

Frequency Factors in Presidential Executive Orders

A Senior Honors Thesis

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### *Introduction*

American Presidents utilize an array of tools which each have a varying level of political expediency. Some tools may be well recognized and clearly defined yet slower and more cumbersome such as the general legislative process which formally makes bills into laws. Going through such a process can take considerable time because of the amount of checks and balances involved as well as the gridlocked nature of Congress. In contrast, other tools may be less well defined and possess potential to “get the job done quicker”. One can see these more efficient manifestations of power in the Executive Branch of government. For example, the President has ultimate authority over the military as Commander in Chief and accordingly has much more unilateral authority on that front than he does with the legislative process itself. Another integral part of this latter category is precisely the topic of this research paper: Executive Orders. These can be generally defined as binding instructions which the President can issue for implementation by the Executive Branch. There has been significant scholarly study on the subject of what instigates a President to issue Orders at a more frequent rate. Additionally, there has been much dispute over what they are used *for* in the first place.

These debates and controversial questions have driven dividing lines between the two sides of the issue. One for example views Orders as the underappreciated avenue of achieving political goals whereas the other treats them as if they are only part of routine business and rather uncontroversial in the way they are really used. But why should any of us care? After all, many of us are completely disconnected from the daily functioning of government. Thus, we may not consider questions relating to it in any intense manner as doing so would effectively take us away from the daily functions of our own busy lives. In spite of all this, it is abundantly clear that we should actually care about these very issues and specifically how Presidents use

Executive Orders. Simply put, they are a manifestation of *unilateral* power. It is precisely for this reason that you and the public at large *should* care about them. Any manifestations of unilateral power should be tightly constrained and regulated. The concern here is that Orders are used not only to regulate the Executive Branch of government but also as a means to create policy for an expressly political purpose. Now you may find yourself still asking: “I understand why I should care about Orders generally, but who cares about their frequency factors”? The reason that the frequency factors are of the utmost importance themselves is that they can show just how “political” Orders can be. If Orders are used for political purposes then one would expect to see certain usage trends *depending on* the political circumstances of any given time.

The research question at hand is: “what factors lead to higher rates of Executive Order frequency and why”? Thus, the central focus of this paper is to establish what trends and motivations exist in the way Orders have been issued in twenty first century America. The research model tests differing variables which may affect Order frequency. Such research has extended existing analysis of the twentieth century and relies on much of the previously used methods of analysis. The previous research was able to clearly establish that Orders can be issued for expressly political purposes precisely because they are issued more frequently depending on a President’s political climate. However, such conclusions could only apply to the previous era of 1936-1999. Therefore, proper considerations on the current era of 2000-2020 are necessary in order to determine what has changed since then in the way Orders are politically used. Furthermore, this extension of past research allows for a better understanding of more contemporary times as well as a greater ability to make qualified predictions about what the near future holds.

### *A Review of Existing Literature*

Existing scholarship on the subject of Executive Orders tends to center on the following two key categories. The first of which studies what factors makes Orders more frequent. In addition, the second examines how Orders are treated by the public, courts, and Congress after they have been issued.

#### **Frequency Factors**

In order to analyze the causes and circumstances which make Orders more frequent, researchers often do statistical analyses of all Orders issued by all Presidents or a specific one. As a result of such analyses, it is commonly concluded that the *goal* of any given Order is to either bypass Congressional authority (the “Strategic Model”), or go about mundane tasks of government in consultation with the other branches (the “Non-Strategic Model”). Additionally, scholars disagree over which of the following are the true *causes* of higher Order frequency: divided government, civil rights issues, foreign or domestic crises, or public approval ratings.

##### *a. Goals: “Strategic” Model*

Fine and Warber (2012) argued that one of the prime reasons for the use of Orders is to bypass a divided government. The authors go over the evidence for this “Strategic Model” of Order use by looking at recent developments and by running some research models of their own which concluded with a general support of their “Strategic Model”. Lacey (2008) offers an analysis of a specific Bush Jr. Order which he argues was issued to specifically bypass Congressional earmarks regulating the EPA. Belco and Rottinghaus (2014) discussed the way in which Presidents used Orders as both a way to “preempt” and also support Congressional legislation. Their findings included that Orders “preempted” legislation when it was an issue in the President’s agenda whereas they supported legislation when the President was from the same

party as the related bill's sponsor. Bolton and Thrower (2016) concluded that Orders are more common under the following circumstances: the President's ideology diverges with that of either branch of Congress or when Congress as a whole is capable and/or willing to constrain the President through its own legislation. Cooper (2002) argued that Orders are most often used when issues arise which a President can reasonably expect to solve through an Order as compared to going through the normal Congressional channels; political expediency.

*b. Goals: "Non-Strategic Model"*

Deering and Forrest (1999) counter the commonly held idea of the "strategic model" by claiming that Orders are more commonly used if the President feels he can create his own "legislation" through Orders *and* also knows that Congress will not overturn or challenge his moves. The key to their findings was that a President will not issue Orders in the presence of a *hostile* Senate or House that can do something to counter any Orders issued. Rudalevige (2012) also argued against the "strategic model" by creating the theory that Orders are issued customarily in consultation with Executive Branch agencies and most commonly order things to be done that the agencies themselves already wanted. He claims that Orders are most commonly used for non-controversial things, and the only reason Orders are viewed as so influential is because of the existence of a small minority of controversial ones. The "Strategic Model" and the "Non-Strategic Model" are not necessarily mutually exclusive. The former generally makes the argument that Orders are used to get around political obstacles whereas the latter simply modifies that Orders are mostly used in order to work with existing "obstacles" and norms. It can very well be that both are "true" at the same time, as both methods of Order use can exist.

*c. Causes*

Mayer (2001) argued Orders became more frequent during times when the nation faced serious civil rights issues (ie. 1960s movements) or foreign policy crises (ie. WW2). More nuanced researchers can be seen in Krause and Cohen (2000) who considered how the Presidency as an institution with norms and customs had contributed to the high level of consistency in how Presidents take advantage of Orders. The authors contended that a stress on the Presidency as an institution is more critical than focusing on individual Presidents who make choices independent of the past. Christenson, Dino, and Kriner (2019) examined how the President can react to overall public approval ratings. They essentially concluded that when public approval ratings are high, Orders become more common whereas when public approval ratings are low Orders become constrained. This is nearly the only source which ascribed *causation* to the public, the other sources outlined in my *public* section below are generally dismissive of it.

Other insight on the question of why Orders are issued can be seen from Barber and Fleming (2011) who considered the question of how a President can claim to oppose Executive Branch overreach, whereas through their actions they reinforced it. Specifically they studied the case of Barack Obama who, when elected, had argued against the strong Executive actions that Bush made and in response used his own authority as President to undo many of Bush's Executive actions. Edelson (2013) explored how Executive Branch lawyers hired into the Obama Administration flip-flopped on their views of the President's authority after they were hired into his Administration. Edelson also examines how President Obama personally criticized President Bush's use of Orders, but when upon becoming President, Obama seemingly switched his stance

on the use of Orders. From both of the above sources it can be implied that access to power itself is what drives the support of Orders: any President in power will support their use.

### **Post-Issuance Treatment**

#### *a. By the Public & Media*

In terms of public treatment, scholars often note the lack of general public awareness and/or use of Orders as a means to target certain segments of a politician's base of support. Milton (2017) criticized President Trump's "Muslim Ban" Order as a targeted method of appealing to the more racist or xenophobic segments of his base. Carter (2018) also commented on President Trump by claiming he felt he was elected with a mandate to "shake things up", thus he began explicitly pushing existing boundaries of Orders. In contrast to Carter, Cooper (2002) argued that the use of Executive Orders by Presidents has been a vehicle for change that goes *unnoticed* by the public because it is unaware of the process itself. He also interestingly argued that Presidents have used Orders to shield their policies from significant media coverage through the use of different methods of making Orders public. Additionally, Cooper criticizes the news media for improperly covering Orders. He discusses how coverage is often narrow minded and simply portrays Orders as being "more frequent than ever" when in fact a more deeper analysis is necessary. Manheim and Watts (2019) looked into how litigants file suit against the President for making certain Orders. One interesting finding was that under Trump, litigants have commonly begun to sue *before* an Order actually results in anything, suggesting an increasingly hostile opposition movement in the public.

#### *b. By the Judiciary*

Researchers often note a clear lack of pushback from the Judiciary in response to Orders. Gonzales (2015) considered how the courts have ruled on the powers of the President when it

comes to his national security powers. This is significant because the Constitution has a very vague amount of parameters on the national security powers of the President. He concluded that the courts have ruled inconsistently, although generally in favor of deferring to Executive authority. Johnson (2015) also studied how the Judiciary often defers to the President on the constitutionality of Orders when it feels Presidential retaliation is likely.

*c. By Congress*

Newland (2015) argued that courts too often deferred to Congress as a result of the lack of strong precedent on the constitutionality of Orders. Smeltzer (2004) argued that Congress should have taken a stronger role in checking Bush Jr.'s use of Orders. For example, he wrote that Bush issued Orders promoting faith based initiatives which, if seriously challenged by either Congress or the courts, would have been stuck down. Additionally, Thrower (2017) examined how Executive Orders from 1937-2013 have been revoked over time as well as what factors led to their revocation. She theorized that the relationship between Orders and termination is dependent on the following: divided government, constitutional authority of a given Order, proximity to an election year, and current public opinion.

As illustrated, the current literature on the topic of Executive Orders has a focus on the two categories of the main goals and causes for Order issuance, and the way in which Orders are treated by the public, the Judiciary, and Congress once issued. As discussed, scholars disagree over whether Presidents use Orders with the goal of bypassing Congress, consulting with Congress and existing norms, or to just be politically expedient. There is an ongoing debate over the prime cause of Order frequency, along with a continual criticism of the other branches of government and the public for not doing enough to curb the powers of the ever growing Executive Branch of government.

## **Gaps in Current Literature**

Existing research on the topic of Executive Orders is extensive, however differing levels of analysis exist for different eras of American political history. The vast majority of scholars in the field specifically write about the way Executive Orders were used between FDR and the present. There is not surprisingly a skew towards more contemporary Presidents, but FDR is still a popular center of attention in the field due to his lasting impacts. Some authors have done extensive statistical analysis of large numbers of Orders, of which the most seminal of such work is by far Mayer's (2001). In his book, Mayer did an analysis of all Orders from April 1936 to December 1999. Unfortunately, there does not appear to be any proper continuation of this type of in depth analysis. Many shorter journal articles have been written on the post 1999 era which examine individual Orders or the way a President used them more generally, but none have continued the in depth statistical analysis seen from Mayer.

## **Justification**

This current research builds off of and effectively updates the existing literature. It renews the statistical analysis done by Mayer which covered the period of 1936-1999 (2001). The purpose of this is to determine what, if anything, changed in the way Orders were used from Mayer's era (1936-1999) to the current era (2000-2020). As part of this one must consider what factors were most useful in predicting the frequency of Orders during my era. Doing this allows for a better understanding and contextualization of the past along with being able to shed light on what current trends one may expect to see continue into the near future. Additionally, the research allows for some conclusions on whether the era of 2000-2020 aligns more with the "Strategic" or "Non-Strategic" models. To indicate alignment with the "Strategic" model it would be expected that Order frequency *is* dependent on the factors outlined below. To indicate

alignment with the “Non-Strategic” Model it would be expected that Order frequency *is not* dependent on the factors below.

### **Research Design**

As part of the research herein is an analysis of all Orders from the start point of January 1st, 2000 until the end point of October 20th, 2020. Some variables go slightly further back in time. For example, one goes back to 1999 in order to cover the period of Bill Clinton’s divided government which lasted from 1999-2001. The research method is very similar to that of Mayer’s (2001). As part of the research there is an attached frequency chart of all the ~812 Orders issued during the current time period which is broken down by the following conditions:

- I. Rate of Issue per month
- II. First year of a new President, the party in control has changed from previous.
- III. Last month of outgoing President, the party of incoming is different.
- IV. January-October of election year.
- V. Divided/Unified Government: President’s party does or does not control both houses of Congress.
- VI. Presidential Popularity: as according to Gallup’s monthly polls.
- VII. Economic Growth: as according to annual GDP percentage of change.
- VIII. Substance of the Individual Order: a breakdown by multiple factors

The substance of the individual Orders were divided into four categories which are similar to what Mayer (2001) used in his analysis: Executive Branch, Domestic Policy, Foreign/Defense Policy, and Boards & Commissions. The Executive Branch category included any Orders involving delegation of Federal agency authority, pay raises, agency orders of succession, and any general procedural changes to the Executive Branch. Domestic Policy

included any Order pertaining to a specific policy or initiative within the US, generally these are just directions given to agencies on how to achieve a certain policy goal. Foreign/Defense Policy entailed any Order relating to policies abroad, national defense, or the military in general. And lastly, under Boards and Commissions was included any Order surrounding the creation of a group, commission, task force, board, award, medal, or recognition.

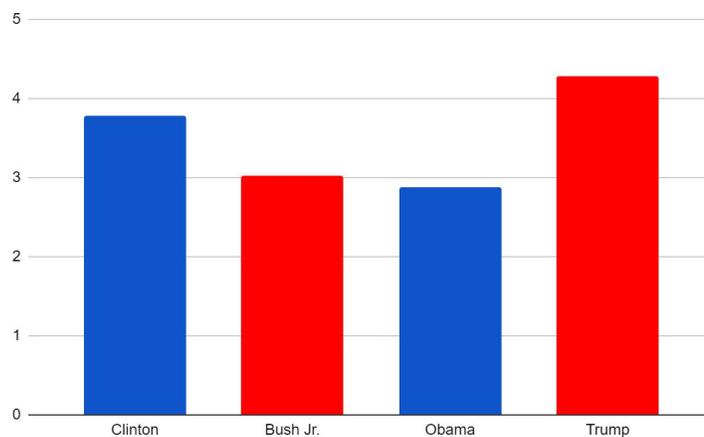
### **The Data and Analysis**

The Federal Register government website was utilized in order to access the Executive Orders. Additionally, Google Sheets was taken advantage of in order to log the data into each of the sections and categories. The final completed spreadsheet has been submitted in addition to this written analysis. The process of sifting through the ~812 Orders was quite tedious, yet it resulted in some rather interesting results. Because President Clinton's terms did not neatly conform to the parameters of covering all Orders from January 1st 2000-October 20th 2020, the research design selectively included or excluded parts of Clinton's presidency from each of the different categories. In the analysis section you shall see how each data category is compared back to each President's monthly average in order to see what factors caused an increase or decrease from said average. In order to indicate a dependent relationship between Order frequency and any given variable one would expect to find a significant straying from a President's overall monthly average. Conversely, if there is no significant straying from the average on a given variable, then it is unlikely that there is a dependent relationship.

Prior to conducting the collection of data, numerous hypotheses were generated relating to each variable as a means of giving each variable's dataset something to "test". For example, with Republicans traditionally being the party of "smaller government" it was hypothesized that they would use Orders less than Democrats within the dataset. As a result of data analysis, each

hypothesis was either supported, rejected, or unclear either way. Although one overwhelmingly clear aspect of the final tallies was that President Trump issued by far the most Executive Orders among all categories.

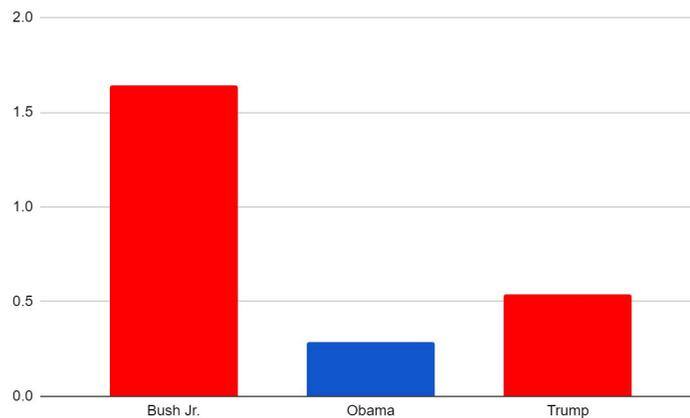
*I: Monthly Averages*



This variable is used to test the following hypothesis: “if a Republican President is in office then less Orders are issued as compared to if a Democrat were in office”. The data on a raw average of monthly Orders is as follows: Clinton- 3.79, Bush Jr. 3.03, Obama 2.88, and Trump- 4.29. Based on the data we can see this hypothesis is not supported. If anything, the data just shows that there is no strong correlation between party identification and Order frequency. However, this of course only applies to this limited dataset. Mayer’s research found a very different result. Based on his analysis, he concluded that Republican Presidents were much less likely to issue Orders than were Democrats (Mayer, 96). His data placed large negative statistical coefficients on Republican Presidents and positive coefficients for all Democrats except Clinton (Mayer, 96). The average Order rate for Mayer’s dataset (1936-1999) was 6.03 per month (Mayer, 96). This can be compared to the average of 3.43 Orders per month for the current

period of 2000-2020. Based on this it is also clear Orders have become less frequently issued from Mayer's period to the current period.

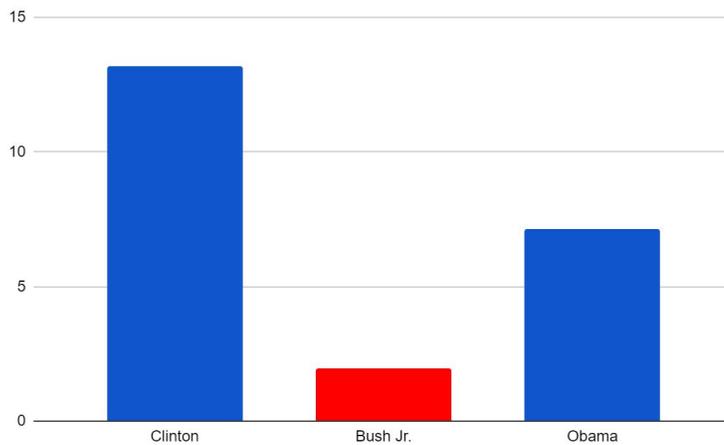
*II: Orders During the First Year of a new President's Term*



This variable is specifically testing the following hypothesis: “are Orders more frequent during a new President’s first year in office”? The data showed the following in terms of an increase from their whole Presidency’s monthly average: Bush Jr. +1.64, Obama +0.29, and Trump was +0.54. Based on the dataset, one can conclude in support of the hypothesis. This is because there is a positive rate for all three of the Presidents on the chart.

Mayer’s dataset showed a positive rate as well for the first year year of a President’s office. However, he was not able to classify such positive rates as being statistically significant (Mayer, 96). Additionally, there did not appear to be a strong commonality in the substance of each President’s Orders during this period of the first year.

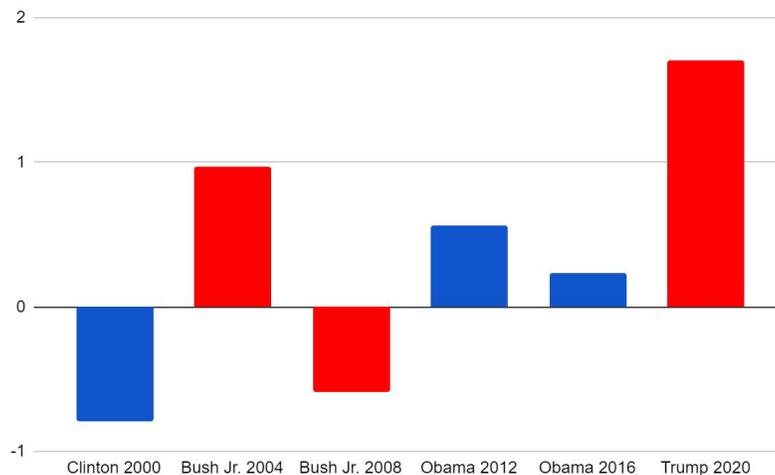
### *III: Last Month in Office*



This variable serves to test the hypothesis of “do Presidents issue more Orders during their last month in office”? The breakdown by the last month of an outgoing President when the party in control is as follows when compared to their entire term average: Clinton +13.21, Bush Jr. +1.97, Obama +7.12. This dataset appears to support the hypothesis. Perhaps there is more of a rush to issue Orders at the end of a Presidency in a similar manner to how there is a rush to issue pardons during the same period.

Mayer’s conclusions based on his dataset are quite similar to the current findings. He writes that “outgoing Presidents who are leaving the office to successors of the opposition party issue nearly six additional Orders ( $6.03 \times 0.915 = 5.52$ ) in their last month of their term” (Mayer, 96). President Clinton nearly doubled Mayer’s trend, Bush Jr. underperformed, and Obama was relatively close.

*IV: January 20th-October 20th of an Election Year*



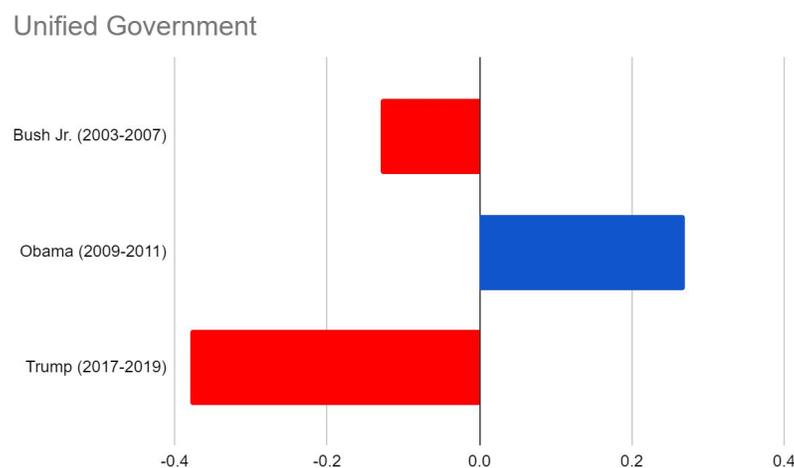
The above variable tests the following hypothesis: “do Presidents issue more Orders during election years”? When considering the Orders issued from January 20th-October 20th during an election year we see the following changes from their entire Presidency’s monthly averages: Clinton 2000 -0.79, Bush Jr. 2004 +0.97, Bush Jr. 2008 -0.59, Obama 2012 +0.56, Obama 2016 +0.23, Trump 2020 +1.71. Unfortunately, the dataset appears to be unclear in terms of whether it supports the hypothesis. That is because both Clinton 2000 and Bush Jr. 2008 underperformed their overall averages. However, another hypothesis to consider is “do Presidents issue more Orders in election years in which they are running”? In contrast to the previous hypothesis, the dataset appears to roughly support this one. That is due to the fact that, as seen in the chart above, both Bush Jr. and Obama issued far less Orders when they were not running for reelection than when they were.

Trump’s outlier of +1.71 can be explained by the fact that 2020 was not only an election year but also the year of the Covid-19 pandemic. Hence many Domestic Policy Orders relating to Covid-19 were issued that year. For the year of 2020 (until October 20th), Trump issued a total of 30 domestic policy Orders or 54.5% of the total of all categories. This can be compared to:

Clinton 2000: 13, 31.7%, Bush Jr. 2004: 6, 13.0%, Bush Jr. 2008: 4, 13.3%, Obama 2012: 9, 23.6%, Obama 2016: 7, 16.7%.

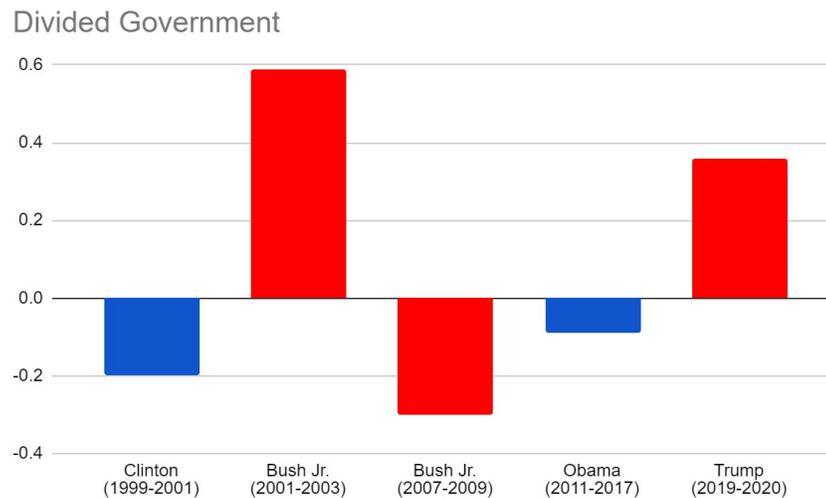
Mayer's dataset showed an unclear relationship with this variable as well. He writes that Presidents who are running for reelection "issue more Orders than they would otherwise" but the coefficient is insignificant (Mayer, 97). However, he also found that Presidents issue less Orders than their overall average when they are *not* running for reelection during a given election year (Mayer, 97). Interestingly, both of Mayer's findings can be seen to have continued into my period of 2000-2020.

#### *V: Unified & Divided Government*



The unified government variable seeks to test the following hypothesis: "do Presidents issue less Orders when there is a unified government"? For the unified government periods the rates of change from the entire Presidency averages are as follows: Bush Jr. (2003-2007): -0.13, Obama (2009-2011): +0.27, Trump (2017-2019): -0.38. It is unclear whether this hypothesis is supported based on the data and chart below. Although both Bush Jr. and Trump issued less Orders in their unified governments, Obama counterintuitively issued more under unified government. This may perhaps be explained with the possibility that Obama simply felt more

comfortable issuing his Orders when he knew there was no hostile Congress there to check him. Conversely, it is also possible that Trump and Bush Jr. were just more comfortable working with their cooperative legislature rather than ruling through Executive fiat.

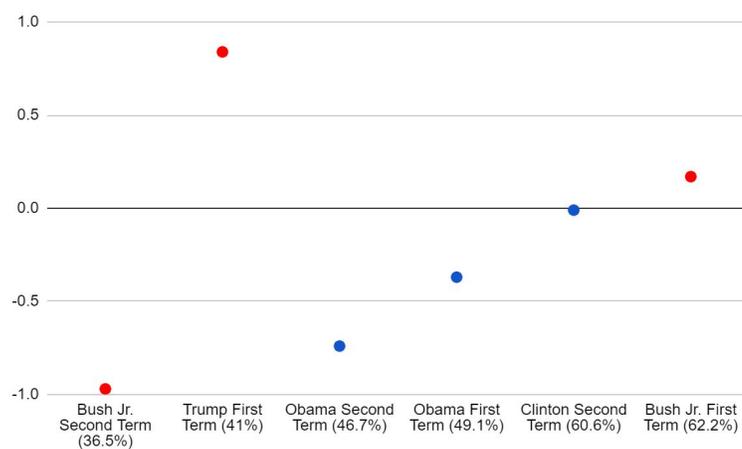


In contrast, there is the divided government variable which tests the following hypothesis: “do Presidents issue more Orders when there is a divided government”? The rates of change from whole Presidency averages for divided government are: Clinton (1999-2001): -0.2, Bush Jr. (2001-2003): +0.59, Bush Jr. (2007-2009): -0.3, Obama (2011-2017): -0.09, Trump (2019-2020): +0.36. Based on the chart below, the data for the divided government variable again appears unclear as to whether it supports or refutes the hypothesis. This is because Clinton’s, one of Bush Jr.’s, as well as Obama’s divided governments all saw a less than average rate of Orders.

These results were surprising in the sense that they did not indicate a clear correlation between divided government and higher Order rates. Mayer found a similarly less firm conclusion based on his dataset. The struggle for Mayer concerning this variable of divided and unified government was that many of the Democratic Presidents in his era enjoyed a unified

government for their entire Presidencies (Mayer, 99). Thus he only chose to focus on those Presidents which had experienced both a unified and divided government while in office. After narrowing his analysis to this area, he was able to see some rather counterintuitive patterns. For example, Truman had no significant change in Order rates between his period of divided and unified government (Mayer, 99). Also, both Clinton and Eisenhower issued more Orders during their unified government (Mayer, 99). Based on all of this, both Mayer's data and the current one clearly do not support the commonly perceived idea that Orders are most often used strategically to get around a divided government.

### VI: Approval Ratings

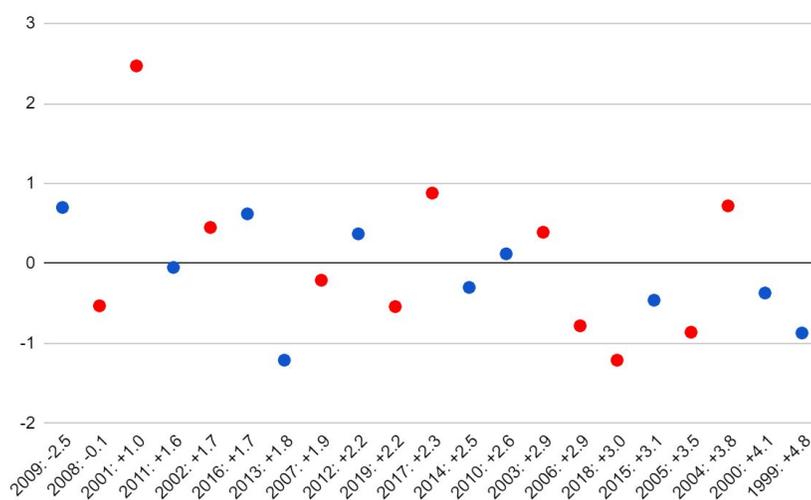


The variable of Presidential approval ratings serves to examine the following hypothesis: “Do Presidents issue more Orders when they have a higher approval rating”? In the scatter plot above, the y-axis measures the average rates of Orders for the President's terms which then have 3.43 (the average for my *entire* period of 2000-2020) subtracted from it. Thus, the y-axis represents how far each President's term strayed from the overall current period average. One can conclude that the data generally supports my hypothesis based on the trend line visible in the

chart. However, Trump is of course a major outlier in terms of this variable. This suggests that he is more willing to act independently of his approval ratings.

In contrast to the above hypothesis, Mayer’s research considered the data with the hypothesis that Presidents would issue more Orders when they were *less* popular. He argued that this was in connection to the idea that when Presidents are less popular then they can use Orders as a way to “act on their own without relying on other institutions or actors” (Mayer, 97). Mayer concluded in support of his hypothesis based on his dataset (Mayer, 97). This is quite interesting, it is unclear why the data appears to have flipped from Mayer’s era to the current one.

### VII: Economic Conditions: Annual GDP Percent Change

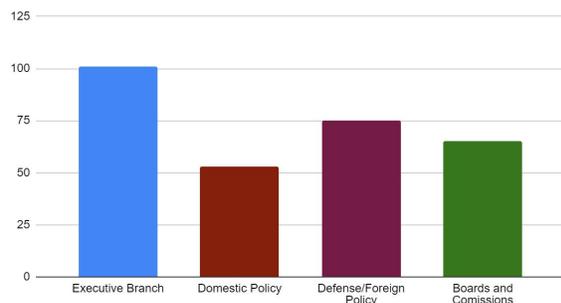


This variable of GDP change seeks to test the following hypothesis: “do Presidents issue more Orders when GDP growth is higher”? In the above scatter plot, the x-axis is ordered from low to high economic growth thus the years themselves are out of order. The y-axis represents each given year’s average Order rate per month which then has its President’s overall average Order rate subtracted from it. In order to judge the hypothesis it would have been preferable to see a *clearer* upward or downward trend in the scatter plot. However, no such trend in either direction is apparent in the plot, thus it is unclear if there is any relationship between GDP

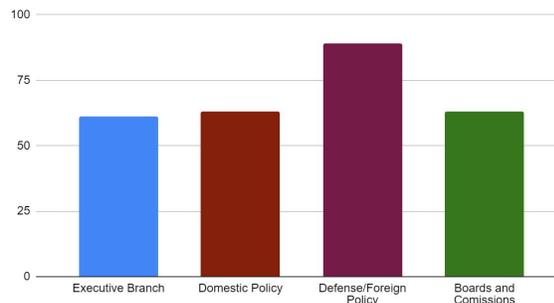
growth and the rates of Orders issued. Unfortunately, Mayer’s research did not go over the GDP variable in its analysis.

### *VIII: Substance of the Orders*

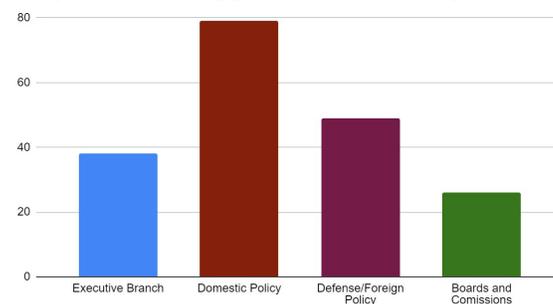
Bush Jr. Entire Presidency



Obama Entire Presidency

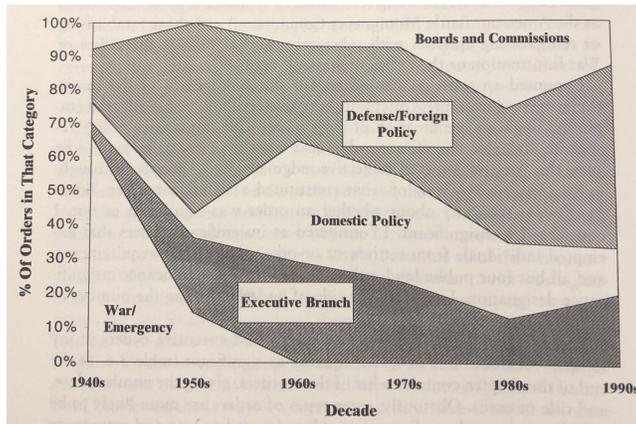


Trump Entire Presidency (Until October 20th, 2020)



There does not appear to be a strong commonality among Bush Jr., and Trump when it comes to the substance of their Orders. As previously discussed, this section was broken down into four categories: Executive Branch, Domestic Policy, Foreign Policy, and Boards & Commissions. The number one category for Bush Jr. was the Executive Branch, for Obama it was Foreign Policy, whereas for Trump it was Domestic Policy. None of the President’s number one category was Boards and Commissions. The Boards and Commission and Executive Order categories are mostly just uncontroversial Orders having to do with the “routine” business of the President. However, it is with the Domestic and Foreign Policy Orders where there starts to be some visible partisanship and/or attempts to “create” legislation. Generally speaking, most of

Trump's Domestic Policy Orders were related to Covid-19 policy whereas most of Obama's Foreign Policy Orders were related to the foreign entanglements that were centered around the Middle East during his administration.



Mayer offers the above chart which covers the nature of the Orders in his dataset (Mayer, 86). Just prior to the beginning of the current dataset, it shows an increase in the amount of Foreign Policy and Executive Branch related Orders, as well as a decrease in the Boards and Commissions and Domestic Policy related Orders. As seen in the current dataset's charts, Mayer's trends would go on to continue until at least Bush Jr.'s terms in office. During his Presidency, the Executive Branch and Foreign Policy Orders were numbers one and two respectively. However, the trends shifted during Obama's Presidency: Foreign Policy took a big lead with the other three being roughly tied. And then during Trump's Presidency the Domestic Policy category would spike to number one likely due to Covid as discussed earlier.

### **Summary of Major Findings**

The research model attempted to test numerous hypotheses but unfortunately not all of them resulted in a conclusive finding either way. In spite of this, the research does offer some significant findings which allow for a better understanding of the current era of 2000-2020. One such finding is that Orders were nearly twice as commonly issued during the previous era of

1936-1999. This would imply that something must have changed in the political landscape between the eras. Perhaps such change was simply that war related Orders became nearly non-existent in the current era (hence they were not given their own category in the collection of the current dataset). This can be compared to the previous era in which they were much more common and contributed greatly to the overall total especially during its several global conflicts.

The current dataset also strongly indicated that Presidents issue more Orders during their first year in office as well as in their last month in office. Both of these are likely done as a means to begin and end their impressions on the Executive office. When a new President takes office, Orders may be used to enact certain campaign promises right away. That is of course as long as they have the legal authority to do so. This can often manifest itself in Orders relating to the operation of the Executive Branch since that precisely what the President has the most unilateral legal authority over. It can of course be much harder for Presidents to use Orders to enact a broader domestic policy. To get around this, Presidents can issue Orders which essentially direct various Executive Branch departments to act in a certain new way as a means to provide a “model” or “goal” for the rest of the country. The data showed a clear spike in Order frequency during a President’s last month in office. This is likely due to the idea that President’s want to cement their legacy when about to leave office. One means of doing this would be to issue Orders trying to commit their successors to a certain policy which the successor might not like. Additionally, if an outgoing President wanted to simply be spiteful towards their successor then they could issue Orders that make the overall job of the next President more difficult.

Another key finding of the research was that Presidents in the current era issued more Orders during the election years in which they were running for reelection. Perhaps this has been done as a means to keep the electorate’s attention on what the President is “actively doing”.

Issuing Orders can be the quickest way for a President to “get the job done” as compared to going through the more arduous legislative process and all the checks and balances it entails. Thus, if a President wants to entice the voting public with something in a fast manner they could issue an Order accomplishing something to do just that. However, Presidents are obviously limited in the scope of their Orders and can only do so much to court the public through them.

It was interesting to see how the relationship between Order frequency and approval ratings flipped between Mayer’s era and the current one. During that era, it can be speculated that the reason the President issued more Orders even when less popular was precisely because they were a last resort which could be turned to in the face of public opposition. This can be easily compared to the finding during Mayer’s era which showed Presidents issued more Orders during divided government: during both instances Presidents may have used Orders precisely to get around their obstacles.

However, during the current era research showed that less popular Presidents issued *less* Orders than the average for the era. This may potentially be explained by the idea that Presidents in the current era are simply more “afraid” of acting without a certain level of approval from the public. The media and journalism landscape of the country has shifted dramatically from Mayer’s era to the current one which likely has given more power behind low approval ratings to put a President in “check”. This concept is somewhat similar to the mixed findings of the research concerning the relationship between divided government and the *current* era. The research showed that President Clinton, Bush Jr. (for one of his divided government periods only), as well as Obama all issued fewer Orders during their divided governments than in their unified governments. It can be speculated that this is due to the relationship between the opposing Congress and those Presidents. Perhaps those Presidents were simply afraid of acting in

a way that would provoke Congress and thus issued less Orders all together during their divided governments.

One final finding of note was that there did not appear to be any strong relationship between GDP change and Order frequency. Its scatter plot was just that; very scattered. The substantive trends appear to have continued for a short period from Mayer's era into the current one and have since moved more towards a dominance of Domestic Policy related Orders.

All of these key findings combined offer a mix of support to the "Strategic" and "Non-Strategic" models. On the one hand the research implied support for the "Strategic" model when it came to how Presidents issued more Orders during their first year, during their last month, and when they are more popular. However, support for the "Non-Strategic Model" comes from the fact that some of the current dataset's Presidents issued more Orders during their unified government than in their divided one. Overall, it can be said that nuance is required when discussing how Orders are used. It is important to remember from this research that the way in which Presidents use Orders can align with *both* of the commonly held models of use.

### **Conclusion**

The research and data presented herein can hopefully be used as a resource in a similar manner to how Mayer's research was utilized in order to summarize the previous era. The importance of such research in general should not be underestimated. It allows us to better understand the nature of power and its manifestations for political purposes. This is precisely why Executive Order research is so imperative: it helps us better understand the motivations behind such unilateralism and when it can become more frequent. Mayer's research on the era of 1936-1999 clearly established how Orders are so closely tied to partisan factors. As shown, the current research demonstrates how the very same partisan factors have bled into the twenty first

century. Such study of these motivations can help us not only better understand the past, but also make qualified predictions concerning the future.

The research conducted on the current era is critical because it serves to bring up to date the previous comprehensive research done by Mayer on the era of 1936-1999. Since the end of Mayer's era there has unfortunately not been any major statistical analyses done in a similar manner; that is precisely where this research comes into the puzzle. However, not all of the necessary pieces can be put together to give an *absolute* understanding of the past and potential for the future. This research falls short in a couple unavoidable ways. It does not have personal access to the Presidents in order to ask them about their own specific motivations when and why they issued the Orders. Additionally, the presence of Trump as an outlier in some of the variable analysis may serve to give a misleading image concerning the future. President Trump has greatly disturbed the political status quo on almost all dimensions, and his use of Executive Orders is certainly no exception. For example, he issued the most Orders out of all the Presidents in the current era while also having one of the lowest approval ratings.

Perhaps Trump has changed the nature of Executive Orders as an institution so much that a "return to normalcy" is questionable. It may also be speculated that in the coming administrations we may see a spike in Order frequency which can take the average back to where it was in Mayer's era; nearly six per month as compared to the slightly more than three the current era has. Additionally, incoming President Joe Biden may begin issuing a very high rate of Orders as a means of "getting around" the gridlock he is likely going to experience in Congress (assuming the Republicans hold the Senate). After all, he has campaigned on removing Trumpian "stains" on the office and therefore may use Orders to "fix" what he perceives to have been "broken" in the Executive Branch.

Sadly, public awareness of Executive Orders and how they are used will likely remain relatively low due to the lack of sensationalism currently surrounding the topic. This reality is likely why research into the field has not exactly been bustling in the past as well as why one has likely not watched much discussion of Orders on television news. As always, the future holds potential for change in both the way Orders are used and in how they are perceived by the public. Before we can speculate on how the next President will use Orders we must be able to hear conclusively from the Electoral College on who exactly that is. With legal challenges still ongoing, the future on this front currently appears up in the air. Therefore, anyone reading this post-publication will undoubtedly have the very enviable position of hindsight.

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