriations. In these cases an agency would explicitly ask for additional FTE to implement the requirements of an executive order, and some discussion would ensue about what those additional staff would be doing, how that relates to the purpose of the executive order, etc. Another common example of this type was hearings to generally review federal policy in a given area. The hearing would cover several related government programs, including ones operating by statute and others operating under executive order. While the full hearing transcript was not substantively focused on the executive order, a significant portion of hearing discussion was. In the analyses that follow, both categories of hearings are included.[42]

While time intensive, this hand-coding approach was necessary for two reasons. First, it was necessary for data quality to ensure that each hearing coded as pertaining to oversight of unilateral action did actually pertain to it. But second, it was typically not clear from the metadata exactly which executive order was being implicated. Even after reviewing the hearing transcript, additional research was often required. For example, it was typical for hearing participants to refer to "the recent executive order entitled..." or "the executive order issued last

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[41] I also searched for variations, such as "executive orders" or "exec. order." Only published hearings were considered.

[42] However, see Appendix C.4 for additional analysis of the subset of hearings focusing exclusively on executive orders.

week." In these cases I reviewed the transcript and used the search functionality of the executive orders database at the American Presidency Project to identify the relevant executive order number(s).

The typical characterization of Congress "checking" presidential exercise of unilateral power misrepresents the breadth of hearing objectives and orientations. The modes of Congressional participation in shaping (or attempting to shape) unilateral policymaking are multiple. In the remainder of this section, I provide brief descriptions of several hearings included in this analysis. The purpose of this descriptive exercise is to convey the variety of purposes and Congressional roles present in the dataset, and to provide some evidence of the potential for collaboration between legislative and executive actors, even in the context of presidential unilateralism.

First, some hearings are focused exclusively and explicitly on gathering information from the executive branch. For example, in 2009 the House Subcommittee on Water Resources and Environment held a hearing in preparation for reauthorization of the Chesapeake Bay Program, which coordinates state and local stewardship and conservation efforts in the Chesapeake region as part of the Clean Water Act.[43] President Obama had issued an executive order earlier that year expanding the role of the federal government in managing the watershed,[44] and the hearing was meant to help participants understand whether federal agencies needed additional legislative authorizations to make progress towards the Program's conservation targets.

The Chesapeake Bay hearing took place during a period of unified government, but this non-partisan information-gathering tone can be found during divided government as well. For example, in 1997 the Senate Subcommittee on Technology, Terrorism, and Government Information held a hearing to review findings of a report issued by the President's Commission on Critical Infrastructure Protection.[45] The Commission was established by executive order in 1996 in response to a request from Congress for "plans and programs" to "detect and warn of a possible strategic information attack."[46] Although the committee leadership was Republican, and the witnesses were Clinton appointees, the general tone of the discussion was neutral and focused on understanding the contours of the policy area. These examples, in which Members are trying to understand a policy issue, what is currently being done, and what role Congress can play moving forward, are common.

Beyond information-gathering, a large number of hearings involve Congress responding to agency implementation of executive orders. For example, in 1986 President Reagan issued an executive order pursuant to the Omnibus Drug Law of 1986 mandating drug testing of federal employees.[47] The Office of Personnel Management (OPM) issued regulations implementing the order later that year, and the Department of Health and Human Services (HHS) issued "scientific and technical guidelines" the following February. Members of Congress were concerned that the regulations promulgated by OPM were too punitive and, in a hearing later that year, members of the House Subcommittee on Human Resources expressed doubts about the constitutionality of

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[43] US Congress. House. Committee on Transportation and Infrastructure. "Reauthorization of the Chesapeake Bay Program". 111th Congress, 1st sess., September 22, 2009.

[44] Executive Order 13508, May 12 2009.

[45] US Congress. Senate. Committee on the Judiciary. "The Nation At Risk: Report of the President's Commission on Critical Infrastructure Protection". 105th Congress, 1st sess., November 5, 1997.

[46] Executive Order 13010, July 15, 1996. Amended by Executive Order 13025, November 13, 1996.

[47] Executive Order 12564, September 15, 1986.

the program, its cost, and the accuracy and efficacy of testing.[48] Later that same year, Congress used a supplemental appropriations act to prohibit the use of appropriations for any drug testing pursuant to the executive order until HHS had issued new guidelines, consistent with the specifications provided by Congress in the Act.[49]

A similar example of Congress taking a close look at executive order implementation comes from the Obama administration. In 2014, President Obama issued an executive order setting the minimum wage for federal contractors at $10.10.[50] During the notice and comment period for the regulations implementing the order, the Department of Labor (DOL) received a request that seasonal guides and outfitters operating on federal lands should be excluded. The final regulations, however, did not make this exception. The Republican-controlled House Subcommittee on the Interior held a hearing in 2015 requesting that DOL make an exception for these types of entities, arguing that they are not "federal contractors" in the traditional sense.[51] Witness testimony from business owners argued that the new requirement would have a severe impact on their ability to operate, and in many cases would cause such enterprises to shut down or resort to charging exorbitant fees. Despite strong questioning by committee members, DOL did not change the rule. However, when President Trump came into office, he issued an executive order making exactly the exemption that Republican lawmakers had been pushing for during the hearings.[52]

To be sure, there are also hearings that focus on accusations of presidential overreach rather than agency implementation. A prominent example is the large number of hearings about President Reagan's Executive Order 12291[53] institutionalizing centralized regulatory review in the Office of Management and Budget (OMB). Some questioning during the hearings focused on OMB's regulations and decision-making in implementing the executive order, but the general focus of hearing activity was on the constitutionality, and advisability, of this major change to how government regulations would be developed and overseen. Clinton's Executive Order 12866[54] and Obama's Executive Order 13563,[55] making further amendments to the regulatory review process, received similar attention.

But in general, cases of macro-political battles about the appropriate separation of legislative and executive functions are the exception rather than the rule. Instead, Congressional hearings about executive orders tend to serve as an opportunity for Members to try to influence agency decision-making. Such hearings focus primarily on understanding orders' design, implementation, and impact; and on steps that Congress can take to shape outcomes to its preferences. Moreover, as I will demonstrate in the empirical sections that follow, I argue that it is specifically the fact that executive orders are themselves acts of delegation to agencies that facilitates this participatory role for Congress.

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[48] US Congress. House. Committee on Post Office and Civil Service. "Drug Testing of Federal Employees". 100th Cong., 1st sess., April 7 and May 20, 1987.

[49] Public Law 100-71, July 11 1987.

[50] Executive Order 13658, February 12, 2014.

[51] US Congress. House. Committee on Oversight and Government Reform. "The Impact of Executive Order 13658 on Public Lands Guides and Outfitters." 114th Cong., 1st sess., Jun 10 2015.

[52] Executive Order 13838, May 25 2018. The exemption was removed in the regulations implementing President Biden's Executive Order 14026 of April 27, 2021, which increased the minimum wage for federal contractors to $15.

[53] February 17, 1981.

[54] October 4, 1993.

[55] January 18, 2011.

Empirical Approach

To analyze the roles of delegation and discretion in shaping Congressional oversight activity, I combine the Executive Order and Hearings Datasets, matching hearing activity to individual executive orders. I avoid selecting on the dependent variable by maintaining the executive order as the unit of analysis, not the hearing. I thus sample executive orders, and for each executive order I indicate whether a hearing occurred about it. This means that not all of the hearings that have been reviewed will appear in the dataset: a hearing's inclusion depends on whether the associated executive order has been sampled.

This approach requires important assumptions about my data collection strategy: in particular, it must be the case that if an executive order did have a hearing about it, that hearing is in my dataset; and if the hearing is not in my dataset, then no hearing was conducted. A weaker but still sufficient assumption is that while there may be some hearings that were conducted but not identified, these "missing" hearings are not correlated with the variables of interest. In other words, there may be some measurement error of the dependent variable. However, while random measurement error in the dependent variable may inflate standard errors, it should not bias coefficients.

One potential concern with using both Delegation and Discretion as explanatory variables is that, as discussed previously, they are unlikely to be statistically independent. Presidents are likely to choose levels of both variables in combination. To address this issue, I construct a four-level factor variable that captures both Delegation and Discretion. A document is coded as *High-scoring* if it has a score of 3 or 4 on both the Delegation and Discretion dimensions; *High Del.* indicates high-scoring only on Delegation but not Discretion, *High Dis.* indicates the opposite, and *Low-scoring* indicates scores of 1 or 2 on both dimensions. While this solution is imperfect, it allows us to use these joint explanatory variables with more confidence.

To operationalize hearing activity, I use the following two variables:
- *Any Hearing* is a binary variable that captures whether at least one hearing was held about a given executive order during any Congress.
- *Total Hearings* represents the total number of observations in the hearings dataset that were coded as pertaining to that executive order. Each observation represents a single entry from the Proquest search results.

The final dataset includes 1,421 executive orders. After matching hearings to executive orders 101 (about 7%) are coded as having had a hearing. Because my sample of executive orders does not contain the full universe of orders issued during the time period, not every order that was the subject of a hearing appears in my sample. Of the 432 executive orders that I identified as being the subject of a hearing, only 195 (about 45%) have been included in my random sampling of executive orders thus far. As additional executive orders are coded and added to the sample, I will be able to leverage more of the hearings in my analysis.

3.4   Results

As an initial illustration of the relationship between Delegation and Discretion and oversight activity, Table 3.3 shows the proportion of orders at each score combination that received any hearing activity. Approximately 7% of all orders in the sample received a hearing, but the proportion of orders receiving a hearing varies considerably depending on the Delegation and

Discretion scores. For example, while only 2% of orders scoring 1 on both dimensions received a hearing, 17% of all orders receiving a score of 4 on Delegation received a hearing. For Discretion, 12% and 13% of orders receiving scores of 2 and 3, respectively, received hearings, while 8% of documents scoring 4 received hearings.[56]

Table 3.3: Proportion of EOs Receiving Any Hearing

	Del.1	Del.2	Del.3	Del.4	Total
Disc.1	0.02	–	–	–	0.02
Disc.2	–	0.11	0.1	0.43	0.12
Disc.3	–	0.15	0.07	0.18	0.13
Disc.4	–	0.05	0.07	0.13	0.08
Total	0.02	0.08	0.08	0.17	0.07

Table 3.4 shows the same information, with the scores grouped into the four-level factor variable described previously. Overall, 2.5% of documents that were low-scoring on both dimensions (Delegation 1 or 2 and Discretion 1 or 2) received hearings, while 12.2% of documents that were high-scoring on both dimensions (Delegation 3 or 4 and Discretion 3 or 4) received hearings. The table suggests a strong positive relationship between hearing activity and higher Delegation scores, and a more modest but still positive relationship with high Discretion scores.

Table 3.4: Proportion Receiving Hearing, By Score Category

	Low Delegation	High Delegation
Low Discretion	0.025	0.119
High Discretion	0.08	0.122

These relationships are tested empirically in the baseline models presented in Table 3.5. Specifications (1) - (3) estimate the likelihood of an order receiving any hearing, and specifications (4) - (6) estimate the effect on the total number of hearings received.[57] The omitted

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[56] While the frequency of these hearings seems relatively low, this does not undermine their importance. First, recall that hearing activity represents only the most visible form of oversight, suggesting that the true amount of oversight is likely higher. Moreover, even infrequent use of hearings can have a deterrence effect, leading agencies to make strategic choices that avoid additional hearing activity. Finally, even a small amount of oversight activity calls into question the dominant view that unilateral actions are largely insulated from Congressional influence.

[57] All models are estimated using OLS with robust standard errors. Logit models for specifications (1) - (3) are provided in Appendix C.3, and show results consistent with the results presented here. As an additional robustness check, in Appendix C.4 I include two additional outcome variables: total days of hearing activity and total pages of hearing transcript, to perform additional analyses leveraging hearings that were focused exclusively or primarily on executive orders. The analyses in the main body of the paper focus on all hearing activity, without the restriction that the entire hearing be primarily about an order. Results are generally consistent with those provided here, with positive coefficients on all score categories. However, only *High Both* is statistically significant. This is not unexpected given the additional noise in those outcome variables.

reference category is documents that are low-scoring on both dimensions. Each model is estimated with and without fixed effects for presidential administration and year. There is a clear association between an order receiving high scores and hearing activity about the order: in all specifications, the coefficients on *High-Scoring*, *High Del.* and *High Dis.* are positive and statistically significant at at least the 0.01 level.

Table 3.5: Baseline Specifications

	Any Hearing				Total Hearings			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
(Intercept)	0.025***	−0.089***	0.099+	0.250***	0.033***	−0.198***	0.205	0.193*
	(0.006)	(0.017)	(0.051)	(0.075)	(0.009)	(0.051)	(0.131)	(0.092)
High Both	0.097***	0.117***	0.116***	0.123***	0.278***	0.300***	0.301***	0.379***
	(0.017)	(0.019)	(0.019)	(0.021)	(0.068)	(0.071)	(0.073)	(0.100)
High Del.	0.094**	0.122***	0.124***	0.106***	0.094**	0.129***	0.123**	0.138***
	(0.029)	(0.029)	(0.028)	(0.031)	(0.032)	(0.037)	(0.041)	(0.039)
High Dis.	0.055**	0.067***	0.065***	0.056**	0.094**	0.103**	0.095**	0.142**
	(0.019)	(0.019)	(0.019)	(0.021)	(0.036)	(0.036)	(0.036)	(0.050)
Num.Obs.	1421	1421	1421	1362	1421	1421	1421	1362
R2	0.029	0.060	0.103	0.083	0.022	0.033	0.067	0.049
President FE	N	Y	N	N	N	Y	N	N
Year FE	N	N	Y	N	N	N	Y	N
Policy Area FE	N	N	N	Y	N	N	N	Y

$+ \ p < 0.1$, $* \ p < 0.05$, $** \ p < 0.01$, $*** \ p < 0.001$

To facilitate interpretation, Figure 3.1 plots the coefficients estimated in Table 3.5. The left panel shows the coefficient estimates for *Any Hearing*, and the right panel shows the coefficient estimates for *Total Hearings*. For *Any Hearing*, the effects of high scores on both dimensions and on Delegation alone are larger than for high scores on the Discretion dimension alone. However, in estimating the number of hearings, the largest effect size is for documents that are high-scoring on both dimensions.

The models provide initial support for both the *Delegation* and the *Window of Opportunity* hypotheses. When orders contain more authorization for agency activity and/or broader discretionary flexibility for selection of policy outcomes, Congress is more likely to try to participate in that policymaking through oversight. In the baseline model, the roles of Delegation and Discretion are supported both separately (the coefficients on *High Del.* and *High Dis.*) as well as in combination (*High Both*).

Figure 3.1: Coefficient Estimates, Baseline Specifications
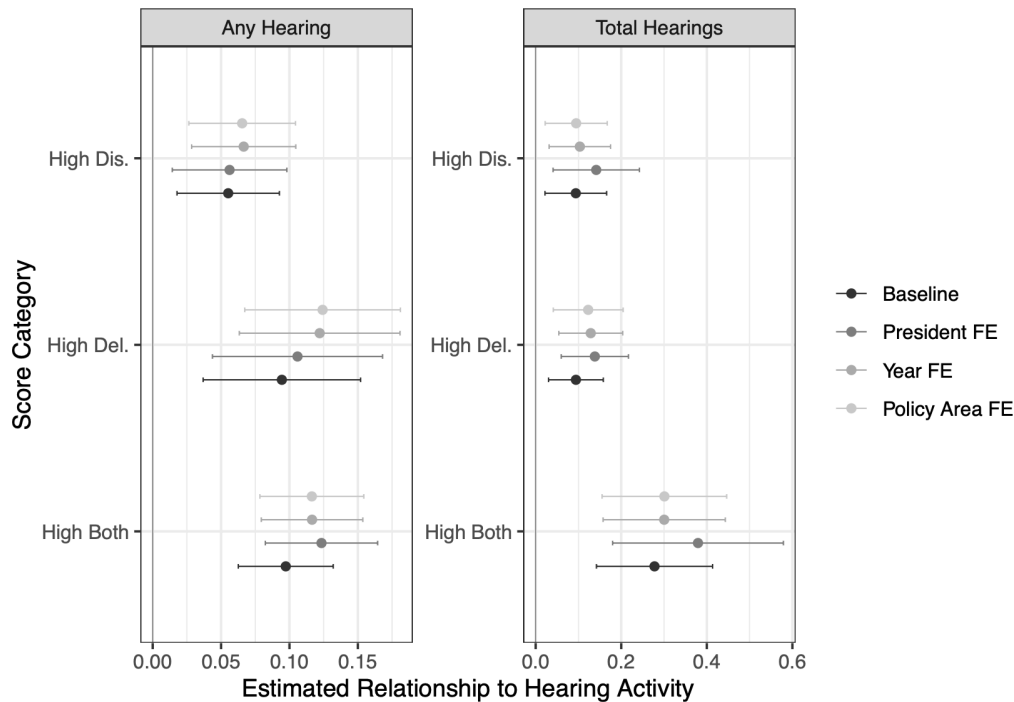
Delegation, Discretion and Divided Government

From these baseline results, there is strong evidence of an association between delegation and discretion in executive unilateralism and congressional oversight activity. However, a more complete characterization of this relationship should account for the partisanship of the president and Congress. How does a period of unified or divided government contribute to Congress's eagerness to oversee executive order implementation? Much of the existing literature on Congressional oversight predicts more hearing activity during periods of divided government. For example, Aberbach (1990) finds that committees engaged in more oversight in years with split party control. Kriner and Schickler (2016) similarly find higher House investigative activity during periods of divided government, moreover finding that the relationship is stronger during periods of high polarization.

In the literature on presidential unilateralism, research is mixed on the relationship between divided government and unilateral activity, finding both more and less unilateral activity during periods of inter-branch conflict (c.f., Lowande and Rogowski 2021). This research does not directly measure Congressional response to unilateral action, but rather investigates presidents' behavior in light of a theorized role for Congress in checking that behavior.

This paper diverges from the existing literature in a number of important respects. Unlike much of the existing work on Congressional oversight, the hearings under consideration here focus on narrow policy areas, and generally exclude higher-profile investigative hearings. Moreover, unlike previous work on presidential unilateralism, I am able to directly measure the Congressional response to individual directives. Finally, the theoretical premise of this paper is not one of partisan disagreement driving inter-branch dynamics, but rather of administrative politics creating an opportunity for inter-branch participation in policymaking.

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For these reasons I suggest that, in most cases, Congressional hearings about unilateral action should be read not as attempts to constrain executive power, but rather as efforts to shape policy outcomes in the executive branch. Selin and Moore observe that "[m]ost members of Congress and their staffs, regardless of partisan alignment, feel the need to conduct oversight— even in times of unified government... Congressional investment of time and resources in the oversight process not only symbolizes a functioning democratic system but also signals to government officials and to the public that members of Congress seek responsive policy implementation" (2023, 202). I argue that it is the agencies' role in executive unilateral directives that creates the opportunity for Congress to seek responsiveness, and thus it is Delegation and Discretion, not party control, that informs oversight activity.

To investigate this possibility, I reshape the data to the order-Congress level. That is each observation, rather than being an individual executive order, is an executive order in a given Congress, in a given chamber. The outcome variables are then whether a hearing was conducted/the number of hearings conducted in a given chamber *during that Congress*. The motivation for this change is to leverage differences between the party of the president who issued the executive order, and the party with control of a given chamber at a given time. The analysis thus identifies *any* hearing activity, not only hearing activity during the Congress in which the order was issued.

The variable *Divided Government* was constructed by first assigning each executive order a party associated with the issuing president, and then for each Congress after (and including) the initial issuance of the executive order a party is assigned for both Senate control and House control. Thus whether the executive order is facing co- or out-partisans in Congress is allowed to vary over time. An additional control, *Executive Order Age*, is constructed by counting the number of Congresses that have passed since the order was issued. This variable is included to account for the possibility that Congress may be more or less interested in an order's implementation at different points in the order's lifespan. The variable *Senate* is an indicator for whether the observation reflects the Senate or the House.

An additional routinely-used control in executive politics is order significance. Measures of significance, for example the measure developed by Chiou and Rothenberg (2017), are used to control for the policy salience or policy impact of a given order. It would be reasonable to expect that Congress would be more interested in conducting hearings on "significant" unilateral actions. However, in this case significance is a post-treatment variable. In fact, whether reference to the order appears in the *Congressional Record* is one of the raters used in the IRT model that Chiou and Rothenberg used to construct their significance scores. Accordingly, throughout this analysis, significance is omitted from the specifications. Nonetheless, it should be emphasized that delegation and discretion scores are both conceptually and operationally distinct from significance.[58]

After expanding observations for each executive order to the order-Congress level, the number of observations grows to roughly 51,000. Table 3.6 shows the results of this analysis. Specifications (1) - (3) estimate *Any Hearing* and specifications (4) and (5) estimate *Total Hearings*, with and without President fixed effects. All models are estimated using OLS with standard errors clustered by Executive Order.[59] As expected, the relationship between high

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[58] The potential role of "significance," and challenges to its measurement, is provided in Appendix C.2.

[59] The decision to cluster errors at the level of the executive order was made because Delegation and Discretion are considered the treatment for this analysis, and thus treatment is assigned at the level of the executive order.

scores on Delegation and/or Discretion and hearing activity remains positive and statistically significant. For clarity, coefficient estimates are plotted in Figure 3.2.[60]

Table 3.6: Full Specifications

	Any Hearing			Total Hearings	
	(1)	(2)	(3)	(4)	(5)
(Intercept)	0.006***	0.010***	0.012***	0.011***	0.012***
	(0.001)	(0.002)	(0.002)	(0.002)	(0.003)
High Both	0.006***	0.008***	0.008***	0.011***	0.011***
	(0.001)	(0.002)	(0.002)	(0.003)	(0.003)
High Del.	0.003*	0.003**	0.004**	0.003**	0.003*
	(0.001)	(0.001)	(0.001)	(0.001)	(0.001)
High Dis.	0.002*	0.002*	0.002*	0.004**	0.003*
	(0.001)	(0.001)	(0.001)	(0.001)	(0.001)
EO Age	−0.001***	−0.001***	−0.001***	−0.001***	−0.001***
	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)
Senate	−0.001**	−0.001**	−0.001**	−0.002**	−0.002**
	(0.000)	(0.000)	(0.000)	(0.001)	(0.001)
Divided Gov.	0.001	0.001	0.001	0.001	0.001
	(0.001)	(0.001)	(0.001)	(0.001)	(0.001)
Num.Obs.	51 202	51 006	51 006	51 006	51 006
R2	0.007	0.009	0.012	0.008	0.010
President FE	N	N	Y	N	Y
Policy Area FE	N	Y	Y	Y	Y

$+ p < 0.1$, $*$ $p < 0.05$, $**$ $p < 0.01$, $***$ $p < 0.001$

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[60] As a robustness check, these analyses are repeated in Appendix C.5 with a subset of the data, focusing on hearings in the first three Congresses after the order's issuance. Results are generally consistent with those presented here.

Figure 3.2:Coefficient Estimates, Full Specifications
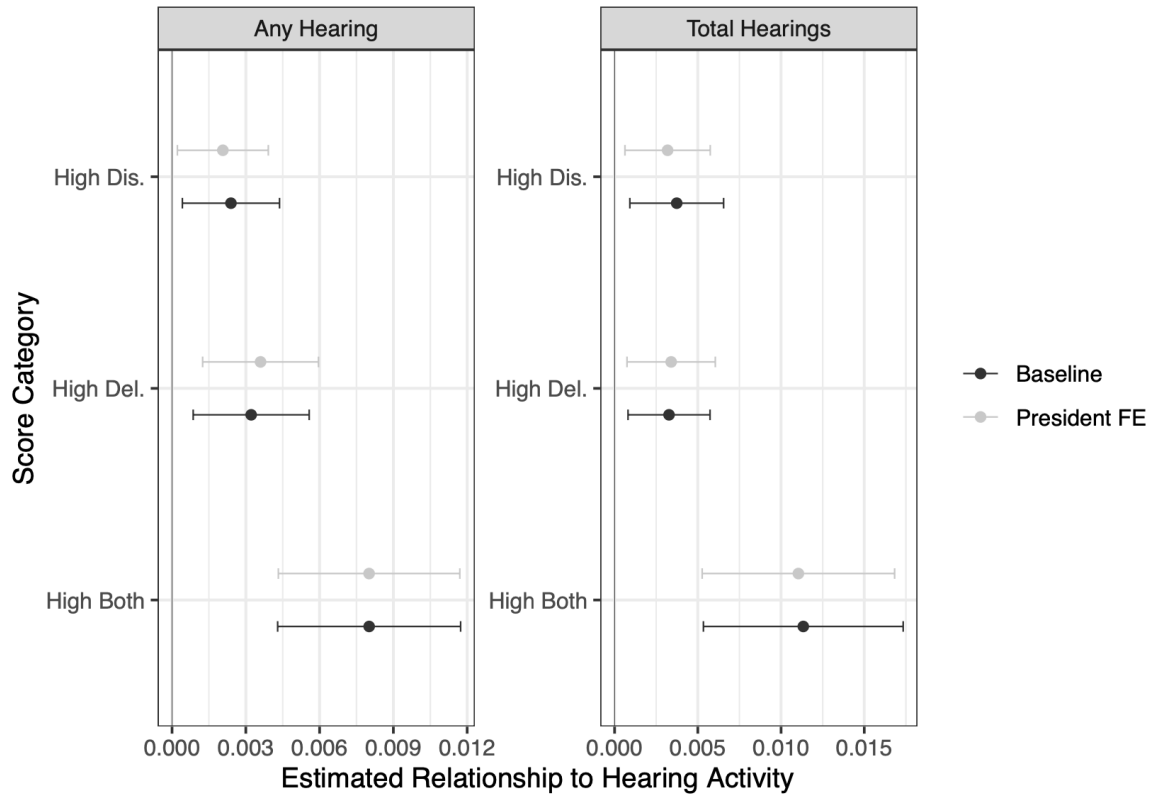
One possible concern with the models estimated in Table 3.6 is that they could be masking differences in how Delegation and Discretion operate during periods of unified or divided government. To test this possibility, the models in Table 3.7 re-estimate the specifications from Table 3.6, adding an interaction between Delegation/Discretion scores and *Divided Government*. The interaction term allows the model to estimate different effects of Delegation and Discretion depending on whether a given Congress is aligned with or opposed to the issuing president. As evident in the table, the interaction terms are generally not statistically significant, with the exception of *High Both x Div.* in models (3) and (4). While the estimates on *High Del.* and *High Dis.* also lose their significance, the coefficient on *High Both* remains robust.

Table 3.7: Interaction Effects Models

	Any Hearing		Total Hearings	
	(1)	(2)	(3)	(4)
(Intercept)	0.011***	0.012***	0.012***	0.013***
	(0.002)	(0.002)	(0.002)	(0.003)
High Both	0.006***	0.006***	0.008**	0.008**
	(0.002)	(0.002)	(0.003)	(0.003)
High Del.	0.002	0.003	0.002	0.002
	(0.002)	(0.002)	(0.002)	(0.002)
High Dis.	0.002+	0.001	0.003*	0.003+
	(0.001)	(0.001)	(0.002)	(0.001)
Divided Gov.	0.000	0.000	0.000	−0.001
	(0.000)	(0.000)	(0.000)	(0.000)
EO Age	−0.001***	−0.001***	−0.001***	−0.001***
	(0.000)	(0.000)	(0.000)	(0.000)
Senate	−0.001**	−0.001**	−0.002**	−0.002**
	(0.000)	(0.000)	(0.001)	(0.001)
High Both x Div.	0.003+	0.003+	0.006*	0.006*
	(0.002)	(0.002)	(0.003)	(0.003)
High Del. x Div.	0.002	0.002	0.002	0.002
	(0.002)	(0.002)	(0.002)	(0.002)
High Dis. x Div.	0.001	0.001	0.001	0.001
	(0.001)	(0.001)	(0.002)	(0.002)
Num.Obs.	51 006	51 006	51 006	51 006
R2	0.010	0.012	0.008	0.010
President FE	N	Y	N	Y
Policy Area FE	Y	Y	Y	Y

+ p < 0.1, * p < 0.05, ** p < 0.01, *** p < 0.001

Figure 3.3: Marginal Effects Estimates, Interaction Models
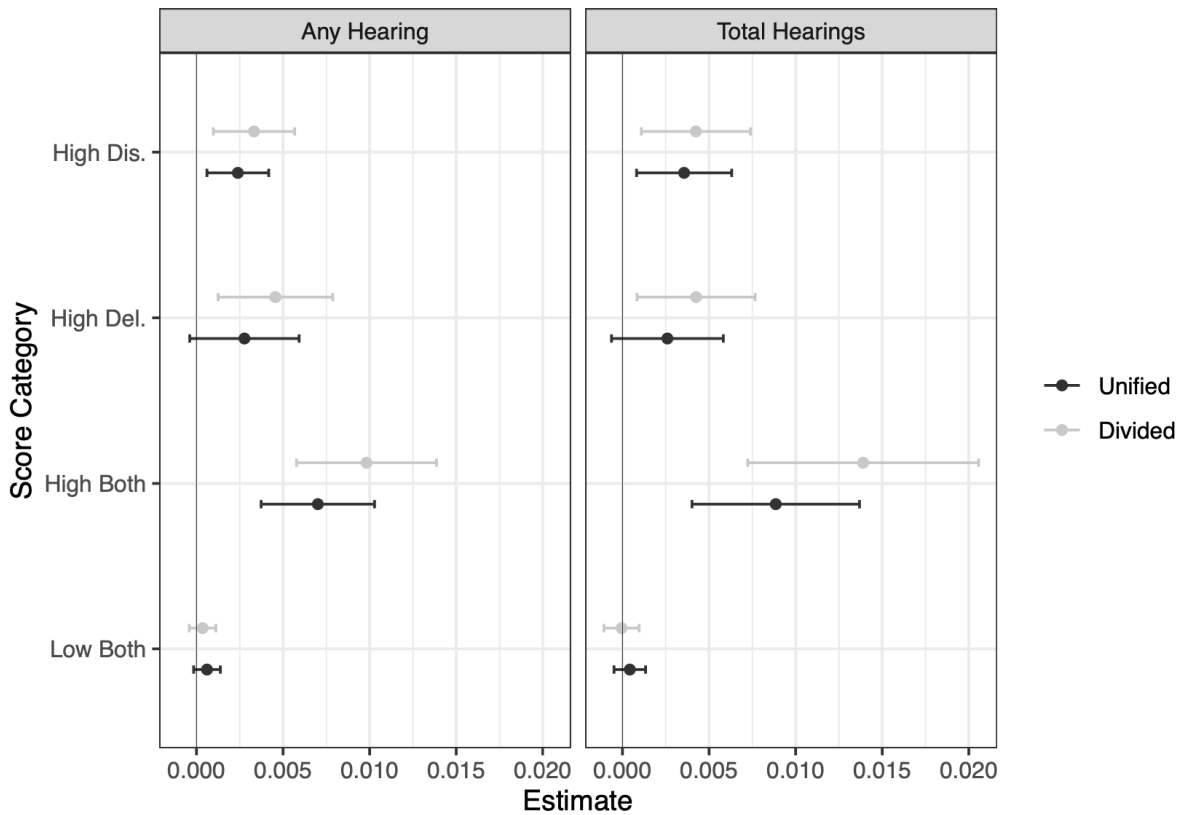
Marginal effects from Specification (1) are plotted in Figure 3.3. The results are consistent with the previous analysis: the likelihood of an order receiving a hearing is higher for documents that are high-scoring on either or both dimensions of administrative delegation. However, this effect does not significantly depend on Unified or Divided government: while the estimated likelihood of a hearing is slightly higher under divided than under unified government for all levels of the explanatory variable, the difference is not large enough to achieve statistical significance.

In summary, hearing activity is increasing in both Delegation and Discretion, and does not seem to be driven by partisan disagreement. These findings lend support to the idea that the administrative politics of unilateral action create an opportunity for Congressional participation in unilateral policymaking. When presidents issue unilateral directives, the directives are implemented by administrative agencies. The more authority and discretion the agencies are given in this implementation, the greater the opportunity for Congressional oversight to shape outcomes.

3.5   Discussion — Congressional Influence on Policy Outcomes

While this paper illustrates that Members of Congress attempt to influence unilateral policy outcomes, an important question that this finding raises is whether they are effective in doing so. Explicit empirical evidence of the effects of Congressional oversight on executive-branch policy is difficult to identify for several reasons: first, long time horizons of federal policymaking mean that a Congressional intervention might have an observable impact only years later. Additionally,

Congressional influence may be felt in ways that are observable in agency operations, but not documented in formal changes to rules. Finally it is difficult, if not impossible, to disentangle the influence of Congressional oversight activity from the effects of other political actors: oversight activity is most likely for issues that are high salience to at least some constituency, and that constituency is likely to be pressuring agencies both through and external to Congress.

Although the exact effects of hearing activity on agency activity are difficult to determine, existing theories of the role of oversight hearings provide support for the plausibility that these hearings are impactful. Moreover, some preliminary evidence can guide further research. First, Congress sometimes does take explicit action after a hearing, for example in the form of limitations on how agencies can use appropriated funds. An example of this was presented previously, when Congress forbade agencies from spending appropriations implementing President Reagan's mandatory federal employee drug testing program. A similar example comes from the George W. Bush administration. President Clinton had issued an Executive Order in 1994 requiring the EPA to consider environmental justice in developing its programs and policies.[61] In 2007, the Democrat-controlled Senate Subcommittee on Superfund and Environmental Health held a hearing to express disapproval of the EPA's implementation of this order under the George W. Bush administration. The main focus of the hearing was the EPA's relaxation of the Toxic Release Inventory reporting requirements in 2006. After Bush left office, the 2009 omnibus appropriations bill included a section invalidating the particular rule that had been the subject of the hearing. While the Clinton Executive Order was itself not at issue, this example highlights the ways that Congress tries to shape implementation over time and across administrations.

Congress can also play a role in preventing executive orders from being issued in the first place. In a high-profile example, in 2011 the Obama administration circulated a draft executive order that would require additional disclosures of employee political contributions from potential federal contractors. The Republican-controlled House Committees on Oversight and Small Business held a joint hearing entitled "Politicizing Procurement," raising strong objections to the proposed order. While the Democrats in Congress were largely in favor of the order, pointing out that contractors were already subject to disclosure requirements, the partisan acrimony in the hearing reflected broader opposition to the order among affected groups. The news media followed the progress of the order, with Reuters reporting after the hearing that the order was "feared stalled."[62] Years later, in 2016, the New York Times reported that Obama was "seriously considering" issuing the executive order.[63] The order, however, was never issued. As in the previous example, the role of Congressional hearings cannot be easily disentangled from pressure faced by the Obama administration from other sources. However, it seems likely that the hearings and other modes of Congressional oversight served as part of the constellation of political factors that shaped this outcome.

An additional question raised by the results presented here is whether the president can select levels of delegation of discretion strategically to avoid triggering oversight. This question

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[61] Executive Order 12898, February 11, 1994.

[62] Dixon, Kim and Patricia Zengerle. "Obama order on campaign donations feared stalled." Reuters, June 16, 2011. https://www.reuters.com/article/us-usa-campaign-contributions/obama-order-on-campaign-donations-feared-stalled-idUSTRE75D6AD20110616

[63] Hirschfeld Davis, Julie. "President Obama May Require Federal Contractors to List Campaign Gifts." The New York Times, January 19, 2016. https://www.nytimes.com/2016/01/20/us/president-obama-may-require-federal-contractors-to-list-campaign-gifts.html

is ripe for further research and theoretical development, but I argue that it is not of particular concern for the results presented here. Because of the way delegation and discretion are measured, they reflect exactly what a president has asked an agency to *do*. Thus, the uppermost consideration must be what the president hopes to accomplish. If the president seeks a change to regulations, he cannot issue a directive requesting recommendations. Such a request might effectively evade Congressional attention, but it also fails to achieve the policy objective.

  If the president cannot adjust delegation and discretion to avoid oversight without undermining agencies' ability to execute his preferences, the alternative is that presidents may choose *not to issue* directives that they are concerned would be changed by Congress. In this case the concern for the interpretation of the empirical results is that perhaps a large number of low-scoring directives went un-issued because they would have triggered Congressional oversight. Such selection would undermine the demonstrated relationship between delegation/discretion and oversight. Again, however, the way the concepts are measured allays this concern. Low-scoring directives are changes to definitions or requests for recommendations. Congress's ability to change policy outcomes through shaping these directives is extremely limited: they may be able to change the nature of the recommendations offered by the agency, but that does not directly change policy outcomes. In the case of changes to definitions, there is no clear theoretical mechanism by which Congressional engagement can change the outcome, short of encouraging agencies to ignore the directive entirely. For directives that Congress would like to influence, delegation *enables* that Congressional participation by placing policymaking action in the agencies. It may still be the case that presidents avoid issuing directives that are likely to result in Congressional (or popular) backlash, but those omitted directives are most likely to be high-scoring.

  What we are left with is a picture of presidential unilateral policymaking that bears striking similarities to the politics of non-unilateral policymaking. Congress chooses to exercise oversight over agency policymaking when doing so is electorally beneficial. Presidents issue directives in light of both their policy priorities and Congress's likelihood to constrain such action's implementation. The strategic environment facing presidents in issuing executive orders is not as insulated from Congressional preferences and behavior as previous literature assumes.

3.6 Conclusion

The results presented in this paper provide evidence that the administrative politics of unilateral action inform Congressional responses to executive orders. When a president issues an executive order, that order can be construed as a request to a bureaucratic agency. Because those agencies are subject to oversight not only by the president but also by Congress, the degree of delegation or discretion granted in the order can affect the likelihood of Congressional oversight of the implementing agency. The oversight of executive order implementation represents an alternative and under-investigated pathway for Congressional influence of bureaucratic policy outcomes. Moreover, the evidence presented here challenges the view that presidents "go it alone" when issuing unilateral directives: not only are such directives best understood as acts of delegation, but their implementation can include a role for Congressional input.

  One opportunity for further research is to consider additional types of oversight activity, as well as different modes of presidential unilateralism. Agency correspondence logs are a particularly promising source of data on informal Congressional oversight (Lowande 2018b; Ritchie 2023). The challenge with using such logs is linking individual Congressional communications to particular executive orders. While existing data sources make this linkage

infeasible, targeted FOIA requests could be used to investigate informal oversight in a sample of cases.

Moreover, while executive orders are the most studied mode of unilateral action, recent scholarship has expanded the focus to include presidential memoranda and proclamations, and preliminary evidence suggests that presidents utilize different types of directives under different political conditions (Kaufman and Rogowski 2023; Lowande 2014; Lowande and Rogowski 2021; McLain 2022; Rottinghaus and Maier 2007). The measures of Delegation and Discretion used in this paper are readily applicable to these other types of directive. Indeed, they were developed with a broad variety of directive types in mind (Benn 2023). In principle, the theory presented here does not depend on the public nature of either hearings or executive orders, and should be relevant to other contexts. Incorporating different types of unilateralism and oversight activity will expand our understanding of how the administrative politics of unilateral action shape Congressional participation more generally.

Finally, further work is needed to fully contextualize the role of presidential unilateralism in today's politics. This paper shows that Congress can participate in shaping unilateral policy outcomes, but we should be careful not to overstate the implications of this fact for the health of our separation of powers system. First, while there may be challenges to democratic governance from the executive branch, the exercise of unilateral power is not the primary source. Recent scholarship highlights current threats from executive power, including presidents using their role as head of the executive branch to "sabotage," "deconstruct," or "undermine" the administrative state (Howell and Moe 2020; Lewis 2019; Noll 2022). In this light, the main peril of unilateral power is not the usurpation of policymaking from Congress, but rather reliance on administrative agencies for policymaking when the capacity of those agencies is under threat from the presidency.

Moreover, although Congress has an opportunity to shape policymaking outcomes, it is not the full deliberative body that fills this role. Rather, the process articulated here is driven by the particular concerns of individual members' constituencies and interests. The potential for parochialism in Congress is a well-studied phenomenon, but further work is required to understand how individual members' incentives affect policy quality in the context of unilateral policymaking. Accurately identifying the roles and incentives of political actors is a critical first step to correctly diagnosing potential challenges to high-quality governance.

This paper shows that the relationship between Congress and presidential unilateralism is more complex than existing literature suggests. Far from "going it alone," when issuing executive orders the president is relying on cooperation from agency actors. Moreover, those agency actors are subject to influence and pressure from their overseers in Congress. In short, the same political factors that shape policy implementation generally apply to the implementation of executive orders, as well. Presidential unilateralism is a deliberative, and ultimately multilateral, process.

REFERENCES

Aberbach, Joel D. 1990. *Keeping a Watchful Eye: The Politics of Congressional Oversight*. Washington, D.C: Brookings Institution.

Belco, Michelle, and Brandon Rottinghaus. 2017. *The Dual Executive: Unilateral Orders in a Separated and Shared Power System*. Stanford, California: Stanford University Press.

Bendor, Jonathan, and Adam Meirowitz. 2004. "Spatial Models of Delegation." *American Political Science Review* 98(2): 293–310.

Benn, Annie. 2023. "The Administrative Politics of Unilateral Action: Measuring Delegation and Discretion in the Executive Branch." *Presidential Studies Quarterly*: psq.12862. doi:10.1111/psq.12862.

Bolton, Alexander. 2022. "Gridlock, Bureaucratic Control, and Nonstatutory Policymaking in Congress." *American Journal of Political Science* 66(1): 238–54.

Bolton, Alexander, and Sharece Thrower. 2019. "The Constraining Power of the Purse: Executive Discretion and Legislative Appropriations." *The Journal of Politics* 81(4): 1266–81.

Canes-Wrone, Brandice, William G. Howell, and David E. Lewis. 2008. "Toward a Broader Understanding of Presidential Power: A Reevaluation of the Two Presidencies Thesis." *The Journal of Politics* 70(1): 1–16. doi:10.1017/S0022381607080061.

Chiou, Fang-Yi, and Lawrence S. Rothenberg. 2017. *The Enigma of Presidential Power: Parties, Policies, and Strategic Uses of Unilateral Action*. Cambridge, United Kingdom ; New York, NY: Cambridge University Press.

Epstein, David, and Sharyn O'Halloran. 1999. *Delegating Powers: A Transaction Cost Politics Approach to Policy Making Under Separate Powers*. Cambridge, U.K. ; New York: Cambridge University Press.

Feinstein, Brian D. 2018. "Congress in the Administrative State." *Wash. U. Law Review* 95: 63.

Gailmard, Sean, and John W. Patty. 2012. "Formal Models of Bureaucracy." *Annual Review of Political Science* 15(1): 353–77.

Hickey, Christopher, Curt Merrill, Richard J. Chang, Kate Sullivan, Janie Boschma, and Sean O'Key. 2021. "Here Are the Executive Actions Biden Signed in His First 100 Days." *cnn.com*. https://www.cnn.com/interactive/2021/politics/biden-executive-orders/.

Holmstrom, Bengt. 1984. "On the Theory of Delegation." In *Bayesian Models in Economic Theory*, eds. M Boyer and R Khilstrom. New York: North Holland, 37–52.

Howell, William G. 2003. *Power Without Persuasion: The Politics of Direct Presidential Action*. Princeton, N.J: Princeton University Press.

Howell, William G., and Terry Moe. 2016. *Relic: How Our Constitution Undermines Effective Government, and Why We Need a More Powerful Presidency*. New York: Basic Books A Member of the Perseus Books Group.

Howell, William G., and Terry Moe. 2020. *Presidents, Populism, and the Crisis of Democracy*. Chicago: The University of Chicago Press.

Huber, John D., and Charles R. Shipan. 2002. *Deliberate Discretion: The Institutional Foundations of Bureaucratic Autonomy*. Cambridge, UK ; New York: Cambridge University Press.

Kagan, Elena. 2001. "Presidential Administration." *Harvard Law Review* 114: 2247–2385.

Kaufman, Aaron R., and Jon C. Rogowski. 2023. "Divided Government, Strategic Substitution, and Presidential Unilateralism." *American Journal of Political Science*: ajps.12821. doi:10.1111/ajps.12821.

Kennedy, Joshua B. 2015. ""Do This! Do That!" And Nothing Will Happen': Executive Orders and Bureaucratic Responsiveness." *American Politics Research* 43(1): 59–82. doi:10.1177/1532673X14534062.

Kim, Jieun. 2021. "At Your Own Risk: A Model of Delegation with Ambiguous Guidelines." *Journal of Political Institutions and Political Economy* (2): 483–508.

Kinane, Christina M. 2021. "Control without Confirmation: The Politics of Vacancies in Presidential Appointments." *American Political Science Review* 115(2): 599–614. doi:10.1017/S000305542000115X.

Kriner, Douglas L., and Eric Schickler. 2016. *Investigating the President: Congressional Checks on Presidential Power*. Princeton and Oxford: Princeton University Press.

Lewis, David E. 2003. *Presidents and the Politics of Agency Design*. Stanford University Press.

Lewis, David E. 2008. *The Politics of Presidential Appointments*. Princeton, N.J: Princeton University Press.

Lewis, David E. 2019. "Deconstructing the Administrative State." *The Journal of Politics* 81(3): 767–89.

Lowande, Kenneth. 2014. "After the Orders: Presidential Memoranda and Unilateral Action." *Presidential Studies Quarterly* 44(4): 724–41.

Lowande, Kenneth. 2018a. "Delegation or Unilateral Action?" *The Journal of Law, Economics, and Organization* 34(1): 54–78.

Lowande, Kenneth. 2018b. "Who Polices the Administrative State?" *American Political Science Review* 112(4): 874–90.

Lowande, Kenneth, and Rachel Potter. 2021. "Congressional Oversight Revisited: Politics and Procedure in Agency Rulemaking." *The Journal of Politics* 83(1): 401–8.

Lowande, Kenneth, and Jon C. Rogowski. 2021. "Presidential Unilateral Power." *Annual Review of Political Science* (24): 21–43.

Lowande, Kenneth, and Charles R. Shipan. 2022. "Where Is Presidential Power? Measuring Presidential Discretion Using Experts." *British Journal of Political Science* 52(4): 1876–90. doi:10.1017/S0007123421000296.

MacDonald, Jason A., and Robert J. McGrath. 2016. "Retrospective Congressional Oversight and the Dynamics of Legislative Influence over the Bureaucracy." *Legislative Studies Quarterly* 41(4): 899–934. doi:10.1111/lsq.12138.

McLain, Meredith. 2022. "Presidential Policymaking in the Face of Congressional Sanctioning." *Unpublished Manuscript, Vanderbilt University*.

Moe, Terry. 1985. "The Politicized Presidency." In *The New Direction in American Politics*, eds. John E. Chubb and Paul E. Peterson. The Brookings Institution.

Moe, Terry, and William G. Howell. 1999. "Unilateral Action and Presidential Power: A Theory." *Presidential Studies Quarterly* 29(4): 850–73.

Nathan, Richard P. 1983. *The Administrative Presidency*. John Wiley & Sons.

Neuendorf, Kimberly A. 2017. *The Content Analysis Guidebook*. 2455 Teller Road, Thousand Oaks California 91320: SAGE Publications, Inc. doi:10.4135/9781071802878.

Noll, David. 2022. "Administrative Sabotage." *Michigan Law Review* (120.5): 753.

Reeves, Andrew, and Jon C. Rogowski. 2018. "The Public Cost of Unilateral Action." *American Journal of Political Science* 62(2): 424–40.

Relyea, Harold C. 2007. "Presidential Directives: Background and Overview."

Ritchie, Melinda N. 2023. *Backdoor Lawmaking: Evading Obstacles in the US Congress*. New York: Oxford University Press.

Rottinghaus, Brandon, and Jason Maier. 2007. "The Power of Decree: Presidential Use of Executive Proclamations, 1977-2005." *Political Research Quarterly* 60(2): 338–43.

Rudalevige, Andrew. 2002. *Managing the President's Program: Presidential Leadership and Legislative Policy Formulation*. Princeton, N.J: Princeton University Press.

Rudalevige, Andrew. 2005. *The New Imperial Presidency: Renewing Presidential Power After Watergate*. Ann Arbor: University of Michigan Press.

Rudalevige, Andrew. 2021. *By Executive Order: Bureaucratic Management and the Limits of Presidential Power*. Princeton: Princeton University Press.

Selin, Jennifer L., and Grace Moore. 2023. "Keeping Tabs on the Executive." *Presidential Studies Quarterly* 53(2): 186–208.

Turner, Ian R. 2020. "Policy Durability, Agency Capacity, and Executive Unilateralism." *Presidential Studies Quarterly* 50(1): 40–62. doi:10.1111/psq.12633.

Volden, Craig. 2002. "A Formal Model of the Politics of Delegation in a Separation of Powers System." *American Journal of Political Science* 46(1): 111. doi:10.2307/3088417.

Warber, Adam L. 2006. *Executive Orders and the Modern Presidency: Legislating from the Oval Office*. Boulder, Colo: Lynne Rienner Publishers.

Warber, Adam L., Yu Ouyang, and Richard W. Waterman. 2018. "Landmark Executive Orders: Presidential Leadership Through Unilateral Action: Landmark Executive Orders." *Presidential Studies Quarterly* 48(1): 110–26. doi:10.1111/psq.12434.

Waterman, Richard W. 2009. *Assessing the Unilateral Presidency*. Oxford: Oxford University Press.

Wiseman, Alan E. 2009. "Delegation and Positive-Sum Bureaucracies." *The Journal of Politics* 71(3): 998–1014. doi:10.1017/S0022381609090847.

4 Appendices
A Appendices for Chapter 1
A.1 Codebook for Research Assistants

Instructions for Coders:

Coders will receive a spreadsheet with a list of documents to read and analyze. For each document on the spreadsheet:

1. Use the American Presidency Project website to search for the document. For Executive Orders and Proclamations you can often use the document number. For Memos you can search using the title.
   - Note: the American Presidency Project search function is case sensitive. So you can search "Executive Order 1234" but not "executive order 1234"
   - Note: Some documents have the same title over multiple years. Cross-check against the President and the date to ensure you are looking at the correct document.
2. Check whether any of the flags apply: if the document is Ceremonial or NotExecutive, you can assign the flag and move to the next document.
3. Read the document closely. Note that style varies by president, but in general:
   - will be some preamble discussing the motivation for the directive. This can sometimes be helpful for coding, but is often not necessary.
   - There is usually some legal boilerplate, especially in later presidencies. This can usually be ignored.
   - Focus on what the directive is doing – what policy change is being considered? What is the agency's (or agencies') role in the policy change?
4. Try to summarize for yourself what the directive is doing in one or two sentences. For example, "This EO is requesting the Petroleum Administrator to operate a particular oil refinery in such a way as to advance US war efforts"
5. Assign either a flag, or Delegation and Discretion scores according to the codebook by indicating the appropriate score in the appropriate column of the spreadsheet. Then move on to the next document.
   - Flags should be indicated with a "1" in the appropriate column.
   - Note: each document receives either exactly one flag, or a score for both Delegation and Discretion.

Assigning Scores

Delegation
- Definition/Determination
- Low — agency input in decision-making
  - Recommendations
  - Agency makes determinations (just delegated determination authority; without follow-up action)
- Medium — limited or conditional agency empowerment
  - Narrowly defined task/single-shot action
  - Narrow internal program

- e.g., internship program; not the kind of thing that affects hundreds of federal workers
- o Case-by-case actions
  - e.g., freeze assets for individuals; or determine a list of individuals then freeze their assets
- o Implement a federal policy at a particular location/in an otherwise narrow way
  - e.g., nationalize this oil refinery; confined to that one oil refinery. Not a program of nationalizing oil refineries
- High — general policymaking authority
  - o Implement a national program or make a policy change that affects the nation
  - o Broad federal policy change (e.g., major change to staffing or procedures in the government, new agency to do a new thing)

Discretion
1. Definition/Determination
2. Low
   - o Narrow discretion as to implementation. Agency must do something, but it's often a comply/don't comply dichotomy
3. Medium
   - o Some flexibility as to definition of tasks/how to best design or implement the policy
     - Provides specific activities that should be undertaken in the policy, but those activities could be done in more than one way
   - o Typically scope of directive is more narrowly constrained policy change
4. High
   - o Broad flexibility as to how to best pursue the ends of the directive
     - e.g., asks agent to develop a strategy
   - o Typically the scope of the directive is a large-scale policy change

<u>Flags</u>
Ceremonial
Use this flag for documents that are ceremonial in nature. These include:
- Declarations of national awareness days/weeks
- Approvals of designs, e.g. for seals
- Requests to lower flags to half-staff to honor deceased individuals or other memorials

Not Executive
Use this flag for documents that are not related to executive-branch policy making. These include:
- Letters to entities other than government agencies (e.g., foreign dignitaries, private citizens, members of Congress).
- Personal letters with no policy content, even if the recipient happens to be a government employee (e.g., "thank you for your hard work" letters)

Administrative
Use this flag for documents that:

- Reorganize agencies in the executive branch without creating new government functions
- Reassign existing functions from one entity to another
- Change the order of succession for a particular department
- Individual personnel issues (appointments, exemptions from retirement of named individuals)

Constraints Appended
Use this flag for documents that reference other materials, which you would need to consult to accurately code Delegation or Discretion. These are typically amendments to previous executive orders.
- If the intention of the directive order is clear, and the change is something like a deadline extension or extending the previous directive to a new category (for example changing "men" to "men and women",) then assign 1,1.
- If it is possible/likely that the delegation/discretion score from the original EO has changed with the amendment, but there is not enough information to know exactly how, assign this flag.
- See further discussion of this flag below.

<u>Examples</u>
Below are some typical scores of frequently-encountered examples. Note that these are typical scores, but coders should use their judgment in assigning scores.

- Definitions/Determinations (Scoring 1, 1)
  - Dismantle an individual agency or commission
  - Amending tariff schedules
  - Add a group to a pre-existing category
  - Allow Congressional inspection of taxes
  - Shifting tracts of land to different jurisdictions
  - Change a deadline or add additional members to a committee
  - Changes to salary schedules, travel remuneration schedules, etc.
- Railway Labor Dispute Resolution Boards
  - Delegation: 3
  - Discretion: 3
- Advisory Commissions
  - Delegation: 2
  - Discretion: 4
  - Note these scores change when, for example, the policy that the commission is advising on is more narrowly targeted (e.g., Discretion 3) or when the commission is not only making recommendations, but also taking actions to implement to policies or strategies (Delegation 3, 4)
- "To all" policy changes
  - These are documents that make broad requests of all agency heads to improve efficiency/increase equity/pursue some other broad goal through the work of government.
  - Delegation: 4
  - Discretion: 3

- o   Note that these scores can vary.
- Freezing assets
  - o   These documents direct agencies to freeze the assets or otherwise limit the transactions of certain entities
  - o   Delegation 3
  - o   Discretion 2
- Determinations that funds should be made available
  - o   These documents typically refer to an existing statute/appropriation and make the determination that the money should become available.
  - o   1/1
- Read this report and tell me what you think
  - o   Documents that forward a government report to a commission and ask for thoughts about the report
  - o   Delegation 2
  - o   Discretion 3

Some candidates for Constraints Appended

Note: In general, ConstraintsAppended should be used sparingly. This flag is reserved for documents where the coder does not have enough information to confidently assign Delegation/Discretion scores. In addition to amendments to Executive Orders, similar documents include:

- Amending manuals or regulations (e.g., amending selective service regulations, manual for courts-martial)
  - o   Typically these documents will be either 1,1 or ConstraintsAppended. If it is clear that the regulations themselves are being changed but the underlying authority to carry out the regulations has not changed, that is 1,1. If it is not clear how the amount of delegation/discretion for agents might have changed (for example a section is added granting decision-making authority, but it is not clear if that authority was pre-existing), coders should apply ConstraintsAppended.
- Congressional delegation pass-throughs
  - o   This refers to documents in which presidents recognize a Congressional statutory authority and delegate it wholly to an agent. If there is no information provided about the delegation (e.g., I hereby delegate the authority granted by statute xyz), then coders should assign ConstraintsAppended. If there is sufficient information about what functions are being delegated (e.g., reporting functions, or the authority to make determinations), then coders should apply the appropriate delegation/discretion score for that authorization. Note that unlike with the amendment directives, it is not necessarily the case that if the directive is not flagged it should receive 1,1.

A.2 Additional Examples of Applied Scores

This appendix provides additional examples of documents with different score combinations. Documents were scored by trained coders following the Codebook in Appendix 1. The examples in this section are representative (but not exhaustive) of the types of documents encountered at each score combination. The main principle to keep in mind when reviewing the examples is that coders were directed to score actions requested *by the directive itself*. As a practical matter, it is not advisable for coders to make inferences beyond the text of the directive, as such inferences would be likely to introduce considerable noise to the coding scheme. These examples should provide the reader with additional clarity on how the coding scheme was applied in practice.

Delegation 1, Discretion 1

These documents provide definitions or determinations, and do not directly request action on the part of bureaucrats. It is important to note that this does not necessarily mean the agent does nothing, rather it means that the directive is not itself ordering action. Any action taken by the agent is considered implementation of the underlying statute or some other directive, but the directive being scored is only providing a definitional change.

An illustrative example of this type of document is EO 7463 of 1936. The order abolishes Fort Pierce, Florida as a customs port of entry. The document is very brief, and does nothing other than declare the customs port of entry abolished. The low scores on Delegation and Discretion do not imply that this was not a consequential decision, or even that the order is fully self-executing. Presumably there are procedures in place for implementing these types of decisions; however the directive does not itself direct any particular action, and does not allow for agency discretion in its execution.

Delegation 2, Discretion 2

Documents scoring 2 on Delegation allow the agent to influence policy outcomes only indirectly, by providing information or recommendations. A score of 2 on Discretion indicates that the specific nature of what is to be reported is narrowly defined. An example of this type of document is EO 11845 of 1975. In this Order, President Ford delegates to the Office of Management and Budget certain statutory functions required of the President. In particular, OMB must transmit to the Comptroller General copies of certain messages, and must submit cumulative reports to Congress of "proposed recessions, reservations and deferrals of budget authority."

Unlike in documents scoring 1 on Delegation, an agent is being specifically asked to do something, in this case transmit messages and reports. However the discretionary flexibility is minimal. OMB is not asked to develop the messages or reports, only to transmit them.

Delegation 2, Discretion 3

Documents with this score combination are still requesting only recommendations or information (Delegation 2), but the flexibility with respect to the content of the recommendations is broader. An example of this combination is EO 11970 of 1977. The Order creates the Presidential Advisory Board on Ambassadorial Appointments, which advises the president about the qualifications of potential future ambassadors. The Discretion score is higher than the 2 in the previous example, because the agent is developing recommendations, not merely transmitting reports. However the criteria that should be considered and the objective of the recommendations are defined in the document, so Discretion falls short of the flexibility in a Score of 4.

Delegation 2, Discretion 4

This score combination is typical of Executive Orders creating Presidential Advisory Boards. The score of 2 on Delegation reflects that the agent is limited to making recommendations, while the score of 4 on Discretion indicates that the agent is given significant latitude in what to recommend and what criteria or information to consider in developing the recommendations. An example of this score combination is EO 11076 of 1964 creating the President's Advisory Commission on Narcotic and Drug Abuse. The Commission was created to recommend to President Kennedy potential policies, including legislation, to "prevent abuse of narcotic and non-narcotic drugs and to provide appropriate rehabilitation for habitual drug misusers." In particular, the Commission was asked to provide a report and evaluate existing programs. Because the request for action falls short of implementing new programs and is instead limited to evaluation and recommendations, the Delegation score is 2. However the broad nature of the policy request means that a Discretion score of 4 is most appropriate. One can imagine any number of approaches to addressing the problem at hand, and the type of information that will be considered in selecting the recommended approach is not constrained by the Order.

Delegation 3, Discretion 2

Documents with this score combination request not just recommendations, but actions that will directly affect policy, however those actions are limited to narrowly-defined programs or case-by-case actions. The low Discretion score reflects clear constraints on how any action is to be taken. An example of this type of directive is President Obama's 2009 Memorandum on Deferred Enforced Departure for Liberians. The memo directs the Secretary of Homeland Security to "take the necessary steps to implement … a deferral of enforced departure" for a period of 12 months for Liberians who meet specified criteria. The narrow, case-by-case nature of the request makes a Delegation score of 3 more appropriate than 4, and the clear criteria delineated in the Order restrict discretion sufficiently that 2 is an appropriate Discretion score.

Delegation 3, Discretion 3

These documents are similar in scope of action to the 3-2 documents discussed above, however the discretionary flexibility for implementation is broader. An example of this type of directive is President Clinton's 2000 Executive Order 13162 creating a Federal Career Intern Program. The scope of policymaking influence granted to agents is limited in that this is a program within the federal government rather than a broad policy affecting the nation. The Office of Personnel Management is directed to constitute the program, and they are given some criteria informing how the program should be organized. However those criteria are general, leaving significant flexibility to OPM in the design and implementation of the program.

Delegation 3, Discretion 4

Documents with this combination of scores are limited in the policymaking scope as in the other Delegation 3 documents, however agents are given relatively unrestricted latitude in the design and implementation of the requested action. An example of this type of directive is President Obama's Executive Order 13548, directing OPM and agency heads to develop and implement plans for recruiting and retention of employees with disabilities. Because the scope of

the program is limited to federal employment rather than national policy, the Delegation score is 3. However, while the goals of the program are enumerated, the order does not put any substantive constraints on the types of activities, evaluation metrics, or other components of program design and implementation. Each agency is simply asked to develop a program and then implement it in consultation with OPM. Note that, because the purpose of the measure is to capture *substantive* discretion, the procedural constraints in the order (timelines and reporting requirements) do not reduce the Discretion score.

Delegation 4, Discretion 2

Documents with this score combination request general policymaking activity on the part of the agent, for example promulgating rules or implementing national policy programs. However they come with narrowly tailored criteria or instructions, significantly restricting agency discretion. An example of this type of document is Clinton's Executive Order 12969 on 1995. The order directed agents to "contract with companies that report in a public manner on toxic chemicals released to the environment." The document is given a score of 4 on Delegation because the scope of the directive affects all federal procurement. While this is a federal program as in the Delegation 3 examples, the scope of impact is not limited to federal employees but to the much broader economic impact of federal procurement. On discretion, however, the order is quite unambiguous about what is meant by this reporting requirement. The order directs the Environmental Protection Agency to promulgate rules implementing the order, but there is sufficient detail and definition in the order itself that the scope for EPA discretion is relatively narrow.

Delegation 4, Discretion 3

This combination of scores indicates documents which give agencies significant policymaking authority, with relatively broad discretion, although the document typically contains specific guidelines or criteria that the agent should consider in the exercise of their authority. An example is President Nixon's 1970 EO 11574, directing agencies to "implement a permit program … to regulate the discharge of pollutants and other refuse matter into the navigable waters of the United States…" Because such a permit program affects national policy outcomes in the area of water pollution, the document is given the highest Delegation score, 4. While agents are directed to issue and amend regulations to implement the permitting program, the order contains several elements that should be considered in permitting decisions, such as the impacts on fish and wildlife beyond water quality considerations, and whether the pollution would change the shape or depth of the body of water itself. These substantive guidelines contribute to a Discretion score of 3 rather than the broader 4.

Delegation 4, Discretion 4

This combination of scores represents both the highest score for delegated authority, implying broad national policy impact, as well as the highest score for discretion, implying significant latitude in the design and implementation of programs. An example of a document with these scores is President George H.W. Bush's EO 12675 of 1989, which establishes the National Space Council. The council is asked to "advise and assist the President on national space policy and strategy." From that request alone, the order looks like a typical order with the 4-2 score combination. However the Council is not limited to making recommendations: the order goes on to direct the Council to "monitor and coordinate implementation of the objectives

of the President's national space policy" and "foster close coordination … and information exchange among the civil, national security, and commercial space sectors." These coordinating and implementation functions raise the Delegation score from 2 to 4. On discretion, while the order contains several procedural provisions, there is minimal substantive direction with respect to the objectives or components of "space policy." For this reason, Discretion is given the highest score of 4.

Documents Excluded from Analysis
Flag: Ceremonial
These documents are not scored on Delegation and Discretion because they are not directly policy-related, but rather ceremonial in nature. An example is President Trump's Proclamation 9750, proclaiming National Safe Boating Week. The proclamation "encourage[s] all Americans who participate in boating activities to observe this occasion by learning more about safe boating practices and taking advantage of boating safety education opportunities."

Flag: Not Executive
These documents are not scored on Delegation and Discretion because they are not unilateral directives. The inclusion of these documents in the sample is an artifact of the way data is organized by the American Presidency Project, which provided the full text of these documents for this analysis. The "Letters and Memoranda" category includes both policy-relevant memoranda as well as letters to members of Congress and personal letters of the president. These latter two categories (for example President Clinton's "Letter to Congressional Leaders Transmitting a Report on Cyprus" or President Roosevelt's letter to the Secretary of the Interstate Commerce Commission on the occasion of the Commissions 50th anniversary) are excluded from analysis.

Flag: Administrative
These documents are not scored on Delegation and Discretion because, although executive-branch reorganization can certainly have policy impacts, any impact on policy outcomes is indirect and not directly ordered by the document itself. For example, President Truman's EO 9710 terminated the Office of Inter-American Affairs and transferred some of its functions to the Secretary of the State. This decision is likely to impact policy outcomes, but the concepts of Delegation and Discretion as understood here are not clearly applicable. This flag also pertains to directives that deal with personnel issues for individuals rather than federal personnel policy, such as designations of certain individuals to various positions, acceptances of resignations, or exemptions of particular individuals from mandatory retirement.

Flag: Appended Constraints
This is the only flag for which the documents receiving the flag do fall under the definition of Administrative Delegation. However, due to the nature or structure of the document, coders were unable to confidently assign scores. These documents were clearly policy relevant, and directed agents to take certain actions, but those actions were not specified in the document itself, instead being enumerated in either a referenced statute or some other document. A typical document in this category is President Reagan's Executive Order 12634, which refers to certain statutory authorities originally granted to the President and redelegates them to the Secretary of Defense and the Director of OMB. There is not sufficient detail in the document to determine how much

authority and discretion the agents are being granted. Amendments to previous Executive Orders also often fall into this category, as it is not always clear from the amendment itself whether the amount of Administrative Delegation granted to the agent has changed as a result of the amendment.

A.3 Measure Reliability Appendix

Additional Reliability Metrics

This appendix provides additional metrics and discussion of the reliability of the Delegation and Discretion measures. The measures reported in the main text above, Krippendorff's alpha and Gwet's AC2, are the best indications of the extent to which the measures perform reliably, and the coefficients for those metrics are satisfactory. However, to provide a complete picture of the measure reliability, Table 4.1 presents additional metrics.

The first measure reported in the table is the overall raw agreement. This is the proportion of observations for which all five raters assigned exactly the same score. The raw agreement calculation does not differentiate between strongly different conclusions and "near-misses" between raters, nor does it differentiate between raters assigning four different scores and all raters being in perfect agreement save one. Recall, too, that these are scales with 4 possible scores each, and 5 coders. Even if the scale is working reasonably well, random error among coders might introduce disagreements that would be reflected in a lower agreement score. Thus while the overall agreement scores of 0.533 for Delegation and 0.467 for Discretion may seem concerning at first glance, they are in fact not good indicators of measure performance.

The second statistic, agreement with tolerance, is an improvement in that it considers near misses differently than stronger disagreements. This statistic counts two scores that are within 1 of each other as a match. That is, if all five coders score a document between 2 contiguous scores (marking only 3s and 4s, for example), it is marked as a match. With a tolerance of 1, the agreement scores improve. However, the agreement with tolerance still does not differentiate between a single disagreeing coder or more widespread disagreement.

The next two statistics ameliorate this challenge by looking at the mean agreement across pairs of coders. The mean pairwise raw agreement reports the average proportion of documents on which two raters perfectly agreed, across all possible pairs, and the mean pairwise agreement with tolerance shows the average proportion of documents on which two raters scored within one of one another across all possible rating pairs.

As the drawbacks of raw agreement are addressed, metrics improve considerably. The mean pairwise agreement with tolerance is quite high, at 0.889 for Delegation and 0.954 for Discretion. However the chance-adjusted measures of agreement reported in the main body of the paper remain the best indicator of measure performance.

Table 4.1: Agreement Metrics

	Delegation	Discretion
Raw Agreement (Overall)	0.533	0.467
Agreement with Tolerance (Overall)	0.680	0.840
Raw Agreement (Mean Pairwise)	0.720	0.681
Agreement with Tolerance (Mean Pairwise)	0.889	0.954

Reliability and 1-1 Documents

In addition to general concerns about reliability, an additional concern is that, because of the large number of documents scoring 1 on both dimensions, and because a score of 1 on one dimension is always associated with a score of 1 on the other dimension, perhaps these cases are easier for the coders to identify and thus driving the reliability results.

This concern is addressed empirically below. However, it should be emphasized that these 1-1 documents are not conceptually separate from the remaining documents in the dataset: a 1 represents *less* Delegation/Discretion than a 2, not a *different kind* of Delegation/Discretion. The fact of the 1s going together is intuitive in light of what they represent: when a document is assigned 1 on Delegation, i.e., there is a minimal role for the agent to play in implementing the order, it is reasonable to expect that there would be no discretion associated with it, as the agent is not taking any action over which they might exercise discretion. Similarly, when the president does not provide any discretion for implementation of the order, it is unlikely they are asking for agency action, as even heavily constrained requests for activity naturally give rise to at least discretion over whether to follow the directive.

That said, Table 4.2 estimates reliability statistics omitting these documents. The first challenge in doing this analysis was to identify which documents to drop. There is no *a priori* way to identify the 1-1s; they are identified by the coders. I thus chose to omit the documents on which all coders agreed the score was 1 on both dimensions. This resulted in removing 25 of the documents from the original testing sample of 185. Recall that an additional 65 documents were not scored on Delegation or Discretion, but instead given one of the Flags described previously. This leaves only 95 documents to test reliability of the measures.

This reduced sample size will itself lower the reliability coefficients, as any random error among coders will have an outsized effect on the agreement ratings given the small sample size. Additionally, by removing only documents on which all raters agree I am artificially suppressing the reliability metrics. Without knowing *a priori* which documents should be removed, and instead removing only documents on which all raters agree, the new test sample is biased towards documents on which raters disagree.

Even with these caveats, the measure continues to perform adequately. The raw agreement score is reported for transparency, but is not a good measure of reliability. Recall that this measure reflects the proportion of documents on which all five raters assigned exactly the same score. Given the small sample size, any random error among coders will drastically affect the final score. The second score ameliorates this issue somewhat, reporting the proportion of documents for which all five raters score a document within one point of one another. These scores are higher, but still reflect the influence of potential random error among coders. The mean pairwise results are more forgiving of random error, because an error made by a single coder is insulated from agreement across other coders. The proportion of documents on which a given pair of coders scored a document within one point of one another is, on average, 82% for Delegation and 93% for Discretion. The chance-adjusted measures of reliability, which are the measures that should be used to test reliability as they account for the possibility of random error in the context of the sample size, score distribution, and scale size, remain reasonable ranging between 0.63 and 0.77. While the "gold standard" threshold is 0.8, Neuendorf indicates that scores above 0.6 are reasonable "for most situations" (2017, 168). In light of the caveats above, the exercise of omitting the 1-1 documents reaffirms the reliability of the measure.

Table 4.2: Reliability Metrics, Omitting 1-1 Scores

	Delegation	Discretion
Raw Agreement (Overall)	0.300	0.200
Agreement with Tolerance (Overall)	0.520	0.760
Raw Agreement (Mean Pairwise)	0.500	0.520
Agreement with Tolerance (Mean Pairwise)	0.820	0.930
Krippendorff's alpha	0.630	0.680
Gwet's AC2	0.650	0.770

A.4 Sample Characteristics

This appendix provides evidence that the sample of documents reviewed by coders is broadly representative of the full set of documents over this time period. However, note that more recent Executive Orders were slightly over-sampled. Additionally, data availability for the Roosevelt administration is incomplete, thus documents from 1936-1945 are under-represented in the complete data and thus also in the sample.

Figure 4.1 illustrates the distribution of document types (Executive Order, Memo, and Proclamation) between the full dataset (n = 19,859) and the sample (n = 4036). Figure 4.2 illustrates the distribution of documents of each type over time. Finally, Table 4.3 summarizes the word count of the documents in the full dataset compared to the reviewed sample. Recall that the full sample of 4,036 documents was reviewed, but only 1,641 documents were assigned scores after flags were removed.

Figure 4.1: Distribution of Document Types
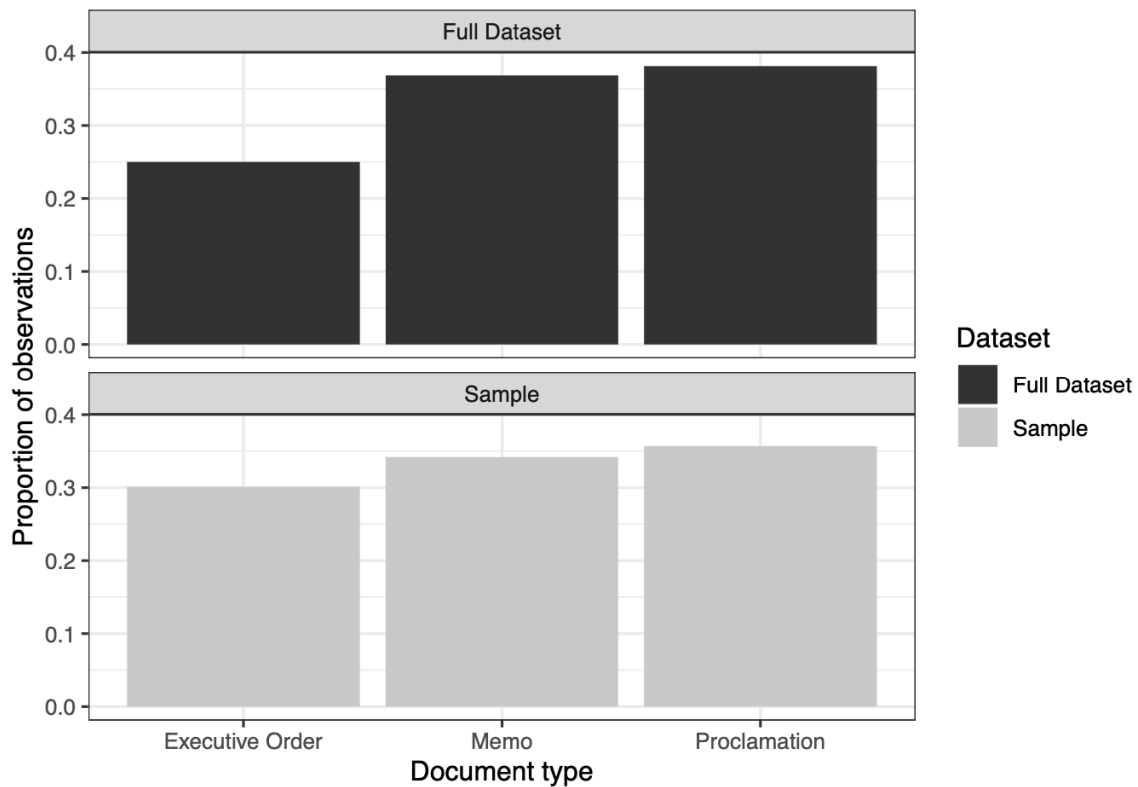
Figure 4.2: Distribution of Document Types By Year
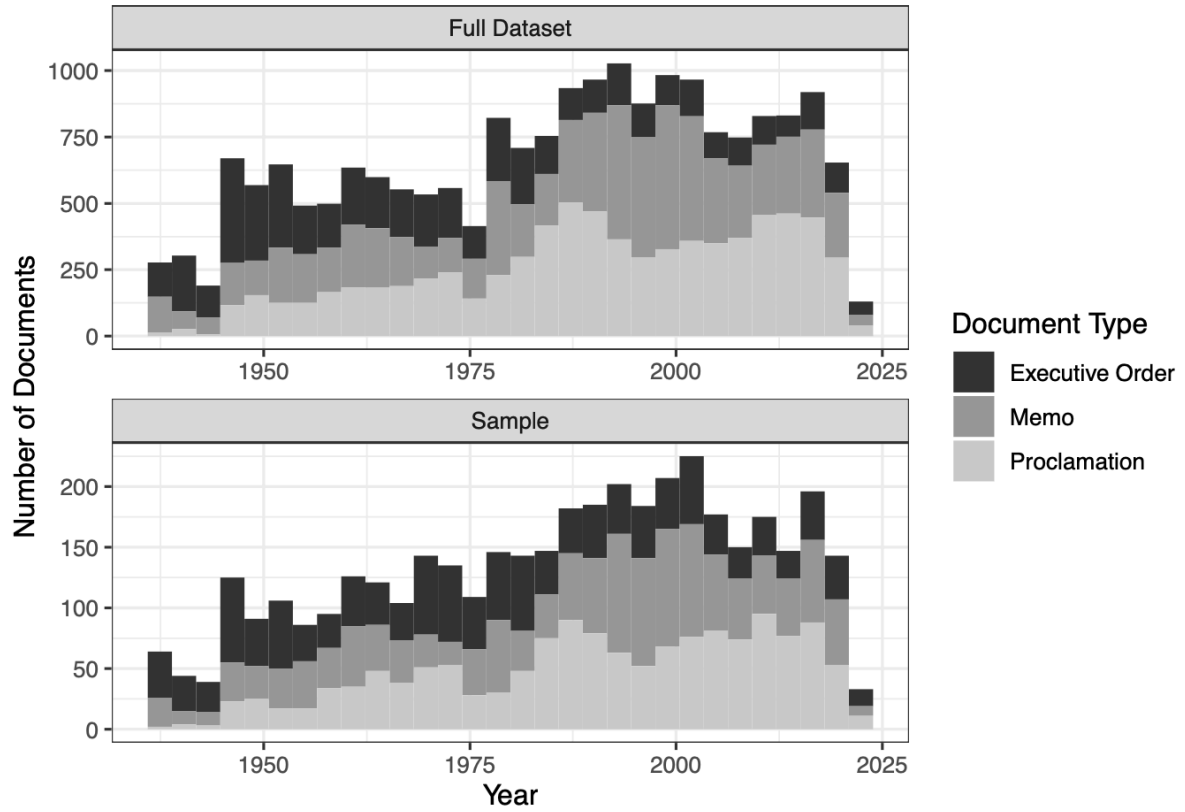
Table 4.3: Summary Statistics - Word Count

Group	N	Mean	Min	Max	Std. Dev.
Full Dataset	19859	543.52	8	52119	849.18
Sample	4030	559.17	9	52119	1071.42

A.5 Replication with Delegation and Discretion

The analyses in the main body of the paper employ a variable *High-Scoring,* which takes a value of 1 if a document receives a score of 3 or 4 on both Delegation and Discretion. The motivation for this is that, while the two dimensions are conceptually distinct, they may not be statistically independent. While the two variables are thus not used separately in the analyses, this appendix provides the reader a sense of their distribution descriptively. The figures in this appendix replicate figures in the main text, substituting *High Delegation* (Delegation of 3 or 4) and *High Discretion* (Discretion 3 or 4) for the constructed variable *High-Scoring.*

Figure 4.3 illustrates the use of Delegation and Discretion over time, replicating Figure 1.2. While the main analysis found that the proportion of high-scoring documents had stayed relatively constant over time, Figure 4.3 shows that both Delegation and Discretion are increasing, both in absolute count and in proportion to total unilateral directives. This suggest that the number of documents that are high-scoring on one dimension but not both has been increasing.

Figure 4.3: High Delegation and High Discretion Over Time
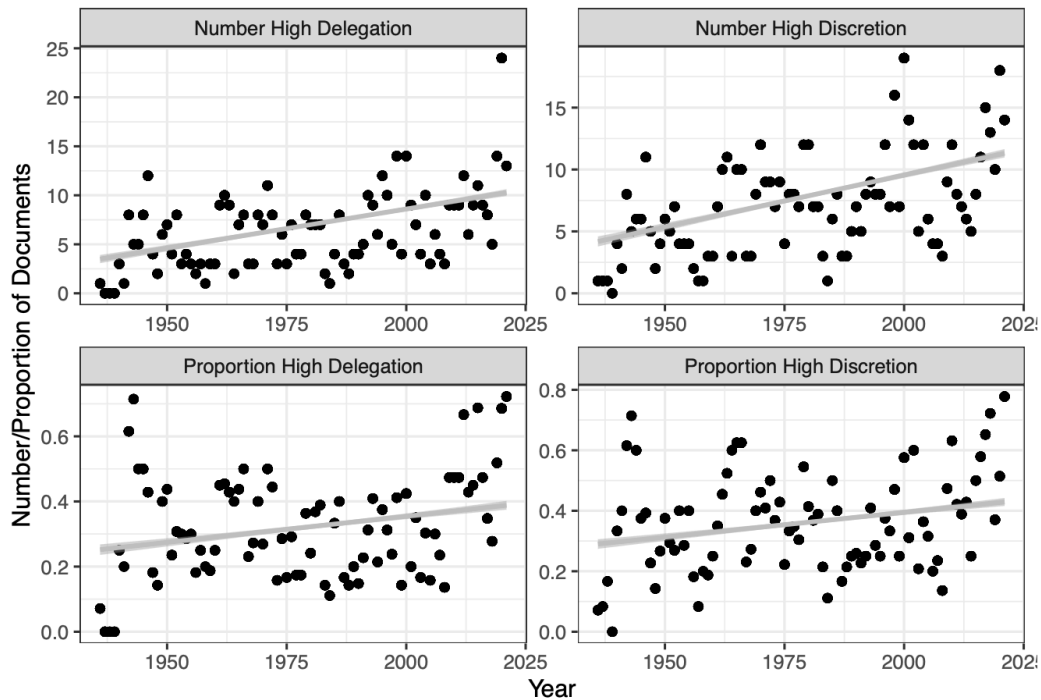
Figure 4.4 shows the use of Delegation and Discretion over time, separated by Document Type, replicating Figure 1.3 from the main paper. The results here appear to corroborate the finding from the main analysis: the overall number of documents with high scores on Delegation and Discretion are increasing, but as a proportion of total documents those high-scoring documents are increasing only among Executive Orders and, to a lesser extent, proclamations.

Figure 4.4: High Delegation and High Discretion Over Time, By Document Type
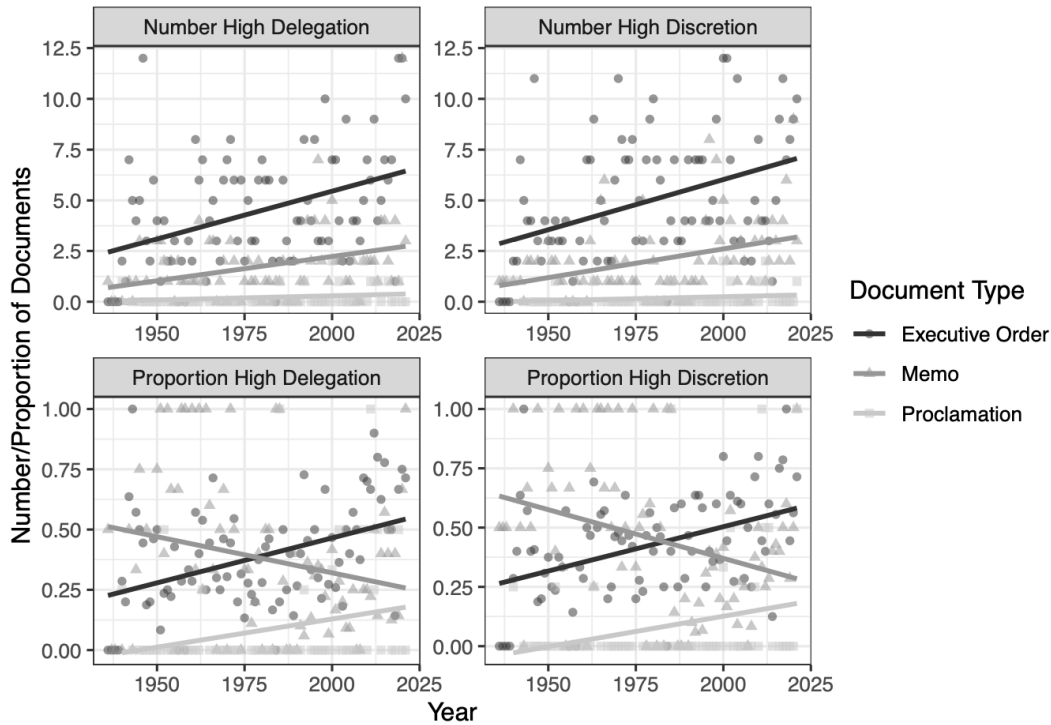
Figure 4.5 replicates Figure 1.4 from the main paper, showing the use of high scores over time separated by policy area. As in the main analysis, in general the use of high scores appears lower for foreign policy than domestic policy, although that seems to be changing for Delegation: the number of documents scoring high on Delegation is higher in domestic than in foreign policy, though the gap is shrinking. However, the proportion of documents scoring high on Delegation is higher in foreign than in domestic policy beginning in the 1990s. Future research on Administrative Delegation and its use in different policy contexts should investigate this development.

Figure 4.5: Delegation and Discretion By Policy Area
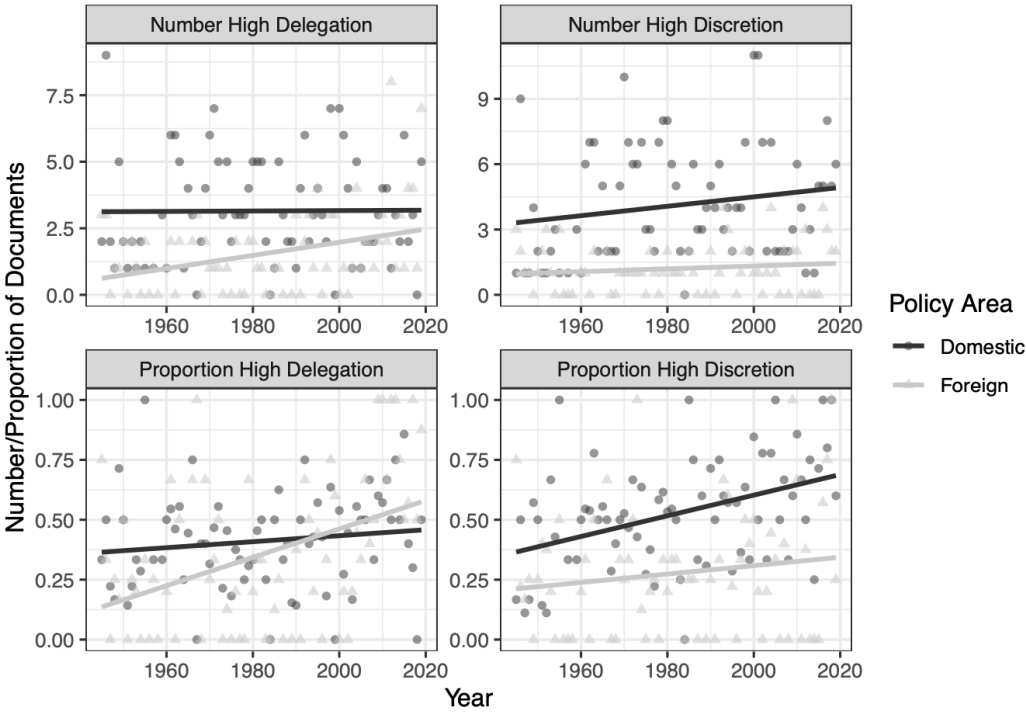
A.6 Logit Robustness Checks

This appendix provides replications of key results from the main text. Table 1.5 estimates OLS models to predict the use of High-Scoring documents over time and by document type. Table 4.4, below, replicates these specifications using Logit for the binary outcome models. Table 4.5 performs the same Logit replication for the models in Table 1.6 of the main text, estimating the use of High-Scoring documents by policy area. In all cases the results are broadly the same in both sign and significance.

Table 4.4: High-Scoring Documents; Logit Specifications

	Dependent variable:		
	Proportion High-Scoring	High-Scoring	
	(1)	(2)	(3)
Year	0.004	0.003	0.007**
	(0.010)	(0.002)	(0.003)
Memo			0.255
			(0.351)
Proclamation			−2.581***
			(0.837)
Year x Memo			−0.014**
			(0.006)
Year x Proclamation			0.013
			(0.015)
Constant	−8.535	−1.242***	−1.158***
	(19.905)	(0.131)	(0.151)
Observations	86	1,639	1,639
Log Likelihood	−28.170	−928.528	−893.523
Akaike Inf. Crit.	60.341	1,861.057	1,799.046
Note:			*p<0.1; **p<0.05; ***p<0.01

Table 4.5: Trends by Topic; Logit Specifications

	Dependent variable:		
	Proportion High-Scoring	High-Scoring	
	(1)	(2)	(3)
Foreign	−0.882**	−0.779***	−0.784***
	(0.387)	(0.167)	(0.168)
Year			0.006*
			(0.004)
Constant	−0.551**	−0.612***	−12.493*
	(0.243)	(0.087)	(7.091)
Observations	144	889	889
Log Likelihood	−62.202	−530.892	−529.481
Akaike Inf. Crit.	128.404	1,065.783	1,064.961
Note:		*p<0.1; **p<0.05; ***p<0.01	

B Appendices for Chapter 2
B.1 Robustness of Baseline Model to Alternative Specifications

Table 4.6 replicates the baseline specifications from Table 2.2, omitting the fixed effects by policy area. The results are generally consistent between the two.

Table 4.6: Baseline Specifications (Ordered Logit)

	Dependent variable:				
	Discretion				
	(1)	(2)	(3)	(4)	(5)
Centralization	0.331***	0.341***	0.296***	0.394***	0.533***
	(0.113)	(0.109)	(0.097)	(0.103)	(0.088)
Delegation	1.767***	1.745***		1.793***	
	(0.140)	(0.135)		(0.129)	
Significance	0.055	0.066	0.589***		
	(0.145)	(0.141)	(0.120)		
Republican		−0.112			
		(0.353)			
100 Days	−0.435	−0.463	−0.396	−0.529	−0.255
	(0.453)	(0.446)	(0.393)	(0.427)	(0.358)
Unified Government	0.169	0.164	−0.597	0.279	−0.197
	(0.537)	(0.361)	(0.448)	(0.516)	(0.418)
President FE	Y	N	Y	Y	Y
Policy Area FE	N	N	N	N	N
Observations	381	381	381	423	423
Note:				*p<0.1; **p<0.05; ***p<0.01	

Table 4.7 replicates the baseline specifications from Table 2.2 with an alternate construction of the dependent variable. Whereas the baseline specifications employ an ordered logit model estimating the ordinal discretion score, the specifications in Table 4.7 instead estimate the binary variable "High Discretion" using standard logit. An order is coded "High Discretion" if it's discretion score is 3 or 4.

Table 4.7: Baseline Specifications (Binary outcome)

	Dependent variable:				
	High Discretion				
	(1)	(2)	(3)	(4)	(5)
Centralization	0.503**	0.541***	0.422***	0.676***	0.661***
	(0.215)	(0.204)	(0.143)	(0.196)	(0.128)
Delegation	2.628***	2.403***		2.621***	
	(0.307)	(0.266)		(0.291)	
Significance	0.324	0.328	0.744***		
	(0.248)	(0.238)	(0.170)		
Republican		0.283			
		(0.655)			
100 Days	−0.612	−0.926	−0.679	−0.559	−0.227
	(0.722)	(0.700)	(0.526)	(0.700)	(0.479)
Unified Government	1.240	1.119*	−0.245	1.324	0.085
	(1.011)	(0.667)	(0.627)	(0.982)	(0.579)
Constant	−5.817***	−5.364***	−0.289	−5.901***	−0.479
	(1.744)	(1.427)	(1.155)	(1.735)	(1.111)
President FE	Y	N	Y	Y	Y
Policy Area FE	Y	Y	Y	Y	Y
Observations	381	381	381	409	409
Log Likelihood	−92.948	−97.410	−180.603	−99.412	−201.736
Akaike Inf. Crit.	255.896	246.819	429.205	266.823	469.473

Note: *p<0.1; **p<0.05; ***p<0.01

B.2 Proportional Odds Intercept Estimates

Table 4.8 replicates the models in Table 2.2, with the additional inclusion of the intercept estimates for the different discretion cut points. Figure 2.2 illustrates the estimates from Column (1).

Table 4.8: Intercept Estimates

	Dependent variable:				
	Discretion				
	(1)	(2)	(3)	(4)	(5)
Centralization	0.489***	0.490***	0.434***	0.545***	0.639***
	(0.134)	(0.130)	(0.117)	(0.122)	(0.106)
Delegation	1.919***	1.867***		1.903***	
	(0.161)	(0.153)		(0.150)	
Significance	0.038	0.057	0.538***		
	(0.156)	(0.152)	(0.129)		
Republican		−0.333			
		(0.387)			
100 Days	−0.174	−0.207	−0.157	−0.220	0.007
	(0.471)	(0.466)	(0.420)	(0.442)	(0.386)
Unified Government	0.522	0.132	−0.320	0.842	0.187
	(0.590)	(0.388)	(0.482)	(0.557)	(0.454)
1—2	4.004***	3.580***	0.140	4.284***	0.388
	(1.144)	(0.955)	(0.995)	(1.124)	(0.962)
2—3	5.109***	4.667***	0.665	5.391***	0.883
	(1.164)	(0.976)	(0.995)	(1.144)	(0.961)
3—4	7.625***	7.178***	2.532**	7.833***	2.637***
	(1.202)	(1.016)	(1.003)	(1.181)	(0.970)
President FE	Y	N	Y	Y	Y
Policy Area FE	Y	Y	Y	Y	Y
Observations	381	381	381	409	409

Note:	*p<0.1; **p<0.05; ***p<0.01

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C Appendices for Chapter 3

C.1 Measurement

This appendix provides additional discussion of the measures of Delegation and Discretion. As described in the main paper, Delegation refers to the authorization of an agency to take action. Lower scores on this dimension typically reflect a request for recommendations, without direct policymaking impact. Higher scores on this dimension reflect more direct policymaking authority, either through case-by-case determinations, such as issuing permits (Score 3) or through general policymaking authority, such as rulemaking (Score 4). Discretion, on the other hand, refers to the flexibility that agencies are granted in determining *how* to use that granted authority. Lower scores on this dimension reflect detailed instructions as to not only the objectives of a new policy, but also the means of pursuing those objectives. High scores reflect broader discretionary windows, for example more open-ended statements of objectives that leave room for interpretation (Score 3), or even the statement of a policy area without clear policy objectives (Score 4).[64]

Some examples illustrate how these scores are used in practice:

- **Executive Order 12974 — Continuance of Certain Federal Advisory Committees (Clinton)** *Delegation 1, Discretion 1*. This executive order extends the tenure of a list of advisory committees. Any work the advisory committees are doing reflects the Delegation and Discretion granted in the order originally constituting them. This order is limited to extending their work to a later date. Because a change in deadline does not change the original grant of Delegation or Discretion, this order receives a score of 1 on both dimensions. Note that this does not imply that the order is not policy-related, or that it is not consequential. The additional time granted to these advisory committees may change their ability to influence policy outcomes. The low scores simply reflect that the order does not itself constitute a grant of delegation or discretion.

- **Executive Order 13237 — Creation of the Presidents Council on Bioethics (W. Bush)** *Delegation 2, Discretion 4*. This order establishes the President's Council on Bioethics. The flexibility given to agents in developing policy recommendations is extremely broad. The order does not indicate policy objectives or even specific areas of focus, but rather directs that the Council should "advise the President on bioethical issues that may emerge as a consequence of advances in biomedical science and technology." The order goes on to describe some types of activities the council might take (explore questions, provide a forum, undertake inquiry). But the Council is clearly not given the authority to directly make policy. In fact the order explicitly proscribes this, stating "The Council shall not be responsible for the review and approval of specific projects or for devising and overseeing regulations for specific government agencies." This combination of broad discretionary flexibility but limited policymaking authority is typical for executive orders that establish advisory councils.

- **Executive Order 13145 — To Prohibit Discrimination in Federal Employment Based on Genetic Information (Clinton)** *Delegation 4, Discretion 2*. In the inverse of the previous example, this executive order requests agencies take action to

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[64] These measures are introduced in more detail, including additional examples and discussion of reliability and validity, in Benn (2023).

implement a large-scale federal policy; however, the policy is itself clearly and narrowly defined. The order prohibits discrimination in federal employment based on genetic information. It directs the heads of executive agencies to implement this policy, and includes clear definitions and terms detailing how the policy ought to be applied. While agent action will have a direct impact on the policies of the federal government, they are not given latitude in determining what the policy is or how it will be implemented.

- **Executive Order 13329 — Encouraging Innovation in Manufacturing (W. Bush)** *Delegation 3, Discretion 3*. This order is an example of relatively high scores on both dimensions. The order directs agencies with Small Business Innovation Research or Small Business Technology Transfer programs to "give high priority within such programs manufacturing-related research and development" in order to help advance innovation in manufacturing through small businesses. On Discretion, agencies have significant flexibility in how to use their programs to achieve this objective; there is no additional detail in the order about how the purposes of the order ought to be achieved. However the order falls short of a 4 on Discretion because it does specify the narrow purpose of the order, as well as that it should be pursued through these pre-existing programs. On Delegation, the order grants agencies the authority to implement policy by prioritizing research and development. This represents a direct impact on policy outcomes. However, because these are pre-existing programs and not new initiatives or policy-making functions, the directive is not assigned the highest Delegation score.

Not all executive orders that were sampled received scores on Delegation and Discretion. There were three reasons that an executive order could be excluded from the analysis:

- *Ceremonial*: Ceremonial orders are not policy-related. They declare national holidays, approve designs for new seals, or order flags be flown at half mast.
- *Administrative*: These orders are purely administrative in nature, rather than policy-related. These orders typically dealt with narrow personnel issues, such as exempting individuals from mandatory retirement. In rare cases, they dealt with reorganizations or reassignment of functions within the executive branch. However if functions were reassigned without any new functions being added, or the Delegation/Discretion levels being changed, then the order did not receive Delegation/Discretion scores.
- *Appended Constraints*: In some cases coders were unable to assign scores without additional information. Orders that were excluded for this reason typically amended previous executive orders, or re-delegated statutory functions from the president to agency heads without indicating the nature of those functions. If the appropriate scores could not be determined from the text of the document itself, that document was not scored. There is no evidence that omissions are systematically related to Delegation or Discretion.

Scores were assigned by a team of trained research assistants. Training consisted of a series of regular coding practice sessions and discussions to refine the measure and harmonize its use across coders. After training, a sample of 185 documents was provided to coders, and inter-

coder reliability metrics were calculated for that sample. The results are provided in Table 4.9, below. In general, the reliability coefficients indicate that the measures perform satisfactorily.

Table 4.9: Multi-Rater Inter-coder Reliability

	Delegation	Discretion
Krippendorff's alpha	0.772	0.797
Gwet's AC2	0.760	0.830

Finally, it is worthwhile drawing conceptual distinctions between Delegation as measured here, and other relevant concepts. Delegation is not measuring the extent to which policy changes. Coders were instructed to limit their assessment of Delegation and Discretion to information available in the text itself. The status quo is not readily apparent in a given directive, nor is the agent's selected outcome. While most formal models of delegation consider policy change in a spatial sense, this conception of policy change is not feasible for this coding exercise. Instead, the Delegation measure captures the types of activities that agents can undertake, with the objective of capturing what powers are available to agents for moving policy. Requests for recommendations, for example, have the potential to influence policy outcomes, but are only an indirect tool. Issuing case-by-case permits or making case-by-case determinations has more direct influence on policy outcomes than recommendations, but less than general rulemaking or policymaking authority.

Discretion similarly captures how much *potential* for policy decision-making the agent is granted. Discretion is understood as the absence of substantive constraint. A clear articulation of the policy objective is a constraint consistent with a high score on discretion. Additional constraints successively narrow the discretionary window, for example requirements that a particular strategy be used to achieve the policy objective, or specific language or guidelines that agents are meant to follow.

C.2   Executive Order Significance

One potential concern regarding the measures used in this analysis is that delegation might be capturing the same thing as "significance." Existing measures of significance typically rely on determinations made by third parties as an indicator. For example, Chiou and Rothenberg (2017) construct their measure of significance drawing on raters including the *Congressional Record*, the *New York Times*, or references in judicial proceedings. While this measure has a number of benefits, one drawback is that it avoids clearly conceptualizing what "significance" is capturing. Some orders are significant because of the policy salience of the issue area, others may be significant because of the impact they have on procedures, and others may be significant because they represent expansions of presidential authority. Unfortunately, we are unable to distinguish between these different drivers of significance using existing measures. Nonetheless, none of these potential concepts is the conceptual equivalent of Delegation. The measure captures only how much authority agents are given to act, not whether that authority was granted in a high-salience issue area, or whether the action was constitutionally or legislatively ambiguous, or even whether the agent actually took action that moved policy.

As an example, in 1983 President Reagan issued Executive Order 12433, establishing the National Bipartisan Commission on Central America. As with similar Commissions, this order received a score of 2 on Delegation because the commission was not empowered to make policy, but only to make recommendations and provide advice. However because of the issue salience of the subject matter, the order received a Chiou-Rothenberg significance score of 1.839, which is in the 96th percentile for significance scores in my sample. Conversely, in 1990 President George H.W. Bush issued Executive Order 12699, pertaining to seismic safety standards in federal buildings. Because the order directed agencies to promulgate appropriate regulations, the directive received a score of 3 on Delegation. However the significance score for this order was -0.848, in the 8th percentile for my sample.

Nonetheless, while they are conceptually distinct, significance and Delegation are correlated ($r = 0.43$). This is expected, because Delegation is predictive of hearing activity and hearing activity is a determinant of measures of significance. However it is not the only determinant, and the distribution of the significance scores for executive orders about which hearings were conducted is broader than one might expect (see Figure 4.6). However, because significance is post-treatment, further direct investigation of the relationship is challenging.

The concern is that issue salience could be driving both Delegation scores and hearing activity. This could be investigated if a measure of issue salience could be constructed that did not rely on news about an order, and thus avoided the post-treatment issue. However the evidence from the hearing transcripts casts some doubt on the plausibility of this effect. Take as an example the hearing about Executive Order 13658, which set the minimum wage for federal contractors, including seasonal guides and outfitters on public lands (see discussion in *Data* section). The policy issue in question was the minimum wage, which is plausibly a high issue-salience policy area.[65] However the hearing was not about the minimum wage in a general sense, or even the minimum wage for federal contractors. The entirety of the hearing was focused specifically on the minimum wage *for seasonal guides and outfitters*. Even if the minimum wage were a high salience issue, it is a stretch to then argue that it was the national policy salience of the minimum wage that sparked the hearing. It is more plausible that the hearing was a result of

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[65] Unfortunately significance scores are unavailable for this order, as it is past the date range in the Chiou-Rothenberg dataset.

an individual Member having affected constituents in their district. Indeed, the subcommittee chair was Jason Chaffetz, Representative from Utah.

Figure 4.6: Distribution of Significance Scores for EOs with Hearings
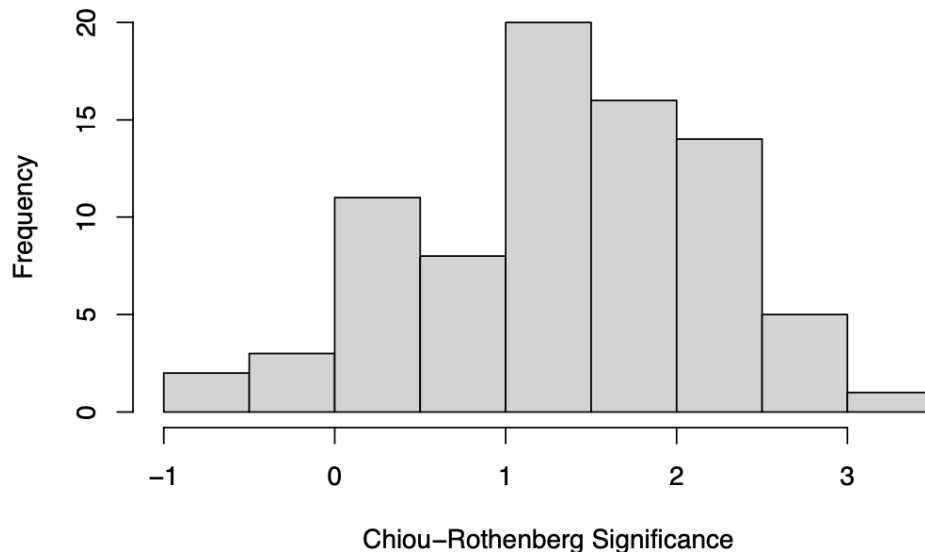
A similar argument can be made if "significance" is taken to mean how consequential the order is for policy outcomes. Perhaps orders that are highly consequential score high on Delegation, and are also more likely to have hearings about them. Certainly setting a minimum wage for federal contractors would be a highly consequential policy, affecting which businesses are able to compete for government contracts, and potentially having ripple effects throughout the economy. However it is clear in this example that it was not the consequences of the executive order generally that led to the hearing, but rather the consequences for the specific, narrow constituency that was the focus of the hearing.

Thus not only is significance conceptually and operationally distinct from Delegation, but the potential for "significance," whatever its underlying mechanism, as a confounder that is driving the results here is limited.

C.3 Logit Replications

Table 4.10 provides replications for the models presented in the paper that take the binary outcome *Any Hearing*. The results of these analyses are consistent with those presented in the paper.

Table 4.10: Logit Replications

| | Any Hearing | | | | | | |
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
(Intercept)	−3.665***	−18.286	−2.939***	−4.893***	−18.125	−4.955***	−18.291
	(0.253)	(552.061)	(0.490)	(0.283)	(391.583)	(0.459)	(390.522)
High Both	1.694***	1.997***	2.027***	1.906***	2.086***	1.957***	2.282***
	(0.295)	(0.305)	(0.314)	(0.251)	(0.256)	(0.496)	(0.504)
High Del.	1.667***	2.138***	2.219***	1.394***	1.680***	1.570*	1.789**
	(0.368)	(0.387)	(0.410)	(0.338)	(0.347)	(0.637)	(0.644)
High Dis.	1.225***	1.378***	1.367***	1.197***	1.254***	1.269*	1.354*
	(0.348)	(0.355)	(0.364)	(0.305)	(0.308)	(0.573)	(0.576)
EO Age				−0.684***	−0.696***	−0.684***	−0.696***
				(0.095)	(0.095)	(0.095)	(0.095)
Senate				−0.342+	−0.352*	−0.343*	−0.354*
				(0.175)	(0.177)	(0.175)	(0.177)
Divided Gov.				0.270	0.225	0.355	0.419
				(0.192)	(0.236)	(0.518)	(0.551)
High Both x Div.						−0.069	−0.267
						(0.575)	(0.581)
High Del. x Div.						−0.245	−0.144
						(0.752)	(0.761)
High Dis. x Div.						−0.099	−0.130
						(0.678)	(0.681)
AIC	691.8	664.4	678.0	1406.2	1354.6	1412.0	1360.4
Log.Lik.	−341.916	−319.217	−284.001	−696.079	−661.308	−696.020	−661.181
Model	Baseline	Baseline	Baseline	EO-Session	EO-Session	Interaction	Interaction
President FE	N	Y	N	N	Y	N	Y
Year FE	N	N	Y	N	N	N	N

+ p < 0.1, * p < 0.05, ** p < 0.01, *** p < 0.001

Hearings Data Coding Decisions

Of the 522 hearings identified in the initial Proquest search, I determined that 362 hearings were pertinent to my analysis. The excluded hearings were captured by my keyword search but upon inspection did not fit the criteria for this project. A common example of this type was a series of hearings regarding land disputes and other land use issues among Native American tribes, whose original reservations were defined by various 19th-century executive orders.

Of the 362 relevant hearings, 145 were focused exclusively or primarily on an executive order. For example, in June of 1995 the House Committee on Economic and Educational Opportunities held a hearing entitled "Executive Order 11246 and Its Implementing Regulations, As Administered by the Office of Federal Contract Compliance Programs (OFCCP)." E.O. 11246 mandated nondiscrimination in employment by the federal government, including federal contractors. Witnesses at the hearing included representatives of the Department of Labor and the Equal Employment Advisory Council. Questioning and testimony focused on the implementation of the executive order, including testimony from both government witnesses and relevant non-governmental stakeholders.

More commonly, hearings had a broader focus but included some meaningful discussion of an executive order (n = 217). Hearings in this category were generally not focused predominantly on a given directive, but instead were focused on legislation, or reviewing a policy area generally, or had an otherwise different focus. However, during the course of the hearing there was some meaningful discussion of an executive order and its implementation. It was not sufficient for an executive order to be mentioned only in passing; I coded hearings in this category only if there was at least some meaningful exchange during the hearing about the order or its implementation. A frequent example of this type occurred during hearings regarding supplemental appropriations. In these cases an agency would explicitly ask for additional FTE to implement the requirements of an executive order, and some discussion would ensue about what those additional staff would be doing, how that relates to the purpose of the executive order, etc. Another common example of this type was hearings to generally review federal policy in a given area. The hearing would cover several related government programs, including ones operating by statute and others operating under executive order. While the full hearing transcript was not substantively focused on the executive order, a significant portion of hearing discussion was. In the analyses in the main body of the paper, both categories of hearings are included.

While time intensive, this hand-coding approach was necessary for two reasons. First, it was necessary for data quality to ensure that each hearing coded as pertaining to oversight of unilateral action did actually pertain to it. But second, it was typically not clear from the metadata exactly which executive order was being implicated. Even after reviewing the hearing transcript, additional research was often required. For example, it was typical for hearing participants to refer to "the recent executive order entitled..." or "the executive order issued last week." In these cases I reviewed the transcript and used the search functionality of the executive orders database at the American Presidency Project to identify the relevant executive order number(s).

Additional Outcome Variables

For the subset of hearings that are focused entirely on executive orders, I constructed two additional measures of hearing activity:

- *Total Days* captures the total number of days over all hearings pertaining to the executive order. The variable was computed by identifying the dates of each hearing and summing over all observations for a given executive order.
- *Total Pages* captures the total number of pages of hearing documentation over all hearings pertaining to the executive over. Hearing documentation can include transcripts, written statements, and other materials submitted to the committee.

In the case of hearings focused solely on executive orders, *Total Days* and *Total Pages* are reasonable proxies for how much attention was paid to the order. However, the measures are not appropriate for hearings in which executive orders were discussed but not the sole focus. In such hearings, there may be significant discussion of an executive order, but it takes place over only 20 pages or on 1 day of a multi-day hearing with multiple hundreds of pages of testimony. It would be possible to count the number of pages/days observed for a given order in a hearing like this. I have not done that here both for feasibility as well as out of concern that it would significantly increase measurement error. Identifying whether an order was discussed at all during a hearing is relatively straightforward. However identifying how much the order was discussed requires a more comprehensive review of the hearing transcript. This review would add significant time to the review of each transcript. Additionally, the task would introduce the possibility of missed discussion within a given transcript, thus increasing measurement error: sources of error would be not only at the level of whether each hearing was captured, but also whether each "mention" within a hearing transcript was captured.

Table 4.11 provides replications of the baseline models in the paper using these two alternative outcome variables. Note that while the unit of analysis is still the executive order, the outcome measures are now limited to the 171 hearings focused on executive orders. The relative sparseness of the outcome variable limits the statistical significance of the results. Nonetheless, the result on *High Both* remains positive and statistically significant at the 0.05 level in all specifications. The effects for *High Del.* and *High Dis.* remain positive as in the full specifications, however they are no longer statistically significant in these models.

Table 4.11: Baseline Specifications, Hearings Subset

	Total Pages			Total Days		
	(1)	(2)	(3)	(4)	(5)	(6)
(Intercept)	5.009**	−17.358*	−9.429*	0.030**	−0.100**	−0.053**
	(1.933)	(7.020)	(4.107)	(0.011)	(0.035)	(0.020)
High Both	24.142*	26.749*	26.609*	0.137**	0.149**	0.141**
	(9.718)	(10.871)	(11.067)	(0.050)	(0.053)	(0.050)
High Del.	9.603	11.949+	11.214+	0.067+	0.078+	0.064
	(6.245)	(6.821)	(6.618)	(0.037)	(0.040)	(0.041)
High Dis.	6.860	7.017	4.894	0.051+	0.051+	0.041
	(4.641)	(4.754)	(5.035)	(0.030)	(0.030)	(0.030)
Num.Obs.	1421	1421	1421	1421	1421	1421
R2	0.008	0.016	0.061	0.009	0.019	0.062
President FE	N	Y	N	N	Y	N
Year FE	N	N	Y	N	N	Y

+ $p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

C.5   EO-Congress Analysis, Limited Observations

One concern with the re-shaped EO-Congress dataset is the sparseness of hearing activity. Even for orders that received hearings, in most years no hearing occurred. This feature of the data reduces effect sizes, making it more difficult to attain statistical significance. To address this, I consider a subset of observations. As illustrated in Figure 4.7, the large majority of hearings occur during the same Congress in which the order was initially issued. Thus I limit the data to observations for which *Executive Order Age* is 3 or less. This restriction captures 90% of hearings.
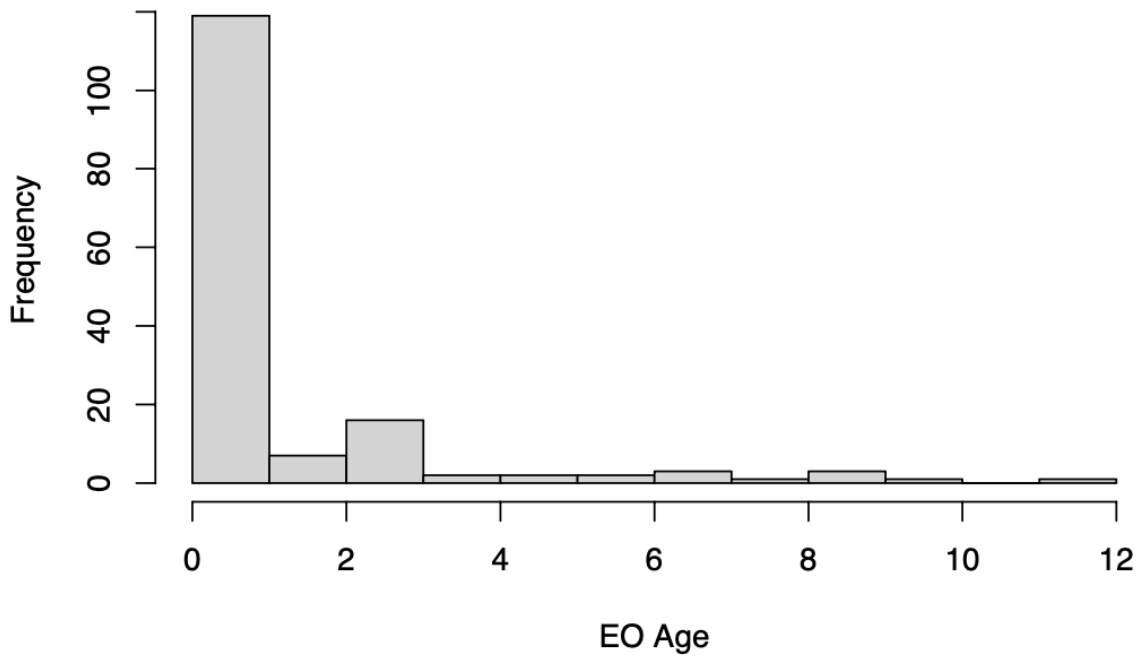
Figure 4.7: Distribution of EO Age at Time of Hearing

Table 4.12 replicates the models in Table 3.6 of the main paper, limiting the data to those observations occurring within 3 Congresses of the date of the Executive Order are consistent with those presented previously.

Table 4.12: EO-Session, Three Congress After EO

	Any Hearing		Total Hearings	
	(1)	(2)	(3)	(4)
(Intercept)	0.038***	0.044***	0.040***	0.045***
	(0.010)	(0.010)	(0.011)	(0.012)
High Both	0.026***	0.028***	0.039***	0.039***
	(0.006)	(0.006)	(0.010)	(0.010)
High Del.	0.013**	0.016***	0.015***	0.016***
	(0.004)	(0.004)	(0.004)	(0.005)
High Dis.	0.011**	0.010**	0.017**	0.016**
	(0.004)	(0.004)	(0.006)	(0.005)
EO Age	−0.007***	−0.008***	−0.009***	−0.010***
	(0.001)	(0.001)	(0.002)	(0.002)
Senate	−0.004*	−0.004*	−0.007**	−0.007**
	(0.002)	(0.002)	(0.003)	(0.003)
Divided Gov.	0.003	0.002	0.004	0.002
	(0.002)	(0.002)	(0.003)	(0.004)
Num.Obs.	11596	11596	11596	11596
R2	0.021	0.026	0.018	0.021
President FE	N	Y	N	Y
Policy Area FE	Y	Y	Y	Y

+ $p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Similarly, Table 4.13, replicates the specifications in Table 3.7 of the main paper, again limiting the data to observations for which *Executive Order Age* < 3. The results are broadly consistent with those presented previously, except that none of the interaction terms are statistically significant in these models.

Table 4.13: Interaction Effects Models (EO Age < 3)

	Any Hearing		Total Hearings	
	(1)	(2)	(3)	(4)
(Intercept)	0.038***	0.044***	0.041***	0.045***
	(0.010)	(0.010)	(0.011)	(0.012)
High Both	0.025**	0.026***	0.035**	0.035**
	(0.008)	(0.008)	(0.012)	(0.012)
High Del.	0.014+	0.015+	0.016+	0.016+
	(0.008)	(0.008)	(0.008)	(0.008)
High Dis.	0.010+	0.010+	0.018*	0.016*
	(0.006)	(0.005)	(0.009)	(0.008)
Divided Gov.	0.002	0.001	0.002	0.000
	(0.002)	(0.002)	(0.002)	(0.003)
EO Age	−0.007***	−0.008***	−0.009***	−0.010***
	(0.001)	(0.001)	(0.002)	(0.002)
Senate	−0.004*	−0.004*	−0.007**	−0.007**
	(0.002)	(0.002)	(0.003)	(0.003)
High Both x Div.	0.002	0.002	0.006	0.006
	(0.007)	(0.007)	(0.010)	(0.010)
High Del. x Div.	−0.001	0.000	−0.001	0.001
	(0.009)	(0.009)	(0.009)	(0.009)
High Dis. x Div.	0.000	0.001	−0.002	0.000
	(0.006)	(0.006)	(0.009)	(0.009)
Num.Obs.	11 596	11 596	11 596	11 596
R2	0.021	0.026	0.018	0.022
President FE	N	Y	N	Y
Policy Area FE	Y	Y	Y	Y

+ p < 0.1, * p < 0.05, ** p < 0.01, *** p < 0.001

Figure 4.8: Marginal Effect Estimates, Interaction Models (Data Subset)
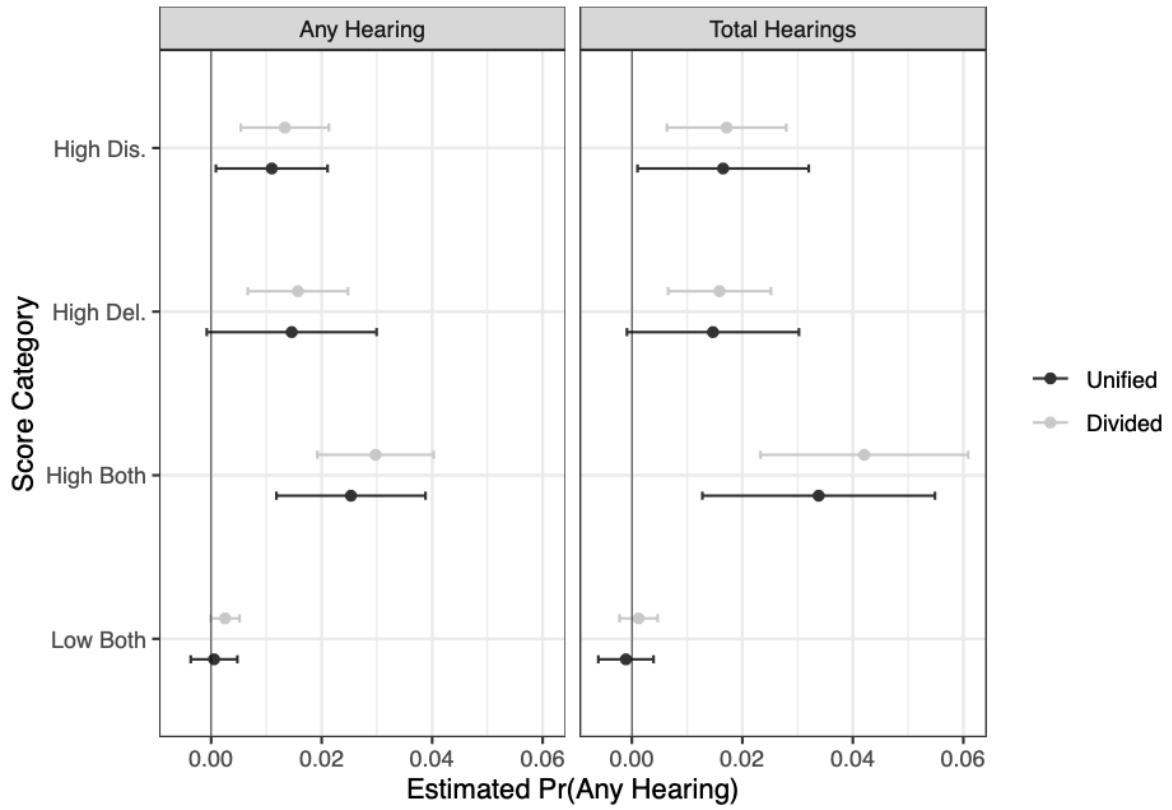
C.6 Interaction Effects Regression Table

Table 4.14: Interaction Effects Models

	Any Hearing		Total Hearings	
	(1)	(2)	(3)	(4)
(Intercept)	0.011***	0.012***	0.012***	0.013***
	(0.002)	(0.002)	(0.002)	(0.003)
High Both	0.006***	0.006***	0.008**	0.008**
	(0.002)	(0.002)	(0.003)	(0.003)
High Del.	0.002	0.003	0.002	0.002
	(0.002)	(0.002)	(0.002)	(0.002)
High Dis.	0.002+	0.001	0.003*	0.003+
	(0.001)	(0.001)	(0.002)	(0.001)
Divided Gov.	0.000	0.000	0.000	−0.001
	(0.000)	(0.000)	(0.000)	(0.000)
EO Age	−0.001***	−0.001***	−0.001***	−0.001***
	(0.000)	(0.000)	(0.000)	(0.000)
Senate	−0.001**	−0.001**	−0.002**	−0.002**
	(0.000)	(0.000)	(0.001)	(0.001)
High Both x Div.	0.003+	0.003+	0.006*	0.006*
	(0.002)	(0.002)	(0.003)	(0.003)
High Del. x Div.	0.002	0.002	0.002	0.002
	(0.002)	(0.002)	(0.002)	(0.002)
High Dis. x Div.	0.001	0.001	0.001	0.001
	(0.001)	(0.001)	(0.002)	(0.002)
Num.Obs.	51 006	51 006	51 006	51 006
R2	0.010	0.012	0.008	0.010
President FE	N	Y	N	Y
Policy Area FE	Y	Y	Y	Y

+ p < 0.1, * p < 0.05, ** p < 0.01, *** p < 0.001