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A THEORY OF CONDITIONAL PARTY OPPOSITION

by

Samuel Nelson

A thesis submitted in partial fulfillment  
of the requirements for the degree

of

MASTER OF ARTS

in

POLITICAL SCIENCE

Approved:

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Logan, Utah

2024

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## ABSTRACT

## A Theory of Conditional Party Opposition

by

Samuel Nelson, Master of Arts

Utah State University, 2024

Major Professor: Dr. Robert Ross  
Department: Political Science

Is the United States as secure from tyranny as we are apt to believe? Owing to the vague nature of Article II, the true extent of executive power is unknown. This taps into a historically deep-rooted fear of strong and unchecked leaders. Scholars have traditionally argued in favor of the separation of powers as a means to stop executive power. However, most scholarship in favor of the Madisonian separation of powers ignores the role that political parties play. When politicians are loyal to their party rather than their branch of government, the Madisonian separation of powers fails to work as intended. While parties are the problem, they may also be the solution.

I argue for a Theory of Conditional Party Opposition. This theory teaches that legitimate parties can act as a check on each other when they are constitutional, responsible, and effective. When parties meet these three requirements, and when policy is salient, parties become a new separation of powers. Without the necessary conditions met, parties will not be an effective check. I test this through a developmental approach of six different presidencies to examine how parties operate over time. I find that under necessary

conditions, parties act as a new separation of powers.

(65 pages)

## PUBLIC ABSTRACT

### A Theory of Conditional Party Opposition

Samuel Nelson

This paper takes a critical look at executive power in the United States. Recent years have shown an increase of executive power that many people including: scholars, media, and the public have become skeptical of. The new norm has been for the executive to bypass Congress in order to accomplish policy goals. Traditionally the separation of powers between the executive, legislative, and judicial branches has been the remedy to executive power. This thesis, however, argues that scholarship has largely ignored the role of political parties in government. Due to this, scholarship has misunderstood the role parties play in the separation of powers. The inter branch dynamics of “ambition counteracting ambition” became replaced by competition between political parties and loyalty to political office was replaced by loyalty to political party. In turn, this causes the structural separation of powers to fail when the government is unified.

I argue that parties can serve as a solution to expanding executive power by creating a new separation of powers based on party opposition. The Theory of Conditional Party Opposition argues that under necessary conditions, parties create a strong division in government that prohibits the executive from expanding their powers. I test this by examining six different presidencies on the issue of immigration. I find that under certain conditions of party opposition

and when an issue itself is salient, parties become a new separation of powers and subsequently stop executive power.

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Samuel Nelson



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## INTRODUCTION

Is the United States as secure from tyranny as we are apt to believe? Or is the President of the United States closer to a prince than a leader elected by the people and for the people? Is there truly a difference between a monarch and a president when executive power is exercised to both create and execute law? The American public has always been cautious of strong government, especially strong leaders and since 1776 Americans have feared government encroachment. With the events of the Revolutionary war and King George III fresh in the minds of the founding fathers, the creation of the constitution sought to limit the office of president. However, the founding fathers also recognized the need for an energetic executive as written by Hamilton in Federalist 70. In American constitutionalism there has always been an inherent tension between constitutionality and executive power due to the ambiguous language of executive power in Article II's vesting clause. Constitutionalism teaches adherence to the founding document, with particular emphasis on the structural separation of powers. Article II, however, vests executive power in a president, and does so without a list of specific powers leaving room for substantial interpretation. With room for interpretation, executive power has grown over the past 30 years with particular emphasis in foreign policy (Sulmasy 2009). Blurring the line between executive and legislator taps into a historically deep-rooted fear: unchecked strong leaders (Rosenberg 1971).

Two recent examples include the War on Terror and the Vietnam War, where executive power was used to send troops into combat without official declarations of war. After the events of 9/11, President George W. Bush launched the "War on Terror" that

has lasted for over twenty years. Yet at the heart of the debate is the question on how a United States President authorized war without Congressional approval? Article I of the Constitution grants the ability to declare war specifically with Congress not the President. Other questions of executive power such as the ability to implement executive orders have also been called into question. There are many examples where the limits of executive power are unknown causing both scholars and the public to fear what comes next.

The traditional manner in which scholars have sought to remedy the issue of executive power has been through the traditional Madisonian conception of the separation of powers. This thesis, however, argues that the Madisonian separation of powers fails to adequately check executive power. The competition that should be situated between branches has now become situated between political parties. I argue that political parties, under certain and necessary conditions, can act as a new separation of powers.

### **Views on Executive Power**

Owing to the vague nature of Article II, executive power has been the subject of much debate across history and continues today. Article II of the Constitution is very vague in powers both given and prohibited to the executive office. This has caused many presidents to push the boundaries of their power such as President Lincoln's suspension of Habeas Corpus during the Civil War. A comparison between Article II and Article I of the constitution demonstrates a difference in clarity between the office of President and Congress. Article I gives clear and enumerated powers to Congress and sets limits for that power whereas the phrase "executive power" given in Article I is unclear as to what

actually constitutes executive power. Article II, therefore, creates a fear of strong unchecked leaders who have the ability to infringe upon the rights of American citizens. This has created a divide among scholars over the promise or peril of executive power. The current literature is broken up into two general areas of thought: Executive power is dangerous and should be approached with caution or, executive power is necessary and was created with the intent to give large amounts of power to a president.

Scholars, fearful of executive power, worry that the executive power will move beyond the constitution and end in tyranny (Mansfield 1989). Rooted in political philosophy, the origins of the executive are found in political theorists such as Machiavelli, Hobbes, and Locke which for some scholars is alarming (Mansfield 1989). With origins in the aforementioned theorists, the principal fear is that the executive is no longer beholden to the people, rather a tyrannical monarch ready to rule. The vague nature of Article II promotes a Prince or Leviathan rather than a duly elected president. The unclear language about executive power in the constitution creates unclear boundaries for exercising executive power while in office. Scholars have even called the office of the executive “the most dangerous” of all the branches (Paulsen 1994). This is due to the unique powers a president has such as the ability to exercise force, will, and judgment (Paulsen 1994). Furthermore, the president also influences legislation while sometimes creating legislation themselves, controls the military, and executes the laws. Altogether, executive power presents a formidable and unclear force when compared to the other branches of government and their limited and outlined constitutional power.

Not all scholars are so fearful of executive power, some even advocate for stronger executive power. The unitary executive theory is one example of scholarship

dedicated to stronger executive power and first garnered attention during the Bush administration (Kelley & Barilleaux 2010; Rozell & Sollenberger 2017). This theory purports that all executive powers are centered on the president and subsequently subject to the executive's control and command (Kelley & Barilleaux 2010). The unitary executive is often synonymous with the discussion of war powers and national security. The unitary executive theory is not without pushback as some scholars argue that the president has usurped Congress in the ability to commit the United States armed forces to international combat (Ogul 1996). However, the defense of the unitary executive centers on the president's ability to defend the United States during times of national security. According to one proponent of the unitary executive, John Yoo, "the original understanding of the war powers is fully reflected in the constitution" (Yoo 2019). In other words, executive power is built into the constitution rather than being something to be feared. Despite national security, fear exists that "the unitary executive model [becomes] a convenient framework to justify constitutional and legal violations" (Fisher 2010). A slippery slope argument is created: The more power a president has in one realm of policy area, the more they will eventually have in the others. The distinction between implied and inherent presidential powers either at the foreign or domestic level, become blurred leading to what can potentially be abuse of power while in office (Fisher 2010).

Executive power can be exercised in a variety of different ways, but one of the most prominent ways is through executive orders. Presidents have used executive orders to make policy choices, determine how legislation is implemented, and to take whatever action is permitted within their statutory authority (Mayer 2001). Almost every president

has issued an executive order while in office, beginning with President Washington. Shortly after ratification, President Washington's proclamation of neutrality tested the early bounds of executive power granted by the constitution. The proclamation, declaring that the United States would not join any European war, was given by Washington to protect the United States from being lured into another war. President Washington's "proclamation of neutrality was the opening volley in a battle for public opinion" (Young 2011). The debate largely focused on the constitutionality of Washington's decision to issue the proclamation or whether it should have been left to Congress. Although the term executive order would be coined later, Washington's proclamation of neutrality directed foreign policy in the likeness of an executive order and sparked an outrage among some Americans (Gaziano 2001). Beginning with Washington and through the next 112 years, only 1,262 executive orders were issued, averaging about 12 per year (Statista 2023). The beginning of the twentieth century, however, marks a significant increase in executive orders with President Franklin D. Roosevelt signing 3,721 executive orders and greatly increasing the scope of presidential power (Statista 2023). And recent years have seen another large increase in executive orders, post 9/11, and continuing with the War on Terror. This sharp increase in executive orders has led many to fear unchecked presidential power. While executive power is not only limited to executive orders, executive orders have acted as a way many presidents have chosen to "get things done" while in office. The use of executive orders has always been controversial due to the blurred lines between executive and legislator.



## Checks on Executive Power

To remedy the issue of executive power, scholars have traditionally turned to the separation of powers. When the Constitution of the United States was first written, Madison envisioned a separation of powers that would be “so contriv[ed]” “as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places” (Federalist 51). To this day, the idea of self-sustaining political competition is frequently portrayed as the unique genius of the United States and the basis for the success of American democracy (Levinson & Pildes 2006). Madison famously says “ambition must be made to counteract ambition” (Federalist 51). Madison hoped that constitutional rights of each branch would be motivation for politicians to keep each other in check. In theory, both federal courts and Congress have the ability to check executive power. Scholars remain divided, however, as to which branch does a better job checking executive power.

There are both positive and negative views towards the ability of federal courts to check executive power. Though few, scholars inclined towards federal courts find that judicial review does a good job checking executive power (Adelman & Glicksman 2020). Judicial review “helps to moderate executive policy towards centrist positions consistent with statutory mandates” (Yates & Whitford 1998). Other scholars argue that courts do a good job at checking executive power at the domestic level but not the foreign policy level (Ducat & Dudley 1989; Yates & Whitford 1998). The justification for foreign policy arises from issues of national security where executive power is necessary.

Not all scholars, however, view federal courts as an adequate check on executive power. Since the inception of the constitution, courts have always been questioned as to

their actual capacity and influence as an institution, including in the context of separated powers. As Hamilton writes, the judiciary “has no influence over either the sword or the purse” and that the courts have neither force nor will only judgment which ultimately depends “upon the aid of the executive arm” (Federalist 78). This is exacerbated in contemporary times where party loyalty runs strong. Current scholarship is divided showing how judges frequently vote more in congruence with the president who appointed them (Epstein & Posner 2016). Moreover, other case studies found that judicial ideology affected the outcome of cases in less than 5% of appellate cases (Adelman & Glicksman 2020). Furthermore, Issues like court packing also arise and potentially ruin judicial independence (Holgado & Urribarri 2023).

It is also argued that courts lack the will to rule against other branches of government. In *Dellums V. Bush 1990* a federal judge refused to render an opinion saying: “it would be both premature and presumption for the court to render a decision on the issue of whether a declaration of war is required a this time or in the near future when the Congress itself has provided no indication whether it deems such a declaration either necessary, on the one hand, or imprudent, on the other” (Dellums v Bush 1990). The lack of will to rule has caused scholars to question the courts attitude towards involving themselves in cases of horizontal power distribution (Koh 1991; Harriger 2011). Critics of the court also argue that as long as executive power is in need of judicial rationalization, the Supreme Court will become an enabler rather than a questioner (Kleinerman 2009).

If not courts, scholarship turns to Congress to check executive power. Those in favor of Congress watching over executive power argue that legislative elites can and

will check executive power (Kleinerman 2007). “Legislators have the means by which to signal the people that their constitution has been breached when executives seek to do too many things that are constitutionally not their province” (Kleinerman 2007). The basis for legislative elites is situated in a belief that public opinion will ultimately be the check on executive power. Congress is supposed to possess not only the political will but the institutional capacity to check expanding executive power (Bolton & Thrower 2021). Others reasons that Congress has done an adequate job is through the statutes of APA or Administrative Procedure Act that effectively creates checks on the exercise of power by the executive (Peterson 2018).

Scholarship in favor of Congress often ignores the role that political parties play. Interbranch dynamics have changed with the rise of political parties and have subsequently created strong loyalties to party over office. Under a unified government, Congress lacks the will power to check the office of the executive (Levinson & Pildes 2017). “Government institutions do not have wills or interests of their own; their behavior is a product of the wills or interests that motivate the individual officials who compose them” it is safe to assume that political parties ruin Congress's ability to remain separated from the executive branch (Levins & Pildes 2317). Therefore, if Congress is to check executive power, it could only exist under a divided government. A divided government is never a guarantee, which means there is not always a sure way for Congress to check executive power.

Both Congress and the courts seem to be insufficient in their ability to check executive power. Courts often lack the will to do anything and prefer to adjudicate on issues involving individual rights rather than questions of horizontal power abuse.

Congress relies on the chance that the government will be divided. In summary, the current literature is broken up into two general areas of thought: Executive power is dangerous and should be checked and executive power is necessary. The former has extensively examined the role the structural separation of powers has played in checking executive power. Primarily arguing that courts or Congress are the powers necessary to check executive power. The latter advocates for a strong unitary executive. This thesis contributes to the discussion by showcasing the failures of the separation of powers and the necessity of examining political parties and their role in potentially checking executive power.

### **The Role of Political Parties**

The conventional solutions to executive power have always been the separation of powers as argued by Madison in Federalist 51. However, Madison did not anticipate the eschewing of constitutional rights for party unity. And although there has been considerable research on political parties, little to none has examined political parties as a possible solution to the problems in the original separation of powers. The work that has been done has argued that political parties can create a divided government that checks other branches of government (Levinson and Pildes 2006). Why is this? Because the political competition envisioned by Madison quickly developed into competition between political parties. The inter branch dynamics of “ambition counteracting ambition” became replaced by competition between political parties and loyalty to political office was replaced by loyalty to political party. In turn, this causes the structural separation of powers to fail when the government is unified. When political parties only have loyalty to

each other, there is no reason why any party would oppose themselves under a unified government. “When a government is unified... the engine of party competition is removed [and] we should expect interbranch competition to dissipate” (Levinson & Pildes 2006). However, a divided government provides a chance for power to be checked. When a government is divided, “party lines track branch lines” and the expectation is to see the competition between parties become channeled through the branches themselves. (Levinson & Pildes 2006). This has led some scholars to the conclusion that political competition has become organized around political parties, not branches. “If the goal is a system of separation of powers that resembles the one Madison and subsequent generations of constitutional theorists imagined, it will have to be built not around branches but around the institutions through which political competition is in fact organized in modern democracies: political parties” (Levinson & Pildes 2006).

With competition situated between political parties rather than the branches of government, the separation of powers fails to work as Madison intended. To resolve this issue would require either the abolishment of political parties as a whole or for parties to behave differently. Neither of those, however, are likely to happen. Instead, parties have become a necessary part of government for all their faults (Hofstadter 1969). The question presents itself, does separation of powers still work as a check on the executive, or do political parties represent a new separation of powers that can adequately check executive power?

## THEORY

### **Theory of Conditional Party Opposition**

Political parties have become an important and necessary part of government (Hofstadter 1969). Parties play a crucial role in the establishment and function of a democracy (Dalton et.al 2011). While parties, or “factions” as Madison calls them in Federalist 10, were not originally designed to be a part of the separation of powers, they have now evolved to play an important role in checking against encroachments of power. I argue for a Theory of Conditional Party Opposition. This theory argues that legitimate parties can act as a check on each other when they are constitutional, responsible, and effective. When parties meet these three requirements, and when policy is salient, parties become a new separation of powers. Without the necessary conditions met, parties will not be an effective check.

Party opposition differs in context from nation to nation, but in the context of the United States it refers to the two major political parties, Republican and Democrat, and their back-and-forth power struggle to gain office (Elkins 1974). The two party and winner take all system that encapsulates American politics dictates that parties compete to hold office. Political parties are in a constant state of competition or opposition in order to get into office because only one party can emerge victorious. In the case of the executive office, whichever party is in office has power over the entire executive branch for four years, therefore there is a strong motivation among political parties to win office.

Not all parties are legitimate enough to be competitive, but the ones who are meet three important criteria. Legitimate parties are: constitutional, responsible, and effective

(Hofstadter 1969). A constitutional party is bound by some sort of constitutional consensus. When parties oppose each other, they are not opposing the government or constitution itself. Rather the animosity is targeted towards the opposing party and their policies. Parties are responsible when an actual alternative government is possible. Responsible parties promise to provide a better path forward than the previous party has done. And parties are effective not only when they have real alternative policy, but the capability to win office and the public or institutional force to show that sooner or later they will in fact take office (Hofstadter 1969). Under these three conditions, parties can have an actual effect in the real world, such as checking executive power. If opposition does not meet these three requirements, they do not qualify as a legitimate opposing party and therefore will not be able to act as a real force while either in or out of office.

Perhaps the most crucial of the three requirements is a party's ability to be effective. More specifically, the ability to produce or have the threat of, real alternative policy in the form of change. "Elections should involve competition between parties that offer divergent policy visions so that voters have meaningful electoral choices" Without such policy divergence, electors have little opportunity to influence government policies through their votes" (Adams 2001). In other words, the provision of alternative policy choices creates a meaningful check on parties while in office. This is because no one party has the ability to completely overrule their opposition or the constitution while in government.

However, the ability to change and implement policy is not enough to create barriers. Policy changes only occur under certain conditions and policy needs to be salient in order to be effective at creating division (Aldrich 1995). Saliency is a necessary

public condition because it forces parties to take sides. Parties are motivated to be in office and therefore cater to public opinion on certain issues in order to be reelected. The condition of salience creates a divided government whereas the alternative is a unified government where there is no separation of powers. Only under a divided government does the separation of powers work to stop threats of encroaching executive power. Underneath this assumption is the premise that: First, politicians desire to expand their power. Second, both political parties share an adherence to the constitution. And third, adherence to the constitution is largely due to American public ideology which strongly advocates for constitutionalism. Otherwise “when an administration makes little attempt to work with the other institutions of our government... Congress, the courts, and the public listen carefully, and worry” (Goldsmith 2007). There is tension between parties when issues are salient. Salience means that one party cannot simply trample the other in pursuit of their interests.

For example, the unification or division of government can drastically affect the ability for policy to be passed in the United States. “Legislation requires the formation of majorities on the floor in each chamber to pass bills to the president to sign” (Aldrich 1995). This being the case, means that parties unify or oppose each other to block or pass bills. This is often the case as parties generally oppose each other's legislation causing gridlock to occur in Congress. Seldom, however, do scholars see “overwhelming electoral success, pent up demand for new initiatives, and presidential leadership... When they do, internal structures cannot block this strong a partisan majority from working its will” (Aldrich 1995). In other words, rarely do political parties unify to pass legislation, but are more often at odds with each other creating gridlock within Congress.



This thesis contributes to a greater understanding of conditions necessary to check executive power. The Theory of Conditional Party Opposition is a new way to examine the problem of separation of powers. The theory is useful because it shows both the virtue and vice that political parties can have in politics. Only under certain conditions do political parties become a realistic check on executive power. Without the necessary conditions, parties can continue to be a vice. I expect that when parties meet the three necessary conditions of legitimacy combined with a salient issue, a divided government will form sufficient to stop executive power. If this is the case, then parties through their opposition can and will act as a new separation of powers.

## RESEARCH DESIGN

### Measurements

This section outlines the research methodology, measurements, justifications, and definitions necessary to carry out an analysis of the Theory of Conditional Party Opposition. Section A addresses the research methodology. Section B gives important definitions key to understanding the argument moving forward. Section C highlights the actual measurements employed to test the theory of party competition. Section D defines the scope and justification of the argument.

#### A. Research Methodology

To measure party competition this thesis employs a developmental approach to examine how political parties operate over time. American political development or APD aims to study politics through history and rests on the theoretical precept that "because a polity in all its different parts is constructed historically, over time, the nature and prospects of any single part will be best understood within the long course of political formation" (Orren & Skowronek 2004). APD also aims to measure politics before, during, and after a "durable shift in power" (Orren & Skowronek 2004). To accomplish these needs, this thesis measures over a 40-year period of time in which the "durable shift in power" is the emergence of immigration as a salient issue. Choosing to measure when a policy becomes salient, is similar to seeing how power shifts in politics. To understand whether or not parties are or can be considered an effective alternative to traditional Madisonian style government, party behavior and rhetoric must be examined over the course of time and before and after a durable shift in power.

## B. Definitions

The term political party has been mentioned multiple times, but what defines a political party? Beyond meeting the necessary conditions for legitimacy, a political party is typically broken into three parts: Party in government, party in electorate, and party organization. Political parties in government are groups of individuals “seeking to control the governing apparatus by gaining office in a duly constituted election” (Downs 1957). Parties in the electorate represent diverse groups of peoples and interests who organize at the government and aggregate level (Lewis 2019). And party organizations are generally coalitions of groups with intense preferences on issues (Lewis 2019). While political parties are broken into these three distinct parts this thesis defines and limits the scope of political parties to mean: party in government.

To understand how political parties interact with each other in the context of divided government, the office of President is perhaps the narrowest and yet broadest way to do this. Rather than expand the scope to include every politician in office, narrowing the scope to a singular person representative of the party as a whole allows for an easier analysis and avoids being pulled into Congress.

Presidents are generally seen as the “head” of their political party. Clinton Rossiter in *American Presidency* describes 10 functions performed by the president, one of which is “chief of his [political] party” (Rossiter 1956). And although George Washington nor John Adams could have comprehended the office of president as head of a political party, it soon became apparent the need for the presidency to function as leadership for political parties (Rosenberg 1971). Political parties need leadership to be meaningful to voters and spokesmen to clarify and translate issues and “for the party in

power only the President can perform this function” (Rosenberg 1971). This means that no party member is motivated to act against the president when both belong to the same political party. Why? One explanation is that presidential endorsements for re-election are important and diverging from your party is political suicide. The occasional divergence can be explained as such: when a president's abuse of power now jeopardizes the party's reelection prospects in the future, the party may act against that President. This however is more rare than common and as witnessed by the Trump administration, political parties rarely persecute their own. No Republican, save for a few, are willing to denounce Trump for fear of losing their status within the political party, and with Republican voters. Trump is the only president to have been impeached twice and despite this continue to garner heavy support from the Republican party.

Presidents represent the political party as a whole because they are forced to conform to one of two political parties in order to gain candidacy. Through their representation of a political party, they advocate not only on behalf of their own views and interests, but more often, the interests, views, and desires of their political party. Thus, when looking at the President, their behavior and rhetoric, it reveals a broader scope of political party interests.

Presidents constitute a good platform to measure the theory of party competition because the expectation is that the will and desire of political parties are manifested into one person, who has the backing of the political party. Because of this, elections and transitions of power serve as a microscale that this thesis aims to study. The competitive nature of elections shows the competitive nature of political parties since only one party can hold the office of executive at a time. The President represents how political parties

choose to operate and be viewed by the world. And due to the vague nature of Article II, it is easier to see how political parties choose to interpret and use executive power while in office. Do political parties interpret the constitution differently before and after office? This is one of the questions this thesis aims to answer. Moving forward, political parties are represented by the President of the United States. Those terms Moving forward, however, the phrases political parties and President become synonymous since Presidents represent political parties.

### **C. Measuring Party Opposition**

There are many ways to measure legitimate parties. This thesis only employs one of many ways to measure party opposition. To measure how political parties operate and change over time, this thesis employs an analysis of political party rhetoric and behavior, as well as looking at the periods of unified or divided government. The expectation is that parties will use rhetoric in order to qualify themselves to the three necessary conditions of legitimate parties. Rhetoric is a powerful tool for parties to use while out of power. Rhetoric is defined as persuasive speech for an intended audience. Rhetoric allows parties to be constitutional, responsible, and effective under the three necessary conditions. Language is a useful tool to identify thoughts, ideas, and ideology that is otherwise impossible to know. In addition, speech is not only a means of communication but is also weaponized in politics. Speech has been used in politics since the earliest of times to identify with or target specific groups of people. From Socrates' Apology to Lincoln's Gettysburg Address, speech is an integral part of politics. In American politics, Presidents have used speech to communicate and appeal to the American public. "Since the presidencies of Theodore Roosevelt and Woodrow Wilson, popular or mass rhetoric

has become a principal tool of presidential government” (Tulis 1987). Rhetoric used by heads of political parties has one goal which is to sway the American people.

Political party behavior on the other hand is defined by action. Political action moves beyond the realm of abstract speech and language and has real and tangible consequences. Behavior results in real world consequences that take the shape of legislation, proclamations, elections etc. In the context of this study how the President behaves while in office, or in other words, chooses to use executive power is what defines behavior. While rhetoric and behavior can coincide, the primary difference is that speech exists in the abstract whereas behavior exists in the real world. The question is if political parties, through their behavior, actually contribute to a divided government in a meaningful enough way, as to create a new separation of powers.

## **I. Rhetoric**

Rhetoric or speech is an important part of politics. Political parties use rhetoric as a means to communicate to the public (Pancer et.al 1992). This is especially true once a president takes office. Rhetoric while in office becomes an informal power, allowing a president to sway public opinion (Windt 1986). From the announcement of presidential candidacy, Presidential candidates speak in ways that are designed to show forth their character and policy preferences (Benoit et.al 2008). Presidential candidates will say and do things that the American public wants to hear to legitimize their party so that they can be voted into office. Part of this is making promises of what they will or will not do while in office otherwise referred to as campaign promises. Rhetoric is useful because it allows an in depth look at the three necessary conditions for a legitimate party. Rhetoric can measure a party's constitutionalism, responsibility, and effectiveness. Rhetoric binds

parties to the constitution, is used to promise a better path forward, and to talk about real alternative policy.

I analyze a variety of different speeches that offer an insight into the language and ideas used by a Presidential candidate in an attempt to sway the American people. This thesis only looks at six successful presidential candidates and so for the remainder of this thesis, candidates will be referred to as “President” since they later took office. I examine a variety of different speeches seen in Table 1. Presidents give a plethora of speeches, on a variety of topics, but not all of them are relevant. To avoid selection bias, the speeches selected are chosen because they are defined as “major presidential speeches.” Major presidential speeches are defined as: live, nationally televised and broadcast addresses to the country (American Presidency Project). These speeches also generally cover a wide range of issues, ideas, and thoughts that attempt to paint a holistic view of the president. Speeches also include the General Election Debates between candidates. \*Table 1 also indicates “campaign speeches” this is representative of what is found as “pre-presidential” and “campaign documents” on the American Presidency Project website. APP phrases other major campaign speeches under this phrasing. The type and number of speeches vary per president, but the basis is the same. They are campaign speeches given before office.

The speeches are a chance for each political party to prop themselves up while potentially tearing down at the other. According to the Theory of Conditional Party Opposition, the expectation is for Presidents to use rhetoric to qualify themselves as a legitimate opposing force aimed at real change. This often comes across as rebuking the opposing party for constitutional abuses or failing the people of the United States and

instead promise to do something different once they are in office. \*Table 1 indicates “campaign speeches” this is representative of what is found as “pre-presidential” and “campaign documents” on the American Presidency Project website. APP phrases other major campaign speeches under this phrasing. The type and number of speeches vary per president, but the basis is the same. They are campaign speeches given before office.

The type of rhetoric examined consists of both explicit and implicit terms. For a divided government to work, parties need to be legitimate, and for parties to be legitimate, there needs to be legitimate rhetoric. Therefore, the type of rhetoric used will surround abuses of executive power that are deemed unconstitutional. The Explicit terms will look for keywords, considered trigger words, that are used in an attempt to signal the American people. These words are found in Table 2. The words are chosen because they are words that stand out and have the potential to stir up certain emotions in the American public. The implicit terms however are any inclination, hint, or theme about abuse of power by the opposing political party or the idea of limiting one’s own power while in office. The implicit categories include any of the following: The constitutionality of the opposing political party, expanding or decreasing executive power, and unilateral action in relation to Congressional action.

To sort through both implicit and explicit terms, a content analysis performed by hand with the help of the American Presidency Project. The APP contains the most comprehensive collection of resources pertaining to the American President. This includes every major speech given by a President, including campaign speeches and announcement of candidacy. This collection provides every speech or action necessary to the completion of this project. The specific speeches examined are outlined in section D.



The scope of this thesis is narrow enough that no software is necessary to sort through the data.

**Table 1**  
*Presidential Speeches*

Announcement of candidacy
Presidential nomination acceptance
*Campaign Speeches
National Convention speeches
General election debates
Inaugural address

**Table 2**  
*Key words*

Unconstitutional
Executive Order
Unilateral action
Bureaucracy/Agency
Power

## II. Behavior

Behavior defined quite literally, is the way in which a person conducts themselves. This thesis is interested in measuring how a President conducts themselves while in office comparative to their rhetoric beforehand. Behavior is an important measurement because it shows whether or not opposing parties can actually *act* as divisive force necessary to the separation of powers.

There are many actions a President can make while in office, but this thesis is interested in the unilateral action that a President takes. Unilateral action refers to the president's ability or capacity to act alone and without Congress otherwise known as executive power. Throughout history, presidents have “relied on their executive authority to make unilateral policy without interference from either Congress or the Courts” (Mayer 2001). And presidents have increasingly turned to unilateral action to accomplish their policy rather than through legislative means (Reeves & Rogowski 2018). Perhaps

the most common unilateral action is an executive order. “Presidents have used executive orders to make momentous policy choices, creating and abolishing executive branch agencies, reorganizing administrative and regulatory processes, determining how legislation is implemented, and taking whatever action is permitted within the boundaries of their constitution or statutory authority” (Mayer 2001). The increase of executive power through unilateral means has sparked debate across media, scholars, and the American public. The expectation should be that the rhetoric beforehand does not boast unilateral action but rather condemns it of the other political party.

To measure unilateral behavior this research examines executive orders, signing statements, proclamations, and memorandums. These behaviors constitute some of the many “devices presidents have developed” to work against an uncooperative Congress (Kelley et.al 2008). These executive actions help to define not only how a President acts while in office, but how they view their role as a leader. Executive orders, which have previously been addressed, showcase how a president chooses to enact policy among other things. Executive orders represent an important indicator of presidential influence because they carry the force of law and also because they can be implemented quickly and efficiently (Marshall & Pacelle 2005). Furthermore, because executive orders are “extra-legal” any executive order is by nature outside the law and has the potential to increase presidential powers or set the precedent to do so.

Another unilateral action used by presidents are signing statements. Signing statements are short documents issued alongside bills. These statements have been traditionally used as commentary on bills but have come under fire more recently after brief controversy in the Regan administration to supplement legislation and during the

Bush administration in 2005. President Bush issued a signing statement on the Detainee treatment Act and the interpretation of this statement suggests that, if necessary, president Bush would ignore this bill under certain requirements (Curtis et.al 2006). Scholarship finds that signing statements are used during periods of divided government to bypass a gridlocked Congress (Kelley et.al 2008).

Presidential proclamations have a similar effect and force of law as do executive orders. Proclamations are used to define situations that become law (Rottinghaus et.al 2007). Furthermore, presidential proclamations are aimed towards those outside the government whereas executive orders are traditionally for those inside the government. Proclamations are used as official determinations and are generally upheld because they are authorized by specific statute. Scholarship finds that proclamations are used in coordination with but largely independent from Congress (Rottinghaus et.al 2007).

Lastly, presidential memorandums exist as another effective unilateral tool for the creation and direction of policy (Cooper 2001). Memorandums have been used in a similar way to executive orders for the creation and implementation of policy. One difference, however, is that memorandums are often issued to direct administrative officials to do or not do something in executive agencies (Cooper 2001). The discussion of executive agencies is important in regards to the executive office. Max Weber in his essay "Bureaucracy" argues that forfeiture of policymaking to bureaucracy subverts the will of Congress and harms the policymaking process (Weber 1948). However, studying agencies as a means to increase executive power is beyond the scope of this research. There are simply too many agencies to examine, and where this paper is concerned with unilateral power, examining agencies takes away from political parties and moves

towards an administrative state. Instead, examining the use of executive orders or presidential memorandums bypasses the issue of a deep dive study on the administrative state while still accurately assessing how presidents use directives to expand executive power.

These executive actions are necessary to measure how parties act with salient issues. Furthermore, the behavior is necessary to compare and contrast with the rhetoric as a means to measure what parties say vs what they do. If political parties or divided government does act as a new separation of powers, then the behavior should reflect that. Behavior will also be examined on a more holistic level, looking at how their behavior aligns with a divided or unified government. APP provides data on the majority party in Congress and who held the office of president.

An important assumption throughout this section has been that unilateral action is discouraged or unacceptable. Scholarship indicates that unilateral presidents are viewed less favorably by the electorate (Reeves & Rogowski 2018). Therefore, presidents are motivated to not act unilaterally or risk or risk disfavor with the American public. Political parties often capitalize on this knowledge and call out each other for increases in executive power or unilateral action, knowing how that might affect the electorate in the next election.

#### **D. Case Study and Scope of Argument**

The question at hand is whether a divided government under political parties is sufficient to act as a new separation of powers? To answer this question, I employ a developmental approach designed to compare and contrast both the party's rhetoric and behavior during different points in time. The expectation is that legitimate opposing

political parties will act as a sufficient means to safeguard the separation of powers. When legitimate parties meet a salient issue, the conditions are ripe for a balance of power. To test the Theory of Conditional Party Opposition this thesis examines six different presidencies and uses immigration policy to track how presidents use their power while in office and to showcase how an issue changes over time.

Understanding how political parties operate requires time, time to examine how a political party develops while in office. To study this, former Presidents Ronald Reagan, George. H.W. Bush, William Clinton, George W. Bush, Barack Obama, and Donald Trump are chosen. These Presidents are chosen not only because they are divided politically themselves but because they served during periods of divided government. For at least one term, Congress was either divided or controlled by the opposing political party (American Presidency Project). Generally, scholarship only examines presidents who served a full two terms (Lewis 2019). Every president but George H.W. Bush and Donald Trump have served two terms. I include George H.W. Bush and Donald Trump however, to take congruent look at rhetoric and behavior regarding immigration as it changes over time. It also allows future scholars to look at any differences that may occur between one term or two term presidencies, in rhetoric and behavior, though that is not explored explicitly in this thesis. Lastly, these presidents represent a mix of both older and newer presidencies with a total span of 40 years in office. This is a sufficient amount of time for this thesis to see how political parties develop and how policy can change as well.

Each presidency as previously stated has two separate inquiries. The first examines the President's use of rhetoric. Illustrated in Table 3 is the period of time

measured for rhetoric. Measurement begins with the announcement of candidacy or closest to and ends with the first inaugural address. The inaugural address acts as the capstone of their campaign, the last speech a President gives before going into office. This time period encapsulates the pre presidential period.

The second inquiry is designed to examine a President's behavior while in office. There are many different policy areas to judge how and where a President uses executive action. This thesis is concerned with executive action related to immigration. Presidents often issue many different executive actions that can span across many different policy areas both foreign and domestic. The choice of immigration represents an important domestic issue that is controversial between the two political parties. Executive action taken on issues related to foreign policy are often more excusable in the eye of the public and media, although not always (Goldsmith 2007). Generally speaking, however, unilateral action taken on issues of foreign policy is often excused under the guise of “national security” (Yoo 2005). Unilateral action related to domestic affairs, on the other hand, is much more controversial. Domestic unilateral action represents a president that is growing in power (Hebe 1972). And this growth of power is largely looked down upon by the American public (Reeves & Rogowski 2018).

There exist many different domestic policy options, immigration is chosen for a variety of reasons. First, the time span of 1981 to 2020 shows changes in the salience of immigration. This is useful to show how parties act when policy is and is not salient. Second, immigration is an issue that should be dealt with in large part by Congress not the president. Therefore, this thesis can closely examine executive action related to immigration as outside the norm. Immigration policy or reform requires law and

Congress is charged to make the necessary law not the President (Griswold 2010). And third, immigration is an important domestic issue dating back to the late 1800's (Jaret 1999). Immigration is expansive enough to cover a wide range of time subject to a variety of different opinions and actions. Immigration is a national issue with steeply divided party lines and has been subject to executive action across presidencies. Executive action on immigration allows behavior to be seen that is contrary to rhetoric spoken before office. On the broader scale, if president's exercise executive action on immigration, then the question should become "where else is unilateral action used in domestic politics?" Or to put more broadly "where is the separation of powers?" Any executive order, signing statements, proclamation, or memorandum related to immigration is examined and contrasted with previous rhetoric. To clarify, it is not necessary to examine speeches related to immigration, although they may mention the issue. Immigration is simply one way to measure domestic action a President is willing to take. The speeches are concerned with broad themes about how a President will use their power and immigration is one context of many where that is put to the test.

**Table 3**

*Presidential candidacy announcements to first inaugural address*

Ronald Reagan	George H.W. Bush	William Clinton	George W. Bush	Barrack Obama	Donald Trump
Nov 13, 1979-Jan 20, 1981	Aug 18, 1988-Jan 20, 1989	Oct 3, 1991-Jan 20, 1993	June 12, 1999-Jan 20, 2001	Feb 10, 2007-Jan 20, 2009	June 16, 2016-Jan 20, 2017

## RESULTS

I begin by examining the rhetoric of each president followed by their behavior while in office. Figures 1-6 are the highlights of both rhetoric and behavior. Each figure demonstrates the strongest rhetoric or the biggest behavior from all examined speeches and behavior. Figure 7 indicates a divided or unified government corresponding to each president. A more detailed discussion of the results and interpretation is given in the next section.

### **I. Ronald Reagan**

The Reagan rhetoric aligns nicely with the necessary conditions for a legitimate party. However, Reagan's behavior does not, because immigration is not a salient policy. Reagan targets the Carter administration for a "litany of despair [and] broken promises." Multiple times, and in multiple speeches Reagan denounces the Carter administration for failing to do a good job across all policy areas. As expected, Reagan calls out the "Carter Administration" in reference to the "Democrats" in office. This is distinct from simply bashing the president in office but turns the focus to the political party in charge. It should be noted, however, that Reagan called upon all Americans regardless of party to "make America great again" multiple times. The call to represent all Americans regardless of party affiliation is a common theme across all four presidencies examined. This did not stop Reagan, however, from tearing down the Carter Administration during campaign speeches. The attempt at targeting the opposing political party demonstrates the ability and desire to show responsibility and effectiveness.

Reagan also makes a focus of his speeches towards the size of the federal government. In the 1980 Inaugural address Reagan remarked "It is my intention to curb



the size and influence of the Federal establishment and to demand recognition of the distinction between the powers granted to the Federal Government and those reserved to the States or to the people.” Other mentions of the federal government consist of calls for the Carter administration to quit spending money haphazardly. This is exactly what was expected, for the out of office party to bash the party in office. While there is no explicit mention of the Carter administration being unconstitutional, in a 1980 televised campaign speech, Reagan promotes the idea of working with Congress rather than through bureaucracy, since “the federal agencies are being ignored by the Carter administration.” The context of this quote hints to the idea that the Democrats in office let the bureaucracy run wild.

Where Reagan falls short of expectations is the behavior while in office. The biggest act with regards to immigration was a law passed by Congress. Without issue salience, policy has a much easier time passing and therefore there is a lack of party opposition. The law, known as the Immigration Reform and Control Act of 1986, addresses illegal immigration and employment. Other actions included a few executive orders or proclamations suspending immigration from different countries. The context of the Reagan administration is the midst of the Cold war. The executive action taken to stop immigration is directly related to national security threats towards communist countries. Reagan did not make immigration a major focus during his tenure in office. The lack of focus on immigration can perhaps be attributed to the Cold war. Should immigration have been a salient issue, then the expectation would be that the policy would play a more important role both in rhetoric and behavior.

**Figure 1: Ronald Reagan****Rhetoric****Behavior**

<p>Announcement of Candidacy - "I will not accept the supposed "wisdom" which has it that the federal bureaucracy has become so powerful that it can no longer be changed or controlled by any administration. As President I would use every power at my command to make the federal establishment respond to the will and the collective wishes of the people."</p>	<p>Proclamation 5517 - Suspends Cuban immigration to the United States.</p>
<p>1980 Remarks at liberty, campaign speech - "The Carter record is a litany of despair, of broken promises, of sacred trusts abandoned and forgotten. This country needs a new administration, with a renewed dedication to the dream of America--an administration that will give that dream new life and make America great again!"</p>	<p>Proclamation 5829 - Suspends certain Panamanians from entering the United States.</p>
<p>1980 Remarks at international business in Chicago - "The Federal Reserve Board is, and should remain, independent of the Executive Branch of government" We will have an administration in which the word from the top isn't lost or hidden in the bureaucracy. That voice will be heard because it is a voice that has too long been absent from Washington - it is the voice of the people."</p>	<p>Executive Order 12324 Interdiction of Illegal Aliens - Aims to stop illegal immigration from sea. Directions given to the Secretary of State and the Coast Guard.</p>
<p>1980 Election Eve Address - In accomplishing these goals, it will be imperative to establish a close working relationship with the new Congress. No objective will be more important to me, if I am elected president, than that of opening a new era of cooperation between the executive and legislative branches of government."</p>	<p>Immigration Reform and Control Act of 1986 - Passed by Congress and signed by Ronald Reagan into law. This was the biggest immigration act enacted during Reagan's tenure as president. It addresses illegal immigrants and employment.</p>

## **II. George H.W. Bush**

When compared to the other presidents examined, George H.W. Bush lacks the most depth in both rhetoric and behavior. The American Presidency Project yielded the least results for George H.W. Bush. Despite this, George Bush had no major focus on immigration during his presidency and therefore the behavior is limited. The rhetoric that is documented still shows Bush meeting necessary conditions of an opposing party due to comments addressing the desire to build a better America (constitutionalism). Or the intent to work with congress to get policy through (responsibility). However, Bush provides a good example of what happens when issues are not salient, similar to Ronald Reagan. Under George H.W. Bush, the “Immigration Act of 1990” was passed through Congress. This reform was touted as the most “comprehensive immigration reform in 66 years” in the signing statement attached to it. When an issue is not salient, policy has a much easier time passing through Congress. If this is the case, then the government is either unified and nulls any separation of powers or the president may exercise executive power and expect little to no resistance. If this is the case, then there can be no check. Actions taken by George H.W. Bush while in office remain minimal regarding immigration while in office. There is one executive order and a signing statement that involve any sort of major action regarding immigration.

**Figure 2: George H.W. Bush****Rhetoric****Behavior**

<p>1988 Accepting presidential Nomination - I seek the presidency for a single purpose, a purpose that has motivated millions of Americans across the years and the ocean voyages. I seek the presidency to build a better America. It's that simple and that big.</p>	<p>Signing statement on the Immigration Act of 1990 – “the most comprehensive reform of our immigration laws in 66 years”</p>
<p>1989 Inaugural Address - We need a new engagement, too, between the Executive and the Congress. The challenges before us will be thrashed out with the House and the Senate. And we must bring the Federal budget into balance. And we must ensure that America stands before the world united, strong, at peace, and fiscally sound. But of course things may be difficult. We need to compromise; we've had dissension. We need harmony; we've had a chorus of discordant voices.</p>	<p>Executive Order 12807 – Interdiction of Illegal Aliens Designed to stop illegal immigration from coming to the United States</p>

### **III. William Clinton**

The Clinton rhetoric aligns well with the expected results, but once again falls short with expected behavior. Clinton in multiple speeches calls out the Republican party for their failure in office. As seen in Figure 2, Clinton calls out both Reagan and Bush when he says, “for 12 years Republicans have tried to divide us.” Clinton also argues that George Bush has failed to help America and instead had no plan and accomplished nothing while in office. In Clinton's 1992 nomination acceptance Clinton says: “Now, George Bush talks a good game, but he has no game plan to rebuild America, from the cities to the suburbs to the countryside, so that we can compete and win again in the global economy. I do.” The last part “I do” is an important characteristic of the Clinton rhetoric. Clinton calls out the opposing political party but follows up with how his own administration will be different. Clinton even goes so far as to say “To turn our rhetoric into reality we've got to change the way government does business, fundamentally.”

Clinton also pushes against the federal government in multiple speeches. As seen in Figure 2, Clinton says, “The Republicans have campaigned against big government for a generation, but have you noticed? They've run this big government for a generation and they haven't changed a thing. They don't want to fix government; they still want to campaign against it, and that's all.” Clinton calls out the Republicans for not fixing the federal government Clinton represents a legitimate party opposition due rhetoric that binds parties to the constitution, promising a better path forward, and talking about real alternative policy change.

Clinton’s behavior while in office, in regards to Immigration, falls short of expectations. Immigration is not yet a salient issue according to the data. Clinton used

quite a few memorandums to address the refugee crisis from around the world. Perhaps the biggest behavior while in office was the direction of both people and funds to INS. Clinton increased federal bureaucracy personnel and also allocated more money for INS to use. Once again, immigration fails to be a major tenet of the Clinton administration as little executive action was taken.

**Figure 3: William Clinton****Rhetoric****Behavior**

<p>Announcement of Candidacy - “For 12 years, Republicans have tried to divide us - race against race - so we get mad at each other and not at them. They want us to look at each other across a racial divide so we don't turn and look to the White House and ask, why are all of our incomes going down, why are all of us losing jobs? Why are we losing our future?”</p>	<p>Multiple memorandums addressing the refugee crisis from around the world.</p>
<p>Acceptance of Democratic Nomination 1992 - “And so I say: George Bush, if you won't use our power to help America, step aside. I will. He won't streamline the federal government and change the way it works, cut 100,000 bureaucrats and put 100,000 new police officers on the streets of American cities, but I will. Now, George Bush talks a good game, but he has no game plan to rebuild America, from the cities to the suburbs to the countryside, so that we can compete and win again in the global economy. I do. The Republicans have campaigned against big government for a generation, but have you noticed? They've run this big government for a generation and they haven't changed a thing. They don't want to fix government; they still want to campaign against it, and that's all.”</p>	<p>Memorandum on Illegal Immigration - “I have directed the Attorney General to move expeditiously toward full implementation of our comprehensive border control strategy, including efforts at the southwest border. To support sustained long-term strengthening of our deterrence capacity, the Administration shall seek funding to add new Border Patrol agents to reach the goal of at least 7,000 agents protecting our borders by the year 2000.” Increased overall border personnel by 50 percent.</p>
<p>Announcement of Candidacy 1992 - “To turn our rhetoric into reality we've got to change the way government does business, fundamentally. Until we do, we'll continue to pour billions of dollars down the drain. A government that is leaner, not meaner; a government that expands opportunity, not bureaucracy; a government that understands that jobs must come from growth in a vibrant and vital system of free enterprise.”</p>	<p>Executive order 12989 - Employers are not allowed to contract with illegal immigrants.</p>
<p>General Election debate at University of Richmond - “So if you analyze where we're out of line with other countries you come up with the following conclusions: Number one, we spend at least \$60 billion a year on insurance, administrative costs, bureaucracy, and Government regulation that wouldn't be spent in any other nation.”</p>	<p>Memorandum on Naturalization - Gives the INS (Immigration and Naturalization Services agency) 165 million dollars targeted towards helping immigrants become citizens.</p>

#### **IV. George W. Bush**

George W. Bush follows closely to the previous presidents both in terms of rhetoric and behavior. Bush presents himself as a legitimate opposition, but little to no action is taken on immigration. President Bush repeatedly calls out the Clinton administration for failing to do what they promised during their campaign. In a speech given in Austin following the Super Tuesday elections Bush says “Soon, our party will unite and turn to the main task at hand: ending the era of Clinton and Gore.” This illustrates the idea that the Republican party is at odds with the Democratic party.

President Bush pushes back against the expansion of the federal government in multiple speeches. In a presidential debate in Boston, President Bush remarks that the Gore plan is to empower bureaucracy not the American people. “It is a plan that will have 200 new programs -- expanded programs and creates 20,000 new bureaucrats. It empowers Washington. My vision is to empower Americans to be able to make decisions for themselves in their own lives.” In other remarks in a speech given in Austin, President Bush says “Big government is not the answer, but the alternative to bureaucracy is not indifference. It is to put conservative values and conservative ideas into the thick of the fight for justice and opportunity.” President Bush is pushing back against the federal bureaucracy and calling upon Republican values to replace it. In other words, this is a call to alternative policy.

Like President Reagan, the Bush administration should be put into context. The Bush administration was informed by 9/11 and the War on Terror. Little to no action was taken on immigration. The biggest action the Bush administration took that includes immigration was the creation of the Department of Homeland Security. The Department



of Homeland Security takes control over issues of immigration but was implemented for national security reasons. While the DHS was created over issues of national security, it marks a significant point of departure for domestic policy. Prior to 2003, there was no federal agency tasked with protecting United States borders from immigration. Congress creates immigration laws, and the executive branch executes them. With the creation of DHS, domestic policy can now be implemented through a federal agency. This will be discussed in more detail in the next section.

#### Figure 4: George W. Bush

##### Rhetoric

##### Behavior

<p>Acceptance of Republican Nomination 2000 - “But instead of seizing this moment, the Clinton-Gore administration has squandered it. We have seen a steady erosion of American power and an unsteady exercise of American influence. Big government is not the answer, but the alternative to bureaucracy is not indifference. It is to put conservative values and conservative ideas into the thick of the fight for justice and opportunity.”</p>	<p>Executive Order 13228 - Establishing the Department of Homeland Security.</p>
<p>General Election debate in Boston - “the man is practicing fuzzy math again. There's differences. Under Vice President Gore's plan, he is going to grow the federal government in the largest increase since Lyndon Baines Johnson in 1965. We're talking about a massive government, folks. We're talking about adding to or increasing 200 programs, 20,000 new bureaucrats”</p>	<p>Statement on Signing the Department of Homeland Security Appropriations Act of 2004 - Signed into law H.R 2555 the first appropriations act for the Department of Homeland Security.</p>

#### V. Barack Obama

The Obama administration marks a stark contrast is characterized by strong rhetoric and strong behavior meeting expectations for both. During the Obama presidency, immigration became a salient issue and therefore is addressed differently than

previous presidents. During the Democratic nomination for President, Obama exclaims “the same party that brought you two terms of George Bush and Dick Cheney will ask this country for a third. And we are here because we love this country too much to let the next four years look like the last eight. On November 4th, we must stand up and say: “Eight is enough.”” In other speeches, Obama highlights the failures of the Republican party: “For over two decades, he's [McCain] subscribed to that old, discredited Republican philosophy.” Obama tends to bring out what appears as a choice during his speeches. Either a fresh new four years or a continuation of a past failed eight years. Multiple times, the word choice appears creating the feeling of dire consequences if people do not vote for Obama. “It's a choice between having a debate with the other party about who has the most experience in Washington or having one about who's most likely to change Washington.” Here, the call for alternative policy and party is very clear.

President Obama is also concerned with federal bureaucracy and suggests that bureaucracy is not the answer in his announcement of candidacy speech. “And although government will play a crucial role in bringing about the changes we need, more money and programs alone will not get us where we need to go.” During Obama’s Democratic nomination speech, he says “But I will also go through the federal budget, line by line, eliminating programs that no longer work and making the ones we do need work better and cost less – because we cannot meet twenty-first century challenges with a twentieth century bureaucracy.” Obama makes a point through speech that one goal while in office is to cut out unnecessary programs to save money and streamline the government. Obama goes so far as to say “These challenges are not all of government's making. But the failure to respond is a direct result of a broken politics in Washington and the failed

policies of George W. Bush.” Obama tends to combine both President Bush and the federal government as the reasons for eight years of failure.

The biggest executive action taken during office was the implementation of DACA or Deferred Action for Childhood Arrivals. Faced with a gridlocked Congress, Obama implements this policy through the Department of Homeland Security. As seen in Figure 4, Obama announces this policy at the White House. What is interesting about this announcement is that Obama acknowledges that Congress has failed to do anything and is gridlocked. It is because of those reasons, the Obama administration failed to get policy through Congress, and admits to turning to executive action in order to implement their preferred policy. This action contradicts many of the speeches and themes given during the campaign for office. It pushes policy unilaterally and also builds upon the federal bureaucracy. This is discussed in further detail in the next section, but it should be noted that executive action through a federal agency happens after the creation of DHS. This might perhaps make immigration policy easier to enact rather than working with Congress.

Obama’s behavior regarding immigration marks a stark change from the previous presidents. As immigration became salient, Obama used executive action. Obama meets the necessary conditions for the Theory of Conditional Party Opposition and with immigration becoming a salient issue, the conditions are ripe to see how President Trump or the Republican party will respond.

**Figure 5: Barack Obama****Rhetoric****Behavior**

Announcement of Candidacy - “And although government will play a crucial role in bringing about the changes we need, more money and programs alone will not get us where we need to go.”	Memorandum on Modernizing and streamlining the United States Immigrant Visa system - gives recommendations to secretary of state and department of homeland security to streamline visa process for Immigrants
Acceptance of Democratic Nomination 2008 - “Now, many of these plans will cost money, which is why I've laid out how I'll pay for every dime – by closing corporate loopholes and tax havens that don't help America grow. But I will also go through the federal budget, line by line, eliminating programs that no longer work and making the ones we do need work better and cost less – because we cannot meet twenty-first century challenges with a twentieth century bureaucracy”	Memorandum on the Deferred action for Childhood Arrivals - Obama speaks in the Rose Garden of the White house announcing this policy. “In the absence of any immigration action from Congress to fix our broken immigration system, what we've tried to do is focus our immigration enforcement resources in the right places. So we prioritized border security, putting more boots on the southern border than at any time in our history.”

**VI. Donald Trump**

President Trump represents the Theory of Conditional Party Opposition as it applies in the real world. Both in terms of rhetoric and behavior, Trump or the Republican party oppose the democrats and thus create a divided government. This occurs under the salient issue of immigration. Now that immigration has become an important issue, the expectation was to see Trump fighting back against Obama policy. That is exactly what is found. Trump indicates a positive finding of how under certain conditions, political parties can act as a new separation of powers.

Trump used immigration as a major campaign point. Due to this, the Trump had the most rhetoric in a pre-presidential period talking about

immigration. Most notably, during Trump's announcement of candidacy in New York, Trump says "I will immediately terminate President Obama's illegal executive order on immigration, immediately." Trump also argues that immigration is an important issue that is key to his campaign in multiple interviews. "Everybody is talking about immigration and illegal immigration." It is evident that that Trump meets the necessary conditions for the Theory of Conditional Party Opposition with his rhetoric. It aims to create and show a real force of change both in party and policy.

The most integral part of the Trump presidency is their reaction to immigration. The behavior shows what can happen when an issue is important. Trump authorized multiple executive orders and memoranda on the topic of immigration designed to keep his campaign promises. Some of the more notable actions were EO 13767 which ramped up border security by quite a bit including expanding personnel, facilities, detention centers, and most notably the authorization of the border wall. EO 13768 expanded border patrol and gave permission to hire 10,000 new employees. Trump also issued a memorandum ending the "catch and release" of immigrants on the border. This entailed ending the ability for immigrants to live in a community while they awaited their court date.

Trump's behavior towards immigration shows how under certain conditions and issue salience, parties can act as adequate opposition necessary to the creation of a new separation of powers. Trump acted as an opposing force to the Democrats while in office attempting to subvert and overcome

democratic policy that he saw as “unconstitutional.” Trump multiple times calls out Obama’s executive orders as wrong and unconstitutional. “[I will] cancel every unconstitutional executive action, memorandum and order issued by President Obama.” The division created by legitimate opposing parties is necessary to have a separation of powers.

### Figure 6: Donald Trump

#### Rhetoric

#### Behavior

<p>Announcement of candidacy in New York – “I will immediately terminate President Obama’s illegal executive order on immigration, immediately.”</p>	<p>Executive Order 13767—Border Security and Immigration Enforcement Improvements Order to ramp up security at the border including the famous wall.</p>
<p>Remarks at Trump SOHO in New York – “National security is also immigration security – and Hillary wants neither. Hillary Clinton has put forward the most radical immigration platform in the history of the United States. She has pledged to grant mass amnesty and in her first 100 days, end virtually all immigration enforcement, and thus create totally open borders in the United States.”</p>	<p>Memorandum on Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits.</p>
<p>Remarks at a rally in Greenville Convention Center – “So to every American who has been waiting for real change, your wait is over – your moment of liberation is at hand. A vote for Trump is a vote to restore Democracy, to heal our economy, and to bring millions of jobs back into every forgotten stretch of this country. The change will begin my first day in office. First, we are going to eliminate every unconstitutional executive order and restore the rule of law to our land.”</p>	<p>Executive Order 13768—Enhancing Public Safety in the Interior of the United States. This includes hiring 10,000 more immigration officers.</p>

## DISCUSSION

This section gives a summary of the results, discusses the data in added detail, and ends with further research questions. For parties to be legitimate, they must meet the three necessary conditions of being constitution, responsible, and effective. By measuring legitimacy through rhetoric, and salience through behavior, the results indicate a positive finding for President Obama and President Trump. Both presidents meet the necessary conditions of legitimate opposition accompanied by the salient issue of immigration. Together, the results show how parties can be effective at stopping executive power due to the party's ability to check one another.

While this is an important and positive finding, it should however, be kept in the context of the other presidencies. The other four presidents do not show any indication of immigration as a salient issue. Because of this, the Theory of Conditional Party Opposition is not fully at work. The lack of party opposition, however, is actually the key to the positive finding. In context, this thesis shows the difference of action between presidents for non-salient and salient issues. The contrast demonstrates the evolution of immigration over time. Furthermore, the divided government means that neither party can use executive power without backlash and consequence, thus party opposition acts as an adequate check on executive power.

Overall, the results show a consistent pattern of rhetoric. Each president called for a legitimate change of government, proposed new and alternative policy, and promised to be effective while in office. These are the necessary conditions of party opposition and are found throughout all six presidencies. Furthermore, the results show rhetoric designed

to influence and sway the American electorate. of presidential rhetoric. Generally, the rhetoric stayed consistent across presidencies.

Along with consistency, the content of the speeches stayed largely the same across presidencies, even including Donald Trump. While each president had their own agenda and priority issues, the speeches were relatively the same. For example, President Reagan was preoccupied with the Cold War going into his campaign and President Bush was primarily concerned with education. Yet each president addresses bureaucracy, economics, and taxes. Every president gave a generalized speech that touches on points important to the American electorate. Each president commented on the failure of the previous administration to accomplish anything while promising to do better themselves and each president commented on the role ‘the people’ should play in government and not the federal bureaucracy. This finding is important because it further emphasizes the importance of a salient issue. Legitimate party opposition is not enough without the accompaniment of a salient issue. Once immigration becomes a salient issue, it becomes a center of attention.

This was the case from 2008 onward. The data shows a stark difference between Presidents Obama and Trump and how they chose to go about immigration when compared to the other four presidents. It begins with Obama’s executive action on immigration when Congress failed to get anything done. Flash forward to Trump, and we see promises to undo Obama’s executive action accompanied by Trumps own executive action on immigration. Trump had more executive action on immigration than any of the other five presidents combined. Immigration became a major part of Trumps campaign.



The major executive action taken first by Obama and then Trump show how behavior changes when certain policies become salient. Up until Obama, there was no real executive action taken towards immigration, and if executive action was used, it was uncontroversial. Or immigration policy simply passed through Congress as was the case with Reagan or George H.W. Bush. After 2008, though, the results show changes in how political parties reacted to immigration. The Republicans led by Trump become infuriated with Obama's use of executive orders on immigration. Therefore, when Trump went into office, he began to undo what Obama had built. The party opposition created a divided government where it becomes difficult to get away with executive power. Immigration becomes a talking point in the rhetoric and a cycle is created where executive power is used and then undone. The expectation moving forward is that the next democrat in office, or in this case Joe Biden, will act against Trump and undo his policies creating a cycle of competition between parties.

The question might be raised "what about executive power used in non-salient issues?" While a good question, non-important policies don't matter, and this creates a key issue. Until the public decides that something is important to them, no one cares whether or not executive orders were used to accomplish something. This is evident in the data by Clinton, Bush, and Reagan who all used some sort of executive action on immigration. If this is the case, then does the constitution only matter when the public cares? While this thesis does not explore this question entirely or have the data to answer that question, it brings up major implications for constitutionalism. If the public only cares for salient issues, and parties can get away with anything involving non-salient issues, then future constitutionalism is at risk. If policy is subject to change over time,

then what no one cares about today, might be tomorrow's big problem. Policies are most likely subject to an ebb and flow of importance. It is not enough to only have checks and balances and a separation of powers that works only half of the time. It is important that scholars begin to take seriously the issue of public opinion and constitutionalism and explore beyond what has already been written about in a political theory context.

That is why the condition of salience is important. Immigration was not important until it was. The broader application would have an expectation that each presidency across time has different issues that are important to them along with a division among party lines. Therefore, under the Theory of Conditional Party Opposition, the expectation would be parties check each other regardless of time or issue.

Perhaps the more interesting question is whether it is okay for executive power to be checked by more executive power? This is evident in Trump's response to Obama. The party opposition creates enough gridlock that passing things through Congress becomes difficult if not impossible. However, using executive power to accomplish policy means that executive orders can be subject to termination by the next president. It has the potential to turn into a back-and-forth battle of executive power that changes every four to eight years. And while executive power can be checked in this process, it might not be a long-term solution. The issue of executive-on-executive power is an important question that should be addressed by future scholars. While this paper lacks the scope to include this, I give a few brief thoughts.

The problem of executive power being met with executive power might just be the result and vice of political parties. While parties can be checked on

executive power under the Theory of Conditional Party Opposition, this does not mean parties are perfect. This might be something that the American public has to live with. This also might be a problem of executive orders themselves. This question might best be handled with a greater understanding and background in executive orders themselves. Lastly and perhaps the more theoretical take is maybe the American people want a prince without the label? It is possible that the American public prefer things get done in a unilateral fashion, but resist the titles that go along with it? I leave the answers to these questions to other scholars.

## CONCLUSION

Have presidents become princes? Extant scholarship has focused primarily on traditional separation of powers as a remedy to abusive executive action. However, little work has been done to examine the role of political parties can play in a divided government contributing to a new separation of powers. This thesis argues that only under certain necessary conditions as outlined under the Theory of Conditional Party Opposition can political parties check executive power and become a new separation of powers.

The Theory of Conditional Party Opposition presents a new way to measure political parties. Much like the original Madisonian conception of the separation of powers, the Theory of Conditional Party Opposition aims to pit ambition against ambition, turning vice into virtue. Parties can now potentially serve as a positive means to check executive power and may be the key for a future characterized by polarization.

Lastly, in finding that political parties can act as a check against executive power, the results have implications for how scholars go about studying both the separation of powers and political parties. This thesis serves as a jumping point for other scholars to take parties seriously in their ability to create a divided government that is helpful rather than obstructive. This thesis also points scholars towards studying the potential issue of executive-on-executive power.

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