

# Beyond the Base: Presidents, Partisan Approval, and the Political Economy of Unilateral Action

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## ABSTRACT

Most accounts of the unilateral presidency emphasize the institutional barriers that severely limit the ability of Congress and the courts to check executive action. An emerging literature argues that political checks, including public opinion, may serve as an important, but informal constraint. However, the empirical evidence for such a popular check is limited. We argue that presidents have incentives to be particularly responsive to their popular standing beyond their party's base. Rather a president's approval ratings among independents and opposition partisans will most influence the likelihood of pushback from would-be opponents in Congress, which can further erode public support for the administration and its policies. Presidents' anticipatory calculations also vary with the health of the economy. A strong economy allows presidents to increasingly resort to unilateral action in periods of divided government and to be less concerned with their approval ratings. By contrast, a weak economy heightens responsiveness to public opinion and blunts the positive effect of divided government on executive action. We find strong support for our hypotheses using a new database of executive action, broadly defined, that achieved some threshold of media coverage from 1977 to 2018. Finally, we

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explore the extent to which President Trump has employed his unilateral power differently than his predecessors. While we find that Trump has issued more major executive actions than most of his predecessors, *ceteris paribus*, we find little evidence that he is less responsive to public opinion.

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Concerns about presidential unilateral power — the power to change politics and policy with the stroke of a pen — are as old as the republic. Washington’s Proclamation of Neutrality prompted cries from no less an authority than James Madison that royal prerogatives, not constitutional principles, drove the administration’s arguments about the broad scope of executive power.<sup>1</sup> The spillover of wartime unilateral powers into the domestic realm, Schlesinger Jr. (1973) argued, was the defining feature that made the presidencies of Lyndon Johnson and Richard Nixon “imperial.” And since 9/11, pundits and scholars alike have frequently warned of the reemergence of a new imperial presidency in perhaps an even more virulent form (Rudalevige, 2005, 2016; Savage, 2008). In 2016, candidate Donald J. Trump routinely denounced Barack Obama’s executive actions as constitutionally specious. Nevertheless, it is perhaps unsurprising that as president, Trump has advanced assertions of unilateral presidential authority exceeding those of his predecessors in boldness (and perhaps also in number).<sup>2</sup>

The quintessential example is President Trump’s declaration of a national emergency and unilateral reprogramming of funds to build a wall on the Mexican border. Article I of the Constitution plainly vests the power of the purse in Congress. Congress considered and explicitly rejected administration proposals to appropriate funds for the wall. Undeterred, in February 2019 President Trump declared a national emergency and directed the wall to be built in direct defiance of Congress’ wishes. Subsequent events perfectly illustrate the institutional barriers that too often all but preclude legislative redress (Howell, 2003; Katyal, 2006; Moe and Howell, 1999a). The Democratic House quickly passed a resolution to rescind the presidential emergency, block wall construction, and restore the status quo. Even the Republican-controlled Senate followed suit with a dozen Republicans joining Democrats to pass the

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<sup>1</sup>See Helvidius 1, available at <https://oll.libertyfund.org/titles/hamilton-the-pacificus-helvidius-debates-of-1793-1794>.

<sup>2</sup>David Graham. “The Strangest Thing about Trump’s Approach to Presidential Power: Many Presidents Have Pushed the Limits of Their Authority. But Not Like This.” *The Atlantic*, June 7, 2018, <https://www.theatlantic.com/politics/archive/2018/06/the-strangest-thing-about-trumps-approach-to-presidential-power/562271/>.

resolution on a 59–41 vote. However, President Trump quickly vetoed the joint resolution, and he easily held onto enough Republicans to sustain his veto. A subsequent effort in September of 2019 met the same, eminently predictable fate.

Since Moe and Howell's (1999b) seminar article, perhaps the dominant paradigm in the unilateral politics literature has emphasized the weakness of the institutional checks on executive action. While the Constitution gives Congress ample formal powers to push back and check presidential unilateralism, partisanship combined with super-majoritarian requirements, and other institutional barriers all but preclude their effective use. Courts can strike down executive actions that exceed statutory delegation or the executive's independent constitutional authority; and by their very design, they avoid many of the institutional stumbling blocks that hinder Congress. However, the problems of enforcement identified by Hamilton in *Federalist 78* often render strategic justices loathe to do so (Howell, 2003; Posner and Vermeule, 2010).<sup>3</sup>

Several strands of scholarship have pushed back against such dour assessments. For example, both Chiou and Rothenberg (2017, pp. 15–22) and Bolton and Thrower (2016, pp. 653–655) have argued that Congress has other tools, including influence over appointments and budgets (Clinton *et al.*, 2012), limitation riders (MacDonald, 2010), and oversight powers (Kriner and Schickler, 2016; Potter and Shipan, 2019), to influence the president's use of unilateral action, even when it cannot enact legislation directly overturning an executive action.<sup>4</sup> More recently, a growing literature has questioned whether public opinion might check presidential unilateralism (Christenson and Kriner, 2015, 2017a,b; Reeves and Rogowski, 2016, 2018) and one study provides the first indirect evidence of a popular check (Christenson and Kriner, 2019). Presidents issue more significant executive orders when they enjoy high approval ratings; by contrast, presidents who enjoy little support among the public are more reticent to push the bounds of their unilateral authority.

We build on these foundations in two important respects. Theoretically, we develop and test a series of more nuanced hypotheses concerning how strategic presidents anticipating the political costs of unilateral action respond to the political environment. Specifically, we examine presidential responsiveness to their approval ratings among different partisan segments of the mass public. When making unilateral decisions, do presidents only consider their base? Contrary to conventional wisdom, the evidence we provide below suggests that

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<sup>3</sup>For alternate perspectives that examine evidence of an increasingly assertive judiciary in cases involving at least some aspects of unilateral power, see Christenson and Kriner (2020) and Epstein and Posner (2018).

<sup>4</sup>Other scholars emphasize the importance of the bureaucracy as a potential check on the president's unilateral impulses (Dickinson, 2009; Kennedy, 2015; Rudalevige, 2009, 2012).

unilateral action is more dependent on approval from the opposition party and independents than from co-partisans.

We also re-examine a long-standing debate in the unilateral politics literature: whether divided government — a clear signal that the president's priorities face an uphill battle in Congress (Edwards *et al.*, 1997) — incentivizes presidents to go it alone. We argue that the effects of both divided government and partisan approval ratings on unilateral action are conditional on the state of the economy. We find that presidents are more responsive to their standing among key partisan constituencies when presiding over a weak economy and that divided government only incentivizes presidents to go it alone when they are insulated from political pushback by a robust economy. In sum, a strong economy may blunt the force of political checks on unilateral power.

Empirically, this article also addresses two of the most important challenges that have long bedeviled quantitative analyses of unilateral action: the fact that most unilateral actions are of relatively little substantive significance (or at least are far from the serious threats to separation of powers emphasized by critics of unilateralism) and that presidents increasingly are using a range of unilateral instruments, not just executive orders, to accomplish their policy goals. While a number of scholars have sought to address the problem of variable importance by identifying a subset of “significant” executive actions, every such effort of which we are aware has focused exclusively on executive orders (e.g., Chiou and Rothenberg, 2014; Howell, 2005; Mayer and Price, 2002). And while a number of scholars have rightly emphasized that presidents have routinely used memoranda (Lowande, 2014), proclamations (Rottinghaus and Maier, 2007), executive agreements (Peake and Krutz, 2009), and other unilateral instruments, most have acknowledged the need to distinguish in aggregate counts between the important few and the relatively unimportant many (e.g., Lowande, 2014, p. 734).

To bridge these strands in the unilateral politics literature, we develop a new measure of significant executive actions that includes any non-ceremonial unilateral presidential directive mentioned in the *New York Times* within a year of its issuance, regardless of the formal instrument used to put it into effect. This measure allows us to focus on the type of publicly salient, substantively important unilateral policy shifts central to arguments that presidential unilateral power has dangerously expanded in contemporary politics and threatens the constitutional system of checks and balances.

Finally, our analysis of the factors driving trends in presidents' issuance of significant unilateral directives from 1977 through 2018 places the first two years of the Trump presidency in a comparative perspective. Our data allows us at least partially to adjudicate between the most common media portrayals emphasizing the boldness and scope of Trump's early unilateral gambits and more systematic analyses that see few differences in the unilateral proclivities of Trump and his predecessors (Potter *et al.*, 2019).

## **Unilateral Action and Partisan Approval**

The formal institutional checks on presidential unilateral power are weak. If presidents, when contemplating unilateral action, only consider the likelihood of being reversed by Congress and the courts, then they should act with relative impunity. Presidential opponents in Congress will almost never be able to muster the requisite super-majorities to overturn executive action, and justices have strong incentives to avoid direct confrontations with the executive branch. But presidents do more than consider the probability of outright reversal in Congress and the courts, or even of battles to ensure bureaucratic compliance. They must also consider the potentially steep long-term political costs of an ill-considered unilateral directive. Perhaps the most important of these costs is the risk of alienating public opinion.

Should a unilateral action trigger a sharp popular backlash, it could damage the president's public approval rating with serious consequences for the administration and its partisan allies. Most immediately, an erosion of popular support could threaten the president's own electoral fortunes or those of the party's would-be successor (e.g., Abramowitz, 2016). As 2017 plainly illustrated, the latter is of critical importance to defending a president's unilateral legacy (Thrower, 2017). Second, it could endanger other items on the president's programmatic agenda as popular presidents, all else being equal, tend to enjoy greater success in Congress than do their peers with lower reservoirs of popular support (Beckmann, 2010; Canes-Wrone and de Marchi, 2002). Finally, in our increasingly presidentialized polity, declining presidential approval ratings could have even broader repercussions for politics and policy. Recent work by Jacobson (2019) demonstrates that a sharp drop in presidential approval could seriously damage Americans' affect toward the president's party, their assessments of the party's congressional delegation and leadership, and their willingness to vote for the president's co-partisans in down-ballot races.

Much of the influence of public opinion on presidents' strategic calculus is anticipatory. When presidents anticipate a popular backlash, they possess strong incentives to eschew taking unilateral action, even when they would almost certainly prevail against any effort by Congress or the courts to restore the status quo. One of the most important drivers of public opinion toward unilateral action is the reaction of other political elites, particularly in Congress. Congressional criticism on policy or constitutional grounds can erode public support for unilateral action (Christenson and Kriner, 2017b) and even have spillover effects for the president's job approval rating (Christenson and Kriner, 2020).

But members of Congress do not decide to criticize unilateral action in a political vacuum. Rather, presidents with low approval ratings are more attractive targets than presidents who enjoy strong public support (Howell, 2003; Kriner and Schickler, 2016). And consistent with this logic,

previous work has shown that high approval ratings embolden presidents to act unilaterally, while low approval ratings raise the political risks of unilateral action (Christenson and Kriner, 2019). Given its common use as a metric of the president's political capital, members of Congress almost certainly look to a president's overall job approval rating when deciding whether to push back against unilateral action in the public sphere. As such, presidents plainly have strong incentives to consider their aggregate approval rating when anticipating the likely costs and benefits they stand to incur or gain should they act unilaterally. However, the president's standing among specific partisan subgroups may also inform these calculations, particularly among would-be congressional critics.

The rising tide of polarization in Congress in recent decades means that congressional challenges to unilateral action are usually led by members of the opposition party.<sup>5</sup> Aggregate approval ratings certainly inform these members' calculations. However, opposition party elites may be particularly sensitive to the president's political standing among fellow opposition partisans in the mass public and among independent voters who may be decisive at the next election. If presidents enjoy the support of even a sizeable constituency in the opposition party, then opposition party elites have strong incentives to hold their fire for fear of alienating part of their own base. Similarly, if presidents boast strong approval ratings among pivotal independent voters, the political risks to opposition party members of publicly challenging the president are high. Thus, strong support among these constituencies insulates presidents from potentially costly political pushback, while lagging support among these groups emboldens congressional critics and raises the political costs of going it alone.

The president's partisan allies in Congress have strong incentives to stand by the president, despite the potential damage to their institutional prerogatives as legislators. Such calculations are buoyed by the robust and stable support that most post-Watergate presidents have enjoyed from their fellow partisans in the mass public.<sup>6</sup> In this era of rising partisan polarization, only Jimmy Carter failed to enjoy majority support among his co-partisans at even a single point in his presidency (during the twin shocks of the energy crisis and the

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<sup>5</sup>Of course, some major unilateral actions of recent administrations have provoked criticism from both sides of the aisle, including DAPA under President Obama (though, most Democratic objections focused on constitutional/procedural concerns and whether such a dramatic shift in policy required new legislation) and President Trump's national emergency to build the wall. However, while the media amplifies same-party criticism (Groeling, 2010), in raw terms opposition party elites have spearheaded such challenges. Moreover, experimental research shows that even congressional criticism levied solely by opposition party elites can significantly erode public support for unilateral action (Christenson and Kriner, 2017b).

<sup>6</sup>Here, we define the post-Watergate era as 1977 to present, as Jimmy Carter was the first president unencumbered by any direct association with the scandal.

Iranian hostage crisis). And aside from Carter, only George W. Bush, in the throes of the worst economic collapse since the Great Depression, even flirted with the 60% threshold at the end of his second term. However, a serious erosion in presidential support among independents could endanger all those running under the party label and encourage some presidential co-partisans, particularly from marginal districts, to break with the administration.

This logic generates what is perhaps a superficially surprising hypothesis in an era of base mobilization politics. Because presidents anticipate the likelihood of congressional pushback that threatens to erode popular support for their actions and their overall job performance, they should be most responsive to their approval ratings among independents and opposition partisans when contemplating unilateral action.

### **The Moderating Role of Economic Strength**

Presidential anticipatory calculations and sensitivity to public opinion may vary across political contexts. Perhaps most importantly, presidents who preside over a strong economy may be less responsive to shifts in approval ratings than presidents saddled with a weak economy. A vibrant economy may both reduce the likelihood of congressional resistance should presidents choose to go it alone, and the probability of the public turning against them and their policies should such an inter-branch battle arise in the public sphere. By contrast, poor economic conditions may heighten the impact of public opinion in presidents' anticipatory calculations. In a weak economy, falling approval ratings among key constituencies may be even more likely to trigger congressional pushback, which could further imperil the president's already weak political position.

Similarly, this logic suggests that the impact of divided government on presidents' willingness to act unilaterally should also be conditional on the strength of the economy. Prior literature offers competing expectations for the effect of divided government on unilateral action. A central tenet of the venerable strategic model of unilateral action (Deering and Maltzman, 1999) is that presidents possess greater incentives to act unilaterally when their legislative agendas face an uphill battle on Capitol Hill. However, divided government may also increase the likelihood of congressional resistance and therefore the political costs of going it alone (Bolton and Thrower, 2016). According to this logic, divided government may actually reduce presidents' willingness to act unilaterally. Empirically, past scholarship has yielded decidedly mixed results with some studies offering support for each perspective (Belco and Rottinghaus, 2014; Fine and Warber, 2012; Gleiber and Shull, 1992; Howell, 2003; Krause and Cohen, 1997; Mayer, 2001; Mayer and Price, 2002; Warber, 2006).

A possible reason for these conflicting results is that Congress' capacity to raise the political costs of unilateral action in periods of divided government is much greater when the economy is weak than when it is strong. A weak economy emboldens congressional pushback and renders it more likely to resonate with the public. By contrast, by providing the president with significant political cover a strong economy should weaken Congress' ability to raise the political costs of unilateral action. This generates our final hypothesis: divided government should incentivize unilateral action when presidents are buoyed by a strong economy, but not when they are more vulnerable because the economy is weak.

### **Trumpian Exceptionalism?**

We also consider the possibility that President Trump may approach unilateral politics differently from his predecessors. Two possibilities suggest themselves. First, President Trump may simply be less responsive to public opinion overall than were earlier presidents. At least superficially consistent with such an interpretation, the most prominent media narrative emphasizes how aggressively and even brazenly President Trump has used his unilateral power despite historically low approval ratings early in his term. Trump wasted little time using the powers of the presidency to great effect to roll back many of the policy accomplishments of his predecessor: withdrawing from the Paris Accords and Trans-Pacific Partnership; rescinding first the Deferred Action for Parents of Americans program and then the Deferred Action for Childhood Arrivals program (though in late 2019 the latter move remains stalled in the courts); and rolling back the Clean Power Plan and other Obama-era environmental initiatives. President Trump has perhaps been even bolder when going it alone with his series of travel bans curtailing asylum programs and banning citizens from many predominantly Muslim countries from entering the United States; prohibition on transgender individuals from serving in the United States military; and efforts to build the Mexican border wall. These most prominent cases and the avalanche of media coverage they, like all things Trump, received comport with a broader narrative contending that norms of institutional forbearance or self-restraint have eroded, the guardrails of American democracy have weakened, and the United States is at a genuine risk of democratic backsliding (Levitsky and Ziblatt, 2018; Sunstein, 2018).

By contrast, other more systematic assessments of unilateralism in the Trump presidency paint a different picture. For example, in a quantitative analysis of President Trump's first year in office, Potter and colleagues found little evidence of any significant differences in the frequency with which President



Trump made recourse to any of the major tools in the office's unilateral toolkit. Somewhat surprisingly given the dominant media narrative, Trump does not even appear exceptional in the extent to which he has revoked, amended, or superseded his predecessors' orders (Potter *et al.*, 2019, p. 615). Using a new measure of significant executive action, the analyses below will examine the extent to which President Trump has been more aggressive unilaterally than his predecessors.

The conventional wisdom also suggests a second way in which President Trump might be exceptional: rather than being completely unresponsive to public opinion, Trump may simply respond differently and instead prioritize his standing among his core partisan base. While Trump campaigned on several policies designed to appeal to swing voters, including items with cross-over appeal such as higher taxes for the wealthy, massive investments in infrastructure, and federal assistance for child care, in office he has fully embraced a governing strategy that prioritizes the needs of his core base supporters and, particularly, the moneyed elite within. If this attentiveness extends to unilateral politics, then Trump, in contrast to other presidents whom we have argued are most responsive to their standing among independents and the opposition, may care only about his standing among Republicans. By contrast, if Trump's exercise of the presidency's unilateral powers largely tracks the dynamics of his predecessors, then there will be no significant differences in the relationship between the three partisan approval series and trends in significant executive actions between Trump and prior presidents.

## **Data**

To test our hypotheses that presidents are particularly responsive to their public standing among independents and the opposition party in the mass public when contemplating unilateral action, we explore the relationship between significant executive actions and presidential approval by party over time. A major limitation of many past analyses of the factors driving unilateral action is the lack of a measure of significant unilateral activity that includes more than executive orders. While scholars have developed a range of approaches for identifying "significant" executive actions, each with their advantages and disadvantages, we adopt Howell's (2005) method and collected and coded all non-ceremonial unilateral actions mentioned by the *New York Times* within one year of issuance from 1977 through 2018. Importantly, this measure includes anything the *Times* called an executive order, regardless of whether the unilateral instrument used was actually an executive order. For example, the *Times* routinely called DACA an executive order, even though it was

implemented through a memorandum. We also explicitly searched for any mention of executive memoranda, proclamations, executive agreements, or anything generally called an “executive action.”<sup>7</sup>

Because presidents can use some of these unilateral tools, particularly executive orders and memoranda, interchangeably and the distinction may rest solely on a matter of presidential preference, it is important to collect a broader universe of actions. As shown in Figure 1, while executive orders comprise a clear majority of the executive actions mentioned in the *Times*, policy shifts effected through other unilateral instruments have also routinely achieved at least this modest threshold of media and public salience. Moreover, in recent years the number of significant unilateral actions that were not achieved through executive order has rivaled the number of executive orders covered in the *Times*.

In Figure 2, we graph the total number of significant executive actions issued in each month from 1977 to 2018. In the median month, the president

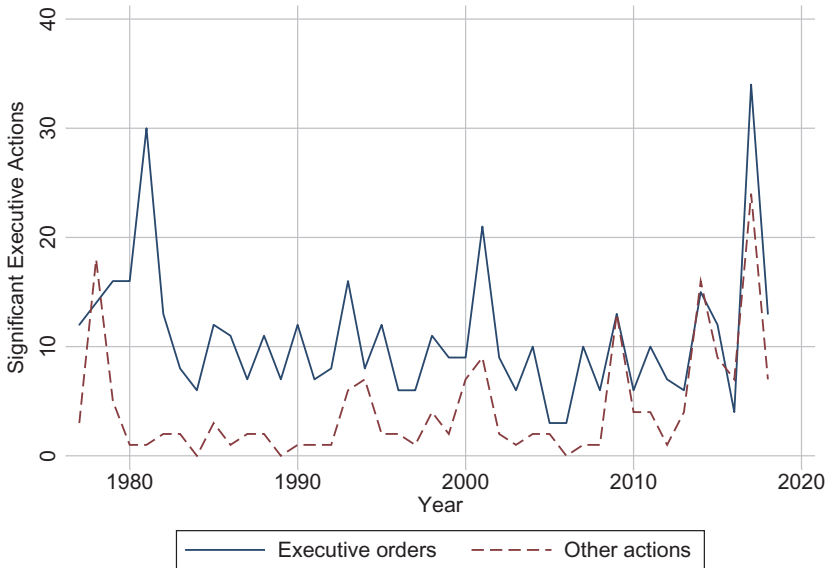


Figure 1: Annual sum of significant executive actions by type, 1977–2018.

<sup>7</sup>Specifically, we searched the *Times* for any article containing at least one of the following words: “executive order”; “executive action”; “proclamation”; “executive agreement”; “memorandum”; or “memoranda”.

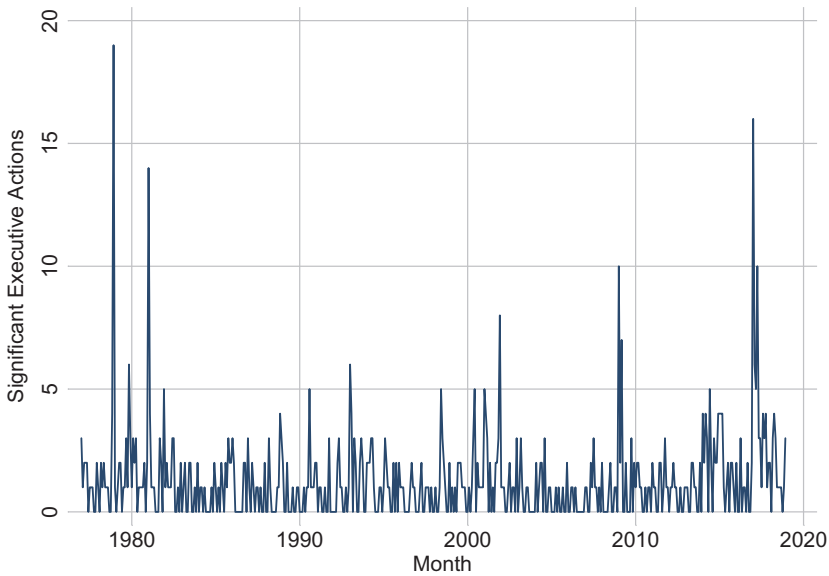


Figure 2: Monthly sum of significant executive actions.

issued a single significant executive action that merited at least one mention in the *Times*. However, there is considerable variation about this low median.<sup>8</sup> For example, there was a spike in December of 1978 when President Carter issued a series of proclamations creating national monuments as well as a pair of executive orders. Another spike in January 1981 involved a range of last-minute orders by the Carter administration regarding the Iranian hostage crisis as well as several initial actions taken by Reagan immediately after assuming office. There is a post-9/11 spike in significant actions, and additional spikes in the early months of the Obama and Trump presidencies.

To this time series of monthly executive actions, we add presidential approval broken down by the public’s party identification. Monthly approval data by party from 2009 through 2018 was provided by Gallup Analytics, and the rest was compiled and averaged by month from Gallup’s Presidential Job Approval Center.<sup>9</sup> Finally, we used Kalman filtering to fill a few

<sup>8</sup>In the median year, the president issued 12.5 executive actions garnering *Times* coverage, with an average of 15 actions and a standard deviation of 10 actions.

<sup>9</sup><https://news.gallup.com/interactives/185273/presidential-job-approval-center.aspx>. When Gallup conducted approval polls for both the incoming and outgoing presidents in the January following a presidential election, we included only the polls for the incoming president. Because not every poll included the partisan lean question, the independents series includes those who leaned toward one party or the other.

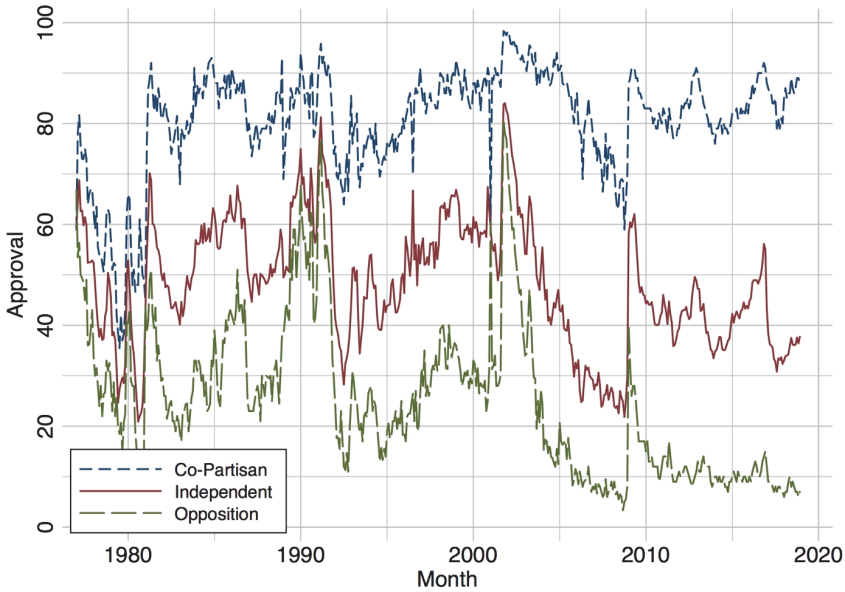


Figure 3: Monthly average of presidential approval by president’s party.

gaps early in the time series (Green *et al.*, 2001). Figure 3 plots the three partisan approval series together from Carter through the first two years of Trump.

The first thing to note is that the time series track each other quite well. That is, while co-partisans nearly always have higher ratings than independents, and independents higher ratings than opposition partisans, the major spikes and drops in the series are largely shared across party identification. In all, the parallel trends in the three series suggest that while partisan lenses most certainly color Americans’ impressions of the president, the public also responds to political, economic, and social events in similar directions, regardless of party. For example, Carter began his term with universally high approval but slipped consistently over time across all three groups as his term progressed (with an intervening rally in the early days of the hostage crisis). George H.W. Bush’s approval ratings soared among all party groups after the victory in Desert Storm, only to fall precipitously among the short but sharp recession in 1991/1992. Likewise, his son rode a rally around the flag wave following 9/11 — with even Democrats approving of him at well over 70%. He then experienced a slow, but steady decline in approval ratings across all three partisan groups, though his base was slower to catch on.

## Methods

We model the relationship between presidential approval and unilateral executive actions with a lagged dependent variable (LDV) model. In doing so, we conceive of presidential approval in the present month as a function of approval in the previous month, plus any new information and context.<sup>10</sup> That is, we think of approval as an inherently dynamic process that therefore requires a dynamic model.<sup>11</sup> In addition, because we measure unilateral actions as a count of occurrences in each month, and because this data is over-dispersed, we use a negative binomial distribution to model the event count.

The main independent variables of interest are measures of presidential approval among co-partisans, independents, and opposition partisans. Because policy change — even unilateral change — typically takes time and consideration, and because public opinion takes some time to gather and is not always instantly available, we also lag presidential approval in our models. Thus, we expect that presidents are either emboldened or constrained in unilateral action by their previous month's approval numbers. Because of this modeling decision, all of our models exclude the first month of each new administration, a total of 7 out of the 504 months in our data. We exclude these months, since lagged approval would then refer to a different president, and because both incoming and outgoing presidents can issue orders in this month.<sup>12</sup>

We also control for a number of factors that could plausibly affect both public opinion and the issuance of executive actions. First, we recognize that extreme political events, like war, may lead presidents to act without delay or consideration for the other branches. We include a single war dummy variable coded 1 for months in which the following wars were ongoing: the Persian Gulf War (Operation Desert Shield and Desert Storm); Iraq; and Afghanistan. The political environment may also affect a president's calculation to act alone. Many prior analyses of executive action have sought to test the evasion hypothesis: presidents facing stiff opposition to their preferred legislation in Congress may rely more heavily on their unilateral powers. While past analyses have yielded at best mixed support for the evasion hypothesis (e.g., Deering and Maltzman, 1999; Fine and Warber, 2012; Krause and Cohen, 1997), our models include a dummy for periods of divided partisan control

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<sup>10</sup>Christenson and Kriner (2019) employed vector autoregression to explore the direction of causality in the relationship, as significant executive order issuance could plausibly also effect changes in presidential approval. Their analysis strongly suggests that the causal arrow runs generally in one direction from approval to significant executive order issuance.

<sup>11</sup>Dickey–Fuller and Phillips–Perron tests suggest that all three series are stationary and therefore the LDV is appropriate (Keele and Kelly, 2006).

<sup>12</sup>However, all of our results in Table 1 with and without the first month are substantively similar; see Supporting Information.

of the presidency and at least one chamber of Congress. In addition, past research concerned with unilateral behavior and legislative activity has focused on the state of the economy (e.g., Krause and Cohen, 2000). Presidents may feel a greater need to go it alone when economic times are tough. As such, we include a widely used measure of economic health in our models, the index of consumer sentiment (ICS). Literature has also suggested that executive action may actually complement rather than substitute for legislation (Belco and Rottinghaus, 2014, 2017). To account for the possibility that trends in significant executive action may stem from the enactment of major legislation, we include a control for the number of landmark laws enacted each month.

The political business cycle may also influence the frequency with which presidents resort to the office's unilateral powers. Second-term presidents may feel less constrained in pushing the scope of their unilateral authority than first-term presidents. Similarly, impending elections might make presidents more reticent to act on their own. To account for these possibilities, we include a dummy variable identifying second-term presidents and another identifying presidential and midterm election years.<sup>13</sup>

Finally, to account for characteristic differences across the presidents that might lead them to naturally issue more or fewer actions, we include presidential fixed effects. In the following models, we use Carter as the baseline and provide estimates for all subsequent presidents.

## Results

Table 1 shows the negative binomial model results for each partisan approval series. That is, we independently model the monthly count of unilateral executive actions as a function of the previous month's presidential approval rating among presidential co-partisans, independents, and the opposition party. Before turning to the results for our hypotheses, we note a few interesting findings on our control variables. First, for all groups, the lagged dependent variable is statistically significant, lending further support to our dynamic modeling approach. The presidential fixed effects show that Reagan and both Bushes issued fewer unilateral actions than Carter for reasons unexplained by the included variables. Most interestingly here, the Trump dummy is positive, whereas the coefficients for all other presidents are negative, and Wald tests confirm that Trump has issued more significant executive actions, all else equal, than all of his predecessors save Carter. This largely comports with media accounts that have emphasized the flurry of unilateral activity in the Trump

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<sup>13</sup>The election year variable is coded 1 for January through October of each election year and 0 for November and December to reflect the president's greater flexibility after voters have rendered their verdict at the ballot box. Alternate measures coded 1 for the entire year yield substantively similar results.

Table 1: The effect of partisan approval on unilateral executive action.

	(1)	(2)	(3)
Presidential party approval <sub>t-1</sub>	0.007 (0.008)		
Independents approval <sub>t-1</sub>		0.011* (0.005)	
Opposition party approval <sub>t-1</sub>			0.011* (0.005)
Executive actions <sub>t-1</sub>	0.101** (0.025)	0.090** (0.025)	0.084** (0.025)
Divided government	0.282 (0.165)	0.237 (0.166)	0.212 (0.166)
Index of consumer sentiment	-0.010 (0.007)	-0.013* (0.007)	-0.012 (0.006)
War	0.149 (0.328)	0.118 (0.322)	0.121 (0.322)
Count of significant laws	0.017 (0.061)	0.012 (0.061)	0.016 (0.061)
Second term	-0.021 (0.147)	0.063 (0.153)	0.076 (0.151)
Election year	-0.077 (0.107)	-0.066 (0.107)	-0.068 (0.107)
Reagan	-0.776** (0.296)	-0.684** (0.245)	-0.567* (0.243)
Bush 41	-1.121** (0.343)	-1.053** (0.311)	-1.037** (0.309)
Clinton	-0.526 (0.272)	-0.408 (0.242)	-0.259 (0.249)
Bush 43	-0.963* (0.395)	-0.772* (0.371)	-0.704 (0.374)
Obama	-0.720 (0.420)	-0.513 (0.394)	-0.298 (0.409)
Trump	0.157 (0.455)	0.561 (0.474)	0.721 (0.488)
Ln(alpha)	-1.040** (0.221)	-1.079** (0.227)	-1.098** (0.230)
Constant	0.678 (0.489)	0.852 (0.451)	0.906* (0.452)
Observations	497	497	497

Note: Models are negative binomial regressions. Standard errors are in parentheses. All significance tests are two-tailed.

\*\* $p < 0.01$ , \* $p < 0.05$

administration, particularly contrasted with its legislative flailing. However, it may also be an artifact of measurement. Given the media's penchant for covering all things Trump — during the campaign they even showed live footage of empty stages before Trump spoke (Sides *et al.*, 2018, p. 47) — it is possible that our media-based measure included less significant actions for Trump than for prior presidents.<sup>14</sup>

We also find no evidence that divided government, landmark legislation, or wars consistently induce unilateral executive action. While the coefficients for divided government and wars are in the expected direction and substantively nontrivial, their standard errors are quite large over this period. Only the state of the economy shows any real effect in our models. Though only reaching significance for the independents model, the coefficients are consistently negative and of similar magnitudes across the models, meaning that presidents act unilaterally more often when the economy is perceived to be in bad shape.

Moving to the tests of our initial hypotheses, we find evidence consistent with differential responsiveness to opinion among partisan subgroups. While the coefficients for lagged approval are consistently positive, suggesting that as approval drops so too does the number of executive orders, the coefficients are only significant and are substantively larger for independents and the opposition partisans. This is consistent with our hypothesis that presidents anticipate greater congressional resistance and therefore political costs when their approval rating is low among independents and the partisan opposition. By contrast, because fluctuations in co-partisan approval are usually around a very high base level of support during this period, the level of approval among co-partisans provides less information for presidents about the anticipated political costs should they act unilaterally.

To illustrate the magnitude of the key results, in Figure 4 we graph the predicted counts of significant executive actions in a month as lagged presidential approval changes for each of the three groups: presidential co-partisans, independents, and the opposition. The results show that while co-partisan support emboldens presidents to issue more unilateral actions, the effects for independent and opposition party approval are substantially larger. Across the range of lagged co-partisan approval, executive actions increase by less than a half of an action on average. Indeed, the substantive effect is so small and the error so large as to be statistically insignificant in this model.

By contrast, when presidents see their approval rating among independents or the opposition party grow their expected number of executive actions jumps. The difference in opposition approval at 10% versus 70%, for example, equates with one more executive action the next month. We see a similar gain in executive actions should independents move from 30% to full support. Even a

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<sup>14</sup>However, simple inspection of the list of actions did not reveal any obvious differences in the qualitative nature of the actions across presidents.



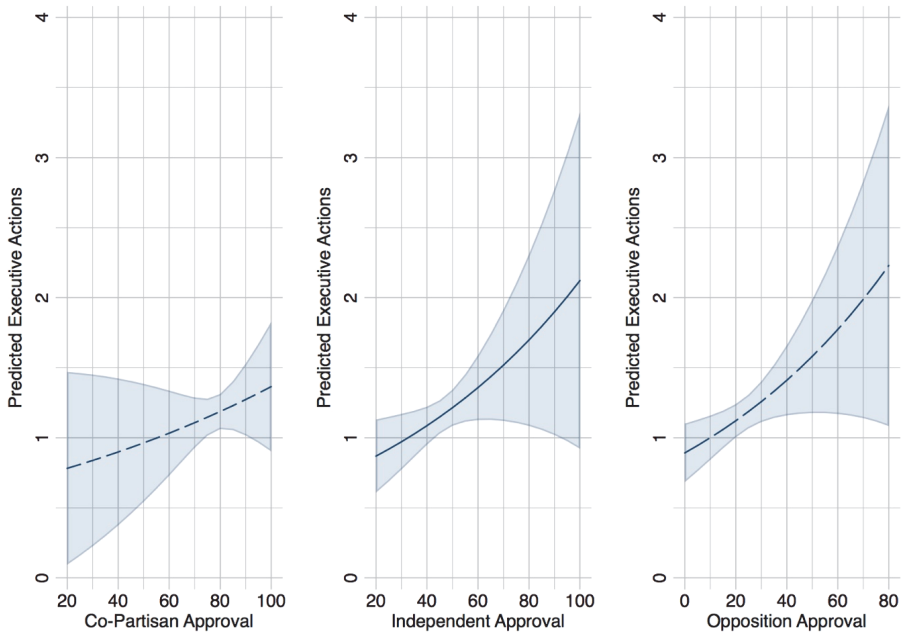


Figure 4: Predicted counts of executive actions by partisan presidential approval.

smaller two standard deviation increase over the opposition party mean would lead to a half more executive actions, on average, in the next month. And of course, if even a smaller increase in approval is sustained over many months it can significantly increase the number of major executive actions a president orders. In short, presidents, largely secure in their support among their own base, look more to how independents and the opposition party view them when deciding to issue unilateral actions.

***Moderating Influence of the Economy***

To test our two moderation hypotheses, we re-estimated the models in Table 1 with the interactions of each partisan approval series with the index of consumer sentiment. Models 1–3 of Table 2 present the results. In Models 2 and 3, the main effect for presidential approval among independents and among opposition partisans remains positive and statistically significant. However, the coefficients on the interactions of both independent approval and opposition party approval and the ICS are negative and statistically significant. To ease the substantive interpretation of the results, Figure 5 illustrates the estimated effect of increasing approval ratings on executive action during good (one

Table 2: The moderating influence of the state of the economy.

	(1)	(2)	(3)	(4)
Presidential party approval <sub>t-1</sub>	0.000 (0.033)			
Independents approval <sub>t-1</sub>		0.091** (0.035)		0.010 (0.006)
Opposition party approval <sub>t-1</sub>			0.095** (0.032)	
Executive actions <sub>t-1</sub>	0.101** (0.025)	0.086** (0.025)	0.072** (0.025)	0.089** (0.025)
Pres party × ICS	0.000 (0.000)			
Independents × ICS		-0.001* (0.000)		
Opposition × ICS			-0.001** (0.000)	
Divided government × ICS				0.012 (0.011)
Divided government	0.276 (0.167)	0.344* (0.171)	0.269 (0.167)	-0.753 (0.926)
Index of consumer sentiment	-0.017 (0.032)	0.030 (0.020)	0.011 (0.011)	-0.020* (0.009)
War	0.151 (0.328)	-0.004 (0.319)	-0.088 (0.321)	0.198 (0.330)
Count of significant laws	0.017 (0.061)	0.012 (0.061)	0.013 (0.061)	0.011 (0.061)
Second term	-0.028 (0.150)	0.150 (0.157)	0.119 (0.152)	0.016 (0.158)
Election year	-0.082 (0.109)	-0.020 (0.109)	-0.045 (0.107)	-0.075 (0.107)
Presidential fixed effects	✓	✓	✓	✓
Ln (alpha)	-1.042** (0.222)	-1.119** (0.232)	-1.140** (0.234)	-1.093 (0.229)
Constant	1.197 (2.439)	-2.651 (1.605)	-1.050 (0.882)	1.449* (0.710)
Observations	497	497	497	497

Note: Models are negative binomial regressions. Standard errors are in parentheses. All significance tests are two-tailed.  
 \*\* $p < 0.01$ , \* $p < 0.05$

standard deviation above the mean) and bad (one standard deviation below the mean) economic times. Strongly consistent with our hypothesis, when presiding over a robust economy, presidential approval among all three partisan subgroups appears to have little influence on presidents' unilateral calculus.

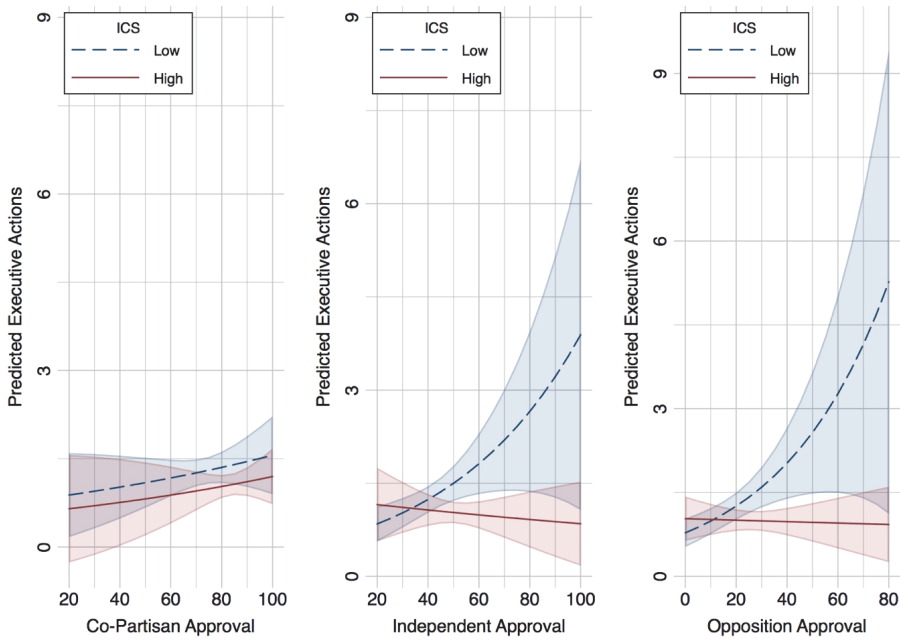


Figure 5: Economic strength moderates relationship between approval and executive action.

However, in bad economic times, the effect of the president’s approval rating among independents and opposition partisans is greatly intensified.

To test our second moderating hypothesis about the influence of the economy, Model 4 of Table 2 interacts divided government with the ICS. Figure 6 illustrates the effects. While the coefficient on the interaction is not statistically significant, Figure 6 shows a meaningful divergence in the effects as the index of consumer sentiment increases (in the range of about 80–110). During weak economic times, there is virtually no difference between the number of unilateral actions we should expect under divided and unified government. That is, when presidents are politically weakened by a poor economy, divided government does not incentivize greater recourse to unilateralism. In these conditions, an opposition-controlled Congress’ capacity to generate political costs is considerable, and as a result presidents’ propensity to act unilaterally does not vary significantly across periods of unified and divided government (despite their stronger incentives to act unilaterally when the opposition controls at least one chamber of Congress). By contrast, during strong economic times, we find evidence consistent with the evasion hypothesis. The strong economy relaxes the political constraints of divided government and presidents issue more significant executive actions in divided government than in unified government. Holding all other variables constant at their means or medians,

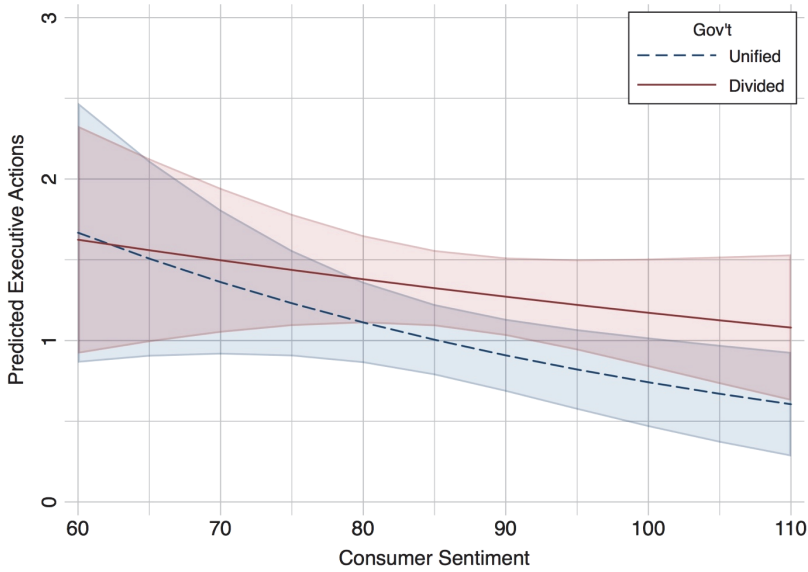


Figure 6: Economic strength moderates relationship between divided government and executive action.

when economic conditions are strong (e.g., an ICS of 100) divided government increases the predicted number of executive actions in a month from roughly .75 to 1.2. While this single-month increase is small, over the course of a year this could result in approximately five or six more significant executive actions, a substantial number, given their relative paucity.

*Is Trump Less Responsive to Public Opinion?*

Finally, to examine whether President Trump was less responsive to public opinion when acting unilaterally during his first two years in office, we re-estimated the models in Table 1 and interacted each partisan approval variable with the Trump indicator variable. The models, which are reported in the Supporting Information, offer no evidence that Trump is more responsive to his standing among his partisan base than were his predecessors, or that Trump is statistically less responsive to changes in his standing among independents or opposition partisans. The limited available data for Trump coupled with the remarkable stability in all three partisan subgroups’ attitudes toward Trump caution against taking these findings too far. However, the available data does not offer evidence of significant differences between Trump and prior presidents in terms of responsiveness to partisan approval.

## Conclusion

While the power to do so is nowhere mentioned in the Constitution, presidents have acted unilaterally since the earliest days of the republic to effect major changes in policy without the formal consent, and often even without the tacit assent of the other branches. Congress and the courts possess the formal means to roll back executive decrees, but institutional and political barriers often all but preclude their effective use. However, this does not mean that presidential unilateral power is unchecked. Far from it. The bedrock of the constitutional system is its intricate system of checks and balances. However, as Madison freely admitted in *Federalist 51*, “a dependence on the people is no doubt the primary control on the government.” The formal checks so carefully enshrined in the document’s parchment barriers may be frail in the contemporary polity. But, there is ample evidence to suggest that the informal popular check remains robust.

In sharp contrast to the evasion hypothesis, we find that presidents do not resort to unilateral action disproportionately when they are low in the polls and struggle to move their agendas through Congress. Rather, strong approval ratings, particularly among independents and the partisan opposition embolden presidents. By contrast, weak approval ratings among these key constituencies frequently dissuade presidents from exploiting their office’s unilateral powers to their fullest. The most likely explanation for this dynamic, we argue, concerns the key role played by congressional opposition. Vocal and sustained pushback from congressional critics can further erode presidential support and ramp up the political costs for acting unilaterally. These critics, many of whom are from the opposition party’s ranks, pay close attention to the president’s standing among independents and their fellow partisans in the mass public when deciding whether the risk of challenging the president is worth the potential reward. Presidents know this and look to their standing among these key groups when deciding whether or not to go it alone.

However, the prospects for congressional pushback and political fallout from going it alone vary across contexts, most importantly with the state of the economy. Presidents buoyed by a strong economy are less concerned with congressional pushback and consequently less constrained by their approval ratings among key partisan constituencies when contemplating unilateral action. Similarly, presidents’ anticipatory calculations about the costs of congressional pushback during divided government also vary with the strength of the economy. In good economic times, divided government emboldens presidents to go it alone. However, in bad economic times divided government has no systematic influence on the frequency of major executive actions.

But have these political checks weakened in the Trump presidency? The empirical evidence, limited as it is with only two years’ worth of data, is somewhat mixed. On the one hand, according to our new measure of significant executive

action President Trump has used his unilateral powers more frequently and aggressively than his predecessors. This finding echoes arguments that norms of institutional forbearance (Levitsky and Ziblatt, 2018), already under assault before Trump, may have weakened further still under this most iconoclastic president. It also contrasts with analyses of Trump's first year that examine a range of unilateral actions, but that do not differentiate between significant and less important executive actions (Potter *et al.*, 2019). The relatively high number of major executive actions under Trump is perhaps even more surprising, given his historically low approval ratings throughout his first two years in office. This, coupled with recent research emphasizing the striking unpopularity of most of Trump's unilateral moves compared to those taken by his immediate predecessors (Christenson and Kriner, 2020), does suggest that Trump may be less sensitive to the political costs of unilateral action (or at least perceives those costs differently) than most presidents. However, our analysis here found no evidence that Trump responds differently to his approval rating among key partisan constituencies than did earlier presidents.

It is perhaps simply too early to understand fully the political dynamics influencing unilateral politics in the Trump era. However, the mixed results for Trump offer an important warning. The strength of the informal political checks on presidential unilateralism depend both on context — perhaps most importantly, the state of the economy — and on the president being sensitive to political costs and responsive to public preferences. A president determined to pursue his or her unilateral agenda regardless of popular preferences and the response of other political elites enjoys wide institutional latitude to do so. In such cases, the only remaining check may be the ballot box.

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