



The Politics of Executive Orders: Legislative Constraints on Presidential Power

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Conventional wisdom suggests that Presidents use executive orders, sometimes characterized as presidential legislation, when legislation is too difficult to pass (in the face of an opposition Congress, for example) or when executive departments or agencies tend to embrace their congressional patrons, rather than the White House. According to this model, executive orders are strategic instruments used by a President to circumvent the constitutionally prescribed policymaking process. Recently studies have found little systematic evidence that executive orders are used to circumvent a hostile Congress. We argue that strategic Presidents do use executive orders to circumvent a hostile Congress, but not if they are likely to be overturned by Congress. In other words, the use of executive orders reflects both their ability to achieve and to maintain preferred changes to the policy status quo. We test this portrait of presidential decision-making by examining determinants of the annual variation in the number of executive orders issued during the post-World War II period.

In 1793, President George Washington issued an executive order declaring American neutrality in the war between France and England. At the time, Washington's order was seen as a pro-British move, since the 1788 Treaty with France required the colonies to defend French interests in North America. Washington's use of an executive order was a strategic choice, as he believed that Congress was unlikely to embrace his position (Pious 1979: 51). This was not the last time that a President used an executive order to accomplish policy goals. Indeed, since Abra-

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ham Lincoln signed the first “numbered” order, Presidents have issued in excess of 13,000 more. These orders have enshrined such policies as Franklin Roosevelt’s establishment of the Civilian Conservation Corps (EO 6101) and the internment of Japanese-Americans (EO 9066), Truman’s integration of the Army and seizure of the steel mills (EO 9981 and 10340), and Clinton’s order controlling the proliferation of weapons of mass destruction (EO 12938). In short, Presidents have frequently viewed executive orders as a tool that can be used to make substantive changes to the policy status quo (Moe 1993; Mayer 1999; Ragsdale and Theis 1997).

Conventional wisdom suggests that Presidents use executive orders when legislation itself is too difficult to pass (in the face of an opposition Congress, for example) or when executive departments or agencies tend to embrace their congressional patrons, rather than the White House (Morgan 1970; Light 1982: 108; Nathan 1983; Cooper 1986: 238; Peterson 1990: 87; Wigton 1996; Page 1997). According to this *strategic* model, executive orders are instruments used by Presidents to circumvent the constitutionally prescribed policymaking process. Although they reject the “strategic” explanation for a President’s decision to use executive orders, Krause and Cohen (1997: 462) summarize it nicely:

The executive order allows presidents to act strategically, enabling them to pursue policy goals in an efficient and alternative manner . . . as a president’s legislative success rate declines (rises) in each chamber, they will be more (less) inclined to issue executive orders as a means to circumvent the legislative process . . . presidents are strategic actors who will bypass Congress by issuing executive orders. . . .

Recently, students of the executive branch have tested this strategic model and, nearly uniformly, they have found it wanting. (Gomez and Shull 1995; Shull 1997; Krause and Cohen 1997; Cohen and Krause 1997; Mayer 1999). That is, little systematic evidence has emerged that executive orders are used to circumvent a hostile Congress.

We articulate and test a revised strategic model to account for the politics of executive orders. Strategic Presidents, we argue, use executive orders to circumvent a hostile Congress, but do not issue orders that are likely to be overturned by legislation. Although past studies of executive orders have asked whether Presidents issue orders to circumvent hostile legislators, such studies have not pursued the role that “anticipated consequences” may play in Presidents’ decisions to issue orders. This alternative portrait of presidential decision-making is tested by examining variation in the annual number of executive orders issued during the past half century.

DOUBTS ABOUT THE STRATEGIC MODEL

Support for the strategic model has historically come in the form of case studies. Using quantitative evidence, however, Shull and his co-authors have

recently cast doubt on the conventional wisdom (Gleiber and Shull 1992; Gomez and Shull 1995; Shull 1997). Because Presidents issue more executive orders under unified than divided government, Shull (1997: 103) concludes that executive orders are primarily a vehicle for reinforcing legislative victories, rather than circumventing a hostile Congress.

Recent studies employing multivariate models tend to reinforce Shull's findings (Krause and Cohen 1997; Mayer 1999; and Cohen and Krause 1997). Although these studies analyze different time periods and test different, but overlapping, sets of independent variables, each raises serious questions about the validity of the strategic approach. Krause and Cohen (1997) demonstrate that a President's legislative success in both the House and Senate and his party's net House seats are positively related to the issuance of executive orders. Since a presidential party's seat margin is correlated with success (Edwards 1989), Krause and Cohen's findings (1997: 470) directly contradict the strategic model. They conclude: "Contrary to earlier research. . . , Presidents are not more apt to issue executive orders when they face strenuous times in the legislative arena." Rather, Presidents use executive orders to reinforce administratively their legislative victories.¹

Cohen and Krause (1997) reach very similar conclusions about the failure of the strategic model. They find no indication that Presidents with narrower congressional seat margins issue more executive orders. Mayer (1999) also raises serious doubts about the validity of the strategic model. Although he includes neither net party seats nor presidential support in his model, he does find that the number of executive orders increases under unified government.² In other words, Presidents issue more executive orders when conditions favor presidential legislative success.

Not all of the results of such recent studies necessarily undermine the strategic model. Mayer, for example, finds that unpopular Presidents issue more executive orders. Because presidential popularity is correlated with a President's capacity to persuade members of Congress (Neustadt 1990) and to go public (Kernell 1993), Mayer provides some support for a strategic model. Although Krause and Cohen (1997) do not find a significant relationship between presidential popularity and the number of executive orders issued, they do find an inverse relationship between the state of the economy and the number of executive orders. During periods of high inflation and unemployment, Krause and

¹ Krause and Cohen did find that the net Senate seats is negatively correlated with the number of executive orders issued by a President. This would be consistent with the strategic model. However, they point out that since the Senate is not a majoritarian institution, this might not indicate that Presidents are using executive orders to circumvent a hostile Congress.

² Because presidential support scores are not available before *Congressional Quarterly* began identifying the position favored by the President in 1954, neither Mayer (1999) nor Cohen and Krause (1997) include in their model a direct measure of presidential success in Congress.

Cohen (1997) and Cohen and Krause (1997) find that Presidents issue additional executive orders. Since presidential popularity is related to the state of the economy and the general public's satisfaction with their own lives (Neustadt 1990; Brace and Hinckley 1991, 1993; Norpoth 1984; Norpoth and Yantek 1983), this finding is consistent with Mayer's presidential popularity finding. Still, taken together, these scholars have cast considerable doubt upon the conventional wisdom embodied in the strategic model.

**REVISING THE STRATEGIC MODEL:
TAKING ACCOUNT OF ANTICIPATED CONSEQUENCES**

Should the conventional wisdom therefore be rejected? Neustadt suggests not. Neustadt makes clear that "self-executing orders" are either "inconclusive or expensive" (1990: 28). Thus, he recommends that Presidents substitute persuasion for command whenever possible and, by extension, legislation for executive order. The inconclusiveness of executive action stems in large part from its transitory nature. As anti-union advocates discovered after Clinton took office, the Bush executive order banning contractors that have entered into project agreements with unions from bidding on Federal construction contracts (EO 12818) could be revoked by a new executive order (EO 12836). Thus, all things equal, Presidents should prefer the permanence of legislation to the potentially ephemeral character of executive action. Of course, Presidents cannot always secure their preferred policy outcomes in the legislative arena and thus are forced to calculate the viability of executive action.

The expense of executive orders stems from the damage done to a President's "professional reputation" if Congress passes legislation that effectively overrides an order (Neustadt 1990). Both the benefit of circumventing Congress and the potential costs for doing so are likely to enter into presidential calculations in deciding whether and how often to issue executive orders (Sala 1998, Moe and Howell 1998).³ For this reason, it is not surprising that in 1993 President Clinton swiftly backed away from an executive order prohibiting the military from excluding gays from service once it became clear that Congress was likely to overturn such an order by legislative action (Drew 1994: 49 and 249; Mayer 1999).

In short, a President's willingness to issue an executive order depends upon both his positive power to get legislation enacted by Congress and his negative power to stop legislation overturning such an executive order. Viewed in this light, presidential decisions regarding executive orders reflect strategic calcula-

³ These cost/benefit calculations pervade other arenas of presidential decision-making. For example, fear of establishing a pattern of failure leads Presidents to be more reluctant to veto a bill after they have had a veto overridden (Copeland 1983). Presidents fear both the political cost associated with having a veto overridden and the cost associated with a "fall in his reputation for 'effectiveness,' for not carrying out a public threat to veto" (Matthews 1988: 348).

tion. A President may find it difficult or impossible to change the status quo via legislative action. But in these same circumstances he may be able to maintain an executive order against hostile legislative action with judicious use of the veto. Under such conditions, an executive order will be the preferred institutional device for pursuing presidential policy goals.

Thus, the President's preferences relative to the distribution of preferences in Congress are critical to understanding a strategic President's willingness to use executive orders.⁴ Most importantly, we need to locate the President's ideal point relative to the ideal points of the legislature's "veto pivots" (Brady and Volden 1998; Krehbiel 1998). These pivots are the legislators located at the positions necessary to sustain a presidential veto. If one assumes unidimensionality and a constitutional requirement that it takes two-thirds of the legislature to override a veto, these are the legislators who are more liberal than one third of the chamber and more conservative than one third of the chamber. If a President's preferred policy outcome falls between the veto pivots, the President can likely block a congressional effort to reverse an executive order by legislation. If a President's preferred outcome lies outside the veto points, the executive order is likely to be overturned.

Figures 1a-1d illustrate the dynamics of the veto region.⁵ Each figure represents a different array of preferences—on a unidimensional, liberal-conservative scale—for the President (P), the chamber median (M), the policy status quo (SQ), and the liberal and conservative veto points (V_L and V_C). In all four instances it is assumed that Congress will prefer the policy status quo to a legislative proposal offered by the President.⁶ As a result, it will be expensive, or perhaps impossible, for a President to build a legislative majority that will move the policy outcome in a direction he favors. Faced with this obstacle, a President will contemplate using an executive order to accomplish his policy objective. When a President is positioned between the two veto points, as in 1a and 1b, he can be confident that he can veto any legislative effort to overturn his executive order. In this case, the veto pivot is more likely to prefer the reversion point induced by a veto (the policy created by the executive order) than a legislative bill preferred by the chamber median to overturn the executive order. Indeed, the more centrally located a President is between the two pivots, the more likely he is to succeed in blocking an attempt to overturn an executive order.

⁴ For arguments about the effect of legislative-executive policy alignments outside of the United States, see Carey and Shugart (1998) and Remington, Smith, and Haspel (1998).

⁵ Although the alignments in the figures roughly represent current political circumstances—a Democratic President and a Republican Congress—alternative alignments can easily be imagined.

⁶ Although the President and chamber median are on opposite sides of the policy status quo in figures 1a-1d, the model does not require this. Because of the costs associated with securing legislative action, a President will always contemplate using an executive order to accomplish his policy objectives. Our model does assume there is a set of policies the President prefers to the policy status quo.

≡ FIGURES 1A-1D
DYNAMICS OF THE VETO REGION

FIGURE 1a

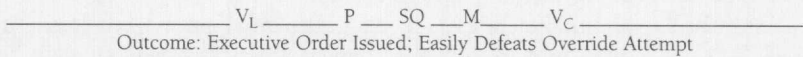


FIGURE 1b

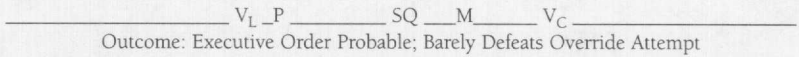


FIGURE 1c

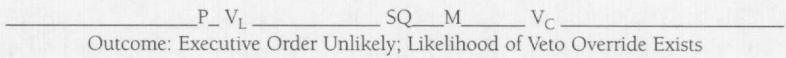
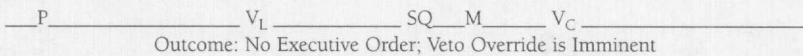


FIGURE 1d



P = president
M = chamber median
SQ = status quo
V_L = liberal veto point
V_C = conservative veto point

When a President's preferred policy position is more extreme than either veto point, he is unlikely to be able to stop a legislative effort to reverse his order. The President's likelihood of success will depend upon the proximity of the President to the nearest veto pivot. The closer the President is to the veto pivot, the cheaper it is for him to convince the pivot to vote against an attempt to override his veto.

In figures 1a and 1b, the President falls between the two veto pivots. Because the President is more centrally located between the pivots in 1a than in 1b, he will be better positioned in 1a to prevent a legislative coalition large enough to overturn his executive order. In figures 1c and 1d, the President is more liberal than V_L. In these cases a President has more to fear than in either 1a or 1b. Therefore, we expect Presidents to issue more executive orders if they fall between the pivots (1a or 1b) rather than outside them (1c or 1d). When Presidents fall outside the pivots, they will issue more executive orders the closer they are to a veto pivot.

Our model of anticipated consequences thus suggests two hypotheses. First, *a strategic President's willingness to issue executive orders should vary inversely with the likelihood that Congress will accede to his preferences*. Since Presidents prefer to implement their policy preferences with legislation, the stronger a President's position in Congress, the less often he will resort to executive orders to implement his policy preferences. This is the conventional wisdom that Krause and Cohen (1997), Cohen and Krause (1997), and Mayer (1999) test. The second key hypothesis is that *Presidents anticipate congressional reaction to their attempt to circumvent the legislative process prior to issuing executive orders*. Strategic Presidents take into account the likelihood that Congress will reverse executive actions by legislation. If a President is likely to have his executive order overturned, he is unlikely to issue them. Empirical support for the second hypothesis would clearly revive the strategic model of executive orders.

DATA AND METHODS

Our dependent variable is the annual number of executive orders issued by the President from 1946 through 1994.⁷ Although aggregate data for executive orders dates back to the mid- eighteenth century (Ragsdale 1996), scholars interested in modeling the use of such orders have been constrained by the availability of data for explanatory variables. Thus, Mayer (1999) begins his analysis in 1936; Cohen and Krause (1997) in 1939; and Krause and Cohen (1997) in 1953. Although the longer the period the more generalizable the results, data on

⁷ The data were collected by Ragsdale (1996), who subsequently identified and corrected a few coding mistakes (see Krause and Cohen 1999). Mayer's (1999) dependent variable is a monthly count of the number of executive orders. We aggregate up to the yearly level for two reasons. First, our independent variables do not vary by month. Thus, using monthly data would result in a model that was underspecified. Of course, this reduces our degrees of freedom. Second, our theoretical interests do not call for a model that varies by month. We are primarily interested in ascertaining whether Presidents issue executive orders in response to the makeup of congress and its leaders. These do not vary on a monthly basis. For the year in which a President was inaugurated, we have made no adjustment for the truncated year that results from a January 20th inauguration. When a President left office, we attribute orders issued between January 1 and January 20th to the preceding year. For 1963, we attribute the seven orders that President Johnson issued after President Kennedy's death to Kennedy's 1963 total. In 1974, we have separate dependent variables for Nixon and Ford because it seemed unreasonable to treat Nixon and Ford as having a similar relationship with Congress and since both of them issued a large number of executive orders. To confirm that our treatment of 1974 did not affect our results, we ran the model while excluding both Nixon 1974 and Ford 1974. There are no significant or substantive differences between the two models. Cohen and Krause's (1997) dependent variable is the annual number of executive orders issued by the President. Krause and Cohen (1997) limited their analysis to orders that had substantive policy implications, excluding orders characterized by Ragsdale (1996) as ceremonial or cultural. Since Ragsdale's classification goes back to 1949, not 1946, we used the total number of executive orders without any exclusion. The correlation between the total number of executive orders and substantive executive orders is .99.

presidential support scores and public support are unfortunately unavailable for earlier periods.⁸

Two characteristics of the dependent variable bear on the analysis. First, because it is a count of the number of orders issued in a given year, each annual observation can only be zero or a non-negative integer. We use a negative binomial model to test the hypotheses specified above for evidence of overdispersion in the data (King 1989a, 1989b).⁹ Second, the number of executive orders issued annually has declined over time (Ragsdale and Theis 1997, Cohen and Krause 1997). On average, 65.4 executive orders were issued per year during this period; however, the peak levels of issuance occurred early in the period while the lowest levels appeared during the last three administrations.¹⁰ We include a lagged dependent variable (EO_{t-1}) in the model as a control for the effects of this trend.¹¹

To test the first hypothesis that Presidents issue more executive orders as their support in Congress declines, we use four different measures, all similar to

⁸ For this reason, Cohen and Krause (1997) exclude presidential popularity from their analysis and neither Mayer (1999) nor Cohen and Krause (1997) are able to include any variables that require knowing the President's position on the actual roll-call votes (support scores). Mayer includes presidential popularity in his model but the variable is set to zero prior to 1949 when data become available. To confirm that this does not bias his results, he subsequently runs a model for the 1949-1995 time period.

⁹ We chose the negative binomial model, because, unlike the more familiar Poisson model, it copes with overdispersion (see King 1989b). In the fitted negative binomial model, the large χ^2 value of 6.735 ($p = .0095$) confirms the inappropriateness of a Poisson. To confirm that our data is overdispersed we also ran our model using King's Generalized Event Count (GEC) program. The dispersion parameter was .4753, reparamaterized to 1.6085. Since this is greater than 1, our data were clearly overdispersed.

¹⁰ Part of the reduction is due to the delegation of authority over public lands by President Truman to the Secretary of the Interior in 1952 (EO 10355). Although public land orders made up seventy to eighty percent of the orders issued in the late 19th century, in three years before 10355 Executive Orders that Ragsdale (1996) classified as natural resources/environment made up 11.7 percent of the orders issued. In the three years after Truman signed EO10355, these made up 11.9% of the orders. Although this suggests that EO 10355 did not affect our analysis, we were able to confirm this by including a dummy variable to denote the Truman presidency. Although this variable was significant, the substantive results do not change. These results are available from the authors. We thank Ken Mayer for pointing this out to us (also Mayer, 1999).

¹¹ A Durbin-Watson test performed while regressing EOs on years clearly indicates the presence of serial correlation in the dependent variable. We do not include a time trend (e.g., the year) variable, however, because there is no theoretical reason to assume that the number of executive orders should decrease monotonically over time. While the inclusion of this variable is an appropriate mechanism for treating serial correlation, there is no theoretical reason for the variable. We do not expect the number of orders issued by Carter in 1980 to influence Reagan in 1981. Nevertheless, this is an appropriate statistical control for the declining mean. To ascertain the effect of this on our results, we reran the model without the lagged variable. The results are substantively the same. These results are available from the authors.

measures used by Cohen and Krause (1997), Krause and Cohen (1997), or Mayer (1999). A President's strength depends in part upon whether his party controls Congress (Cutler 1988; Sundquist 1988-89; Kelly 1993; Edwards, Barrett and Peake 1997; in contrast see Mayhew 1991) and in part upon the balance of partisan forces in the two chambers (Edwards 1989; Light 1982; Bond and Fleisher 1990; Peterson 1990; and Covington, Wrighton, and McKinney 1995). Thus, we include a dummy variable to denote the presence of split party control of Congress and presidency (1 if divided, 0 otherwise) and variables to tap the percent of the House and Senate seats held by the President's party in Congress.¹²

Partisan considerations alone do not shape the behavior of members of Congress. As formal theoretical treatments of legislative politics suggest, the ideological preferences of a chamber's median member will be decisive under certain conditions (Krehbiel 1991).¹³ Thus, a President whose policy preferences are acceptable to the chamber's median will be more successful legislatively, all other things equal. To calculate the ideological difference between the President and the median member of the House and Senate, we calculate the absolute mean difference between a President and each chamber's median, using Poole and Rosenthal's W-NOMINATE (1st dimension) scores (Poole and Rosenthal 1991, 1997; McCarty and Poole 1995).¹⁴

As noted earlier, presidential approval is a valuable resource that may encourage Congress to ratify presidential recommendations. To control for this effect, we also include in our model the annual average approval rating for each President (Ragsdale 1996: 193).

The preceding variables relate to a President's anticipated level of congressional support. The revised strategic model suggests that Presidents also take into account the likelihood that Congress will reverse executive actions by legislation. This suggests that a President's decision to issue an executive order is contingent upon two other factors. Of first importance is the President's relationship with

¹² Mayer (1999) looks at the effect of divided government. The two articles that Krause coauthored included measures to tap House and Senate seat margins. We relied upon Malbin, Mann and Ornstein (1997) to calculate these percentages.

¹³ Although partisanship may be related to the distribution of members' ideal points, it is a very crude measure. Indeed, Kingdon (1989) and Krehbiel (1993 and 1995) both argue that a great deal of congressional behavior usually attributed to partisanship is actually little more than "preferenceship."

¹⁴ To give the President a score on the House and Senate NOMINATE scales, one needs to identify the President's position on congressional roll call votes. To do this, Poole relies upon Congressional Quarterly's coding of the positions taken by Presidents from Eisenhower through Clinton. Because our analysis goes back to 1946, we also needed President Truman's NOMINATE scores. We use Truman's average NOMINATE score for when he was a senator as his presidential NOMINATE score. This enables us to extend our analysis further back. While an alternative measure would be to simply look at actual presidential support scores (Krause and Cohen 1997), this approach forces one to drop the 1946-1952 period since CQ presidential scores are not available for this period.

the veto pivots. If a President is positioned between the veto points, the more centrally he is located, the more executive orders he will issue. If he is positioned outside the veto pivots, the closer he is to the nearest veto pivot, the more executive orders he will issue. To measure this, we calculate the absolute distance on the W-NOMINATE scale between the President and the chamber pivot closer to the President (i.e., the member of each chamber at the 33rd or 67th percentiles); if the President's NOMINATE score is between the pivots, the distance is multiplied by -1 . Thus, the distance is a large negative number in figure 1a, a small negative number in 1b, a small positive number in 1c, and a large positive number in 1d.

Second, the President's relationship to legislative leaders responsible for setting the congressional agenda is also likely to affect the likelihood that Congress overturns the President's executive order. In the House, majority-party leaders disproportionately influence the shape of the floor schedule (Smith 1989; Rohde 1991; Sinclair 1995, 1997). Though significantly more constrained, Senate leaders also retain some leverage over the floor agenda, given the majority leader's right of first recognition on the floor. Since leaders themselves are agents on behalf of the party that selected them, their willingness to attempt to overturn Presidents' executive orders depends in large part upon the acceptability of a President's order to the majority party's median member. Thus, Presidents who are ideologically distant from the median member of the majority party in the House and Senate are likely to issue relatively few executive orders. To measure this, we calculate the absolute W-NOMINATE difference between each President and the median member of each chamber's majority party.

In addition to these measures that enable us to test the strategic President hypotheses, we include several other variables to control for a President's likelihood of issuing executive orders. It has been noted that Democratic Presidents issue more executive orders than do Republican Presidents (Gomez and Shull 1995; Shull 1997; Mayer 1999; Cohen and Krause 1997), perhaps because presidential party is a proxy, albeit a very crude one, for presidential activism. Thus, we include a dummy variable to demark Democratic Presidents.¹⁵ Krause and Cohen (1997), and Mayer (1999), and others speculate that at the beginning of a term, Presidents have a larger legislative agenda and therefore issue more executive orders than at the end of their term. Thus, we also included a counter marking the year of a President's term (1 through a maximum of 8). Krause and Cohen (1997) and Cohen and Krause (1997) also argue that a President's administrative responsibilities depend upon such factors as the number and scope of

¹⁵ The inclusion of this dummy also serves as an important control that enables us to properly interpret the coefficients associated with our divided government variable. This control is needed because Republican Presidents disproportionately had to deal with divided government (Mayer 1999).

the programs that he is required to administer. Thus, we also include the Krause and Cohen (1997) and Cohen and Krause (1997) measure of the annual percentage growth of the federal bureaucracy.¹⁶ Mayer (1999) also suggests that Presidents use executive orders to enhance their prospects for reelection. Thus we include a variable to denote years when Presidents are seeking reelection.

RESULTS AND DISCUSSION

The Table presents the results of our negative binomial model of the political determinants of executive orders. The results lend strong support to the two central hypotheses of a strategic model: both a President's level of congressional support and his likelihood of being overturned by a congressional veto override are inversely related to the number of executive orders issued.

With respect to the President's level of congressional support, we find support for four of our six expectations. First, we find support for the proposition advanced by Krause and Cohen (1997) and Mayer (1999) that Presidents issue more executive orders as their public support falls. Second, we find support for our expectation that Presidents are likely to issue more executive orders as their ideological distance from the House and Senate median member grows. Third, Presidents appear to issue more executive orders when their party holds fewer numbers of Senate seats. There is no clear relationship, however, between the number of House seats held by the President's party and the number of executive orders issued. This finding is consistent with those of Krause and Cohen (1997) and Cohen and Krause (1997).¹⁷ Finally, we find no effect for divided government on the number of executive orders issued, as suggested by Shull and his colleagues. Once embedded in a multivariate model, Shull's counterintuitive result relating unified government to the number of executive orders issued appears premature. In short, we find relatively strong support for the conventional wisdom that has been refuted in the past: Presidents appear to use executive orders against a Congress that is likely to throw legislative roadblocks in front of their policy proposals.

Still, our results also show that Presidents are constrained in their ability to use executive orders to circumvent Congress. We find strong support for all four of the variables that tap the likelihood that a President would be overturned

¹⁶ These data were generously supplied by George C. Krause.

¹⁷ Krause and Cohen (1997) discover that Presidents are more likely to issue executive orders when their party has relatively few seats in the Senate and a relatively large number of seats in the House. Their House finding is consistent with Gleiber and Shull's (1992) and Gomez and Shull's (1995) discovery that Presidents issue more executive orders the more seats their party has in the House. Our findings are consistent with Cohen and Krause's (1997) finding for the 1970-1996 period; Presidents issue more executive orders when their party controls few Senate seats and there are no statistically significant effects for House seats.

≡ TABLE
 DETERMINANTS OF EXECUTIVE ORDER ISSUANCE, 1946-1994
 (NEGATIVE BINOMIAL REGRESSION)

Independent Variables (expected sign)	Coefficient	Standard Error
Congressional Support		
Divided Government (+)	.2386	.2118
% House Seats (-)	.3148	.3648
% Senate Seats (-)	-1.5377***	.5651
Public Approval (-)	-.0052**	.0024
President/Senate Nominate Distance (+)	1.3134***	.4926
President/House Nominate Distance (+)	.3929*	.2900
Likelihood of Being Overturned		
Senate Veto Pivot (-)	-1.1671***	.4152
House Veto Pivot (-)	-.7159***	.2691
President/Party Median Distance, Senate (-)	-.4539***	.1300
President/Party Median Distance, House (-)	-.3915*	.2963
Other Variables		
Democratic President (+)	.3262****	.1051
Year of Administration (-)	-.0099	.0137
% (Executive Branch Growth (+)	-.0085	.0032
Reelection Year (+)	.0912*	.0651
Control		
Executive Orders _{t-1}	.0038****	.0012
Constant	4.5454****	.5360

* $p < .10$ (one tailed); ** $p < .05$ (one tailed); *** $p < .01$ (one tailed); **** $p < .001$ (one tailed)

Log Likelihood = -185.87

Observations = 50

$\chi^2 (15) = 78.00$ ****

Pseudo $r^2 = 0.1734$

LR test against Poisson, $\chi^2 (1) = 6.735$, $p = 0.0095$

legislatively by Congress. The greater such likelihood, the fewer executive orders issued. Specifically, a President's positioning relative to House and Senate veto pivots is central to his decisions to issue executive orders. The closer the President to the nearest veto pivot, the lower the likelihood that he will have a veto overridden, and thus the greater the number of executive orders issued. Similarly, the smaller the distance between Presidents and the median majority party member of the House and Senate, the greater the number of orders issued. Proximity to the party centroids suggests that Presidents can better count on chamber leaders to prevent executive orders from being overturned by means of a veto override.

Finally, we find mixed support for the remaining control variables that test the alternative accounts offered in recent studies. First, Democratic (and presumably more activist) Presidents appear to issue more executive orders (Gomez and Shull 1995; Shull 1997; Cohen and Krause 1997; Mayer 1999). Second, like Krause and Cohen (1997) and Mayer (1999) we find little indication that the number of executive orders varies systematically over the course of a President's term. Third, we find no evidence that growth in the executive branch leads to more executive orders, consistent with the findings of Krause and Cohen (1997) and Cohen and Krause (1997).¹⁸ This finding, along with our finding that the number of orders issued does not systematically vary over the course of a President's term, illustrate that variation in the number of executive orders issued results from presidential-congressional relations, not the President's administrative responsibilities. And fourth, we find only weak support for the claim that Presidents issue more executive orders as part of a reelection strategy, as suggested by Mayer (1999).

Many students of the Presidency have emphasized the benefits Presidents reap by using executive orders. Rejecting the conventional wisdom surrounding the politics of executive orders, recent empirical work stresses that executive orders are issued to consolidate, or supplement, a President's legislative gains. Only when political conditions favor presidential success in Congress are Presidents likely to issue executive orders. In contrast, our findings suggest that the conventional wisdom may be correct: Presidents are willing to use executive orders to circumvent Congress.

Still, Presidents seeking to circumvent Congress with executive orders face important constraints. Strategic Presidents will only use orders when the political, partisan, and ideological contexts suggest that a two-thirds majority is unlikely to override a presidential veto. Using executive orders to avoid Congress is a viable strategy only if a President's negative power is sufficient to protect his policy gains, a power shaped by the alignment of preferences between the House, the Senate, and the President. Presidents, it seems, play both a policy and a reputation game. Although executive orders may move the status quo closer to a President's preferred policy outcome, use of executive orders is not cost free. Indeed, if Congress overturns an order by legislation, a President's professional reputation may be severely damaged and a legislative history may be established that prevents the President from taking administrative action in the future.

In recent years, complicated separation of powers games have been developed to explain the interaction between Congress and the Courts. Central to these games has been an understanding of the political institutions that structure

¹⁸ Although Krause and Cohen (1997) initially report that growth in the executive branch leads Presidents to issue more executive orders, they have subsequently discovered that this finding is attributable to a coding mistake (Krause and Cohen 1999).

each chamber's decision making process. Our findings suggest that the interaction of policy preferences and institutional structures is central to understanding patterns in executive behavior as well.

REFERENCES

- Bond, Jon R., and Richard Fleisher. 1990. *The President in the Legislative Arena*. Chicago: University of Chicago Press.
- Brace, Paul, and Barbara Hinckley. 1991. "The Structure of Presidential Approval: Constraints Within and Across Presidencies." *Journal of Politics* 53 (November): 993-1017.
- _____. 1993. *Follow the Leader: Opinion Polls and the Modern Presidents*. New York: Basic Books.
- Brady, David W., and Craig Volden. 1998. *Revolving Gridlock: Politics and Policy from Carter to Clinton*. Boulder, CO: Westview.
- Carey, John M., and Matthew Soberg Shugart. 1998. *Executive Decree Authority*. New York: Cambridge University Press.
- Cohen, Jeffrey E., and George C. Krause. 1997. "Opportunity, Constraints, and the Evolution of the Institutional Presidency: The Issuance of Executive Orders, 1939-1996." Typescript.
- Cooper, Phillip J. August. 1986. "By Order of the President: Administration by Executive Order and Proclamation." *Administration & Society* 18: 233-62
- Copeland, Gary W. 1983. "When Congress and the President Collide: Why Presidents Veto Legislation." *Journal of Politics* 45 (August): 696-710.
- Covington, Cary R., J. Mark Wrighton, and Rhonda Kinney. 1995. "A 'Presidency-Augmented' Model of Presidential Success on Roll Call Votes." *American Journal of Political Science* 39 (November): 1001-24.
- Cutler, Lloyd N. 1988. "Some Reflections About Divided Government." *Presidential Studies Quarterly* 18: 490.
- Drew, Elizabeth. 1994. *On the Edge: The Clinton Presidency*. New York: Touchstone.
- Edwards, George C. III. 1989. *At the Margins: Presidential Leadership of Congress*. New Haven: Yale University Press.
- Edwards, George C. III, Andrew Barrett, and Jeffrey Peake. 1997. "The Legislative Impact of Divided Government." *American Journal of Political Science* 41 (April): 545-63.
- Gleiber, Dennis W., and Steven A. Shull. 1992. "Presidential Influence in the Policy-making Process." *Western Political Quarterly* 45: 441-68.
- Gomez, Brad T., and Steven A. Shull. 1995. "Presidential Decision Making: Explaining the Use of Executive Orders." Paper presented at the annual meeting of the Southern Political Science Association, Tampa, Florida, November 2-4.
- Kelly, Sean Q. 1993. "Divided We Govern? A Reassessment." *Polity* 25: 475-84.

- Kernell, Samuel. 1993. *Going Public: New Strategies of Presidential Leadership*. Washington, DC: CQ Press.
- King, Gary. 1989a. *Unifying Political Methodology: The Likelihood Theory of Statistical Inference*. Cambridge: Cambridge University Press.
- _____. 1989b. "Variance Specification in Event Count Models: From Restrictive Assumptions to a Generalized Estimator." *American Journal of Political Science* 33: 762-84.
- Kingdon, John W. 1989. *Congressmen's Voting Decisions*, 3rd ed. Ann Arbor: University of Michigan Press.
- Krause, George A., and David B. Cohen.. 1997. "Presidential Use of Executive Orders, 1953-1994." *American Politics Quarterly* 25 (October): 458-81.
- _____. 1999. "Erratum." *American Politics Quarterly* 27 (April): 267-68.
- Krehbiel, Keith. 1991. *Information and Legislative Organization*. Ann Arbor: University of Michigan Press.
- _____. 1993. "Where's the Party?" *British Journal of Political Science* 23: 235-66.
- _____. 1995. "Cosponsors and Wafflers from A to Z." *American Journal of Political Science* 39 (November): 906-23.
- _____. 1998. *Pivotal Politics*. Chicago: University of Chicago Press.
- Light, Paul C. 1982. *The President's Agenda: Domestic Policy Choice from Kennedy to Carter (With Notes on Ronald Reagan)*. Baltimore, MD: Johns Hopkins University Press.
- Malbin, Michael J., Thomas E. Mann, and Norman J. Ornstein. 1997. *Vital Statistics on Congress 1997-1998*. Washington, DC: Congressional Quarterly Inc.
- Matthews, Christopher. 1988. *Hardball: How Politics is Played, Told by One Who Knows It*. New York: Summit Books.
- Mayer, Kenneth R. 1999. "Executive Orders and Presidential Power." *Journal of Politics* 61 (May): 445-66.
- Mayhew, David R. 1991. *Divided We Govern*. New Haven, CT: Yale University Press.
- McCarty, Nolan M., and Keith T. Poole. 1995. "Veto Power and Legislation: An Empirical Analysis of Executive and Legislative Bargaining from 1961-1986." *Journal of Law, Economics, and Organization*. 11: 282-312.
- Moe, Terry M. 1993. "Presidents, Institutions, and Theory." In George C. Edwards III, John H. Kessel, and Bert A. Rockman, eds., *Researching the Presidency: Vital Questions, New Approaches*, pp. 337-85. Pittsburgh, PA: University of Pittsburgh Press.
- Moe, Terry M. and William G. Howell. 1998. "The Presidential Power of Unilateral Action." Paper presented at the Annual Meeting of the American Political Science Association, Boston, September 3-6.
- Morgan, Ruth P. 1970. *The President and Civil Rights Policy Making by Executive Orders*. New York: St. Martin's Press.
- Nathan, Richard. P. 1975. *The Plot That Failed: Nixon and the Administrative Presidency*. New York: Wiley.

- _____. 1983. *The Administrative Presidency*. New York: Wiley.
- Neustadt, Richard E. 1990. *Presidential Power and the Modern Presidents*. New York: Free Press.
- Norpoth, Helmut. 1984. "Economics, Politics, and the Cycle of Presidential Popularity." *Political Behavior* 6: 253-71.
- Norpoth, Helmut, and Thom Yantek. 1983. "Macroeconomic Conditions and Fluctuations of Presidential Popularity: The Question of Lagged Effects." *American Journal of Political Science* 27: 785-807.
- Page, Susan. 1997. "When a Law is Unlikely, Often an Order Will Do." *USA TODAY*, August 11: 7A.
- Peterson, Mark A. 1990. *Legislating Together: The White House and Capitol Hill from Eisenhower to Reagan*. Cambridge, MA: Harvard University Press.
- Pious, Richard M. 1979. *The American Presidency*. New York: Basic Books.
- Poole, Keith T., and Howard Rosenthal. 1991. "Patterns of Congressional Voting." *American Journal of Political Science* 35 (February): 228-78.
- _____. 1997. *Congress: A Political-Economic History of Roll Call Voting*. Oxford: Oxford University Press.
- Ragsdale, Lyn. 1996. *Vital Statistics on the Presidency: Washington to Clinton*. Washington, DC: Congressional Quarterly, Inc.
- Ragsdale, Lyn, and John J. Theis, III. 1997. "The Institutionalization of the American Presidency, 1924-92." *American Journal of Political Science* 41 (October): 1280-1318.
- Remington, Thomas F., Steven S. Smith, and Moshe Haspel. 1998. "Decrees, Laws, and Inter-Branch Relations in the Russian Federation." Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, April 23-25.
- Rohde, David W. 1991. *Parties and Leaders in the Postreform House*. Chicago: University of Chicago Press.
- Sala, Brian R. 1998. "In Search of the Administrative Presidency: Presidential 'Decree' Powers and Policy Implementation in the United States." In John M. Carey and Matthew Soberg Shugart, eds., *Executive Decree Authority*, pp. 254-73. New York: Cambridge University Press.
- Shull, Stephen A. 1997. *Presidential-Congressional Relations: Policy and Time Approaches*. Ann Arbor: University of Michigan Press.
- Sinclair, Barbara. 1995. *Legislators, Leaders, and Lawmaking: The U.S. House of Representatives in the Postreform Era*. Baltimore: Johns Hopkins University Press.
- _____. 1997. *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress*. Washington, DC: CQ Press.
- Smith, Steven S. 1989. *Call to Order: Floor Politics in the House and Senate*. Washington, DC: Brookings Institution.

- Sundquist, James L. 1988-89. "Needed: A Political Theory for the New Era of Coalition Government in the United States." *Political Science Quarterly* 103 (Winter): 613-35.
- Wigton, Robert C. 1996. "Recent Presidential Experience With Executive Orders." *Presidential Studies Quarterly* 26: 473-84.

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