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CRAIG A. JONES*

"Traditionally, it has been conservative Republicans who warned about the need to check the power of a president lest he become dictatorial, while liberal Democrats lobbied for a strong chief executive. Today the two camps essentially have switched sides."[1]

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I. INTRODUCTION

In its broadest sense, presidential control encompasses all the actions, in both word and deed, whereby presidents "go it alone" to adopt policies in the absence of congressional will to do so, and sometimes directly contrary to it. Such actions include using the "bully pulpit" of the executive office to rhetorically set the agenda,

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1. Gerald F. Seib, *Presidential Power -- Limits of Power: Is President's Authority Being Nibbled Away? Many in the GOP Say So --- They Rebel as Congress Curbs Office in Numerous Ways; Democrats Scoff at Notion --- Cry of Remember Watergate*, WALL ST. J., Sept. 11, 1989, at 1 [hereinafter Limits of Power].

frame issues, and mobilize the populace.[2] They also include all the tools the unitary executive has at his or her disposal to set and shape policy, including, among other things, executive orders, budgets, presidential memoranda, signing statements, appointment powers, and agency rulemaking. And while partisan views on presidential power and prerogative shift over time, as the above quote indicates, the fact remains that all modern presidents utilize formal and informal power to their advantage. While the use or abuse of power is frequently in the eye of the partisan beholder,[3] the tools of presidential control are valued by each modern executive entering the Oval Office. Thus, while perspectives on presidential control change with shifting political winds, campaign rhetoric notwithstanding, the practice of presidential control does not. [4] It is precisely this enduring presence that makes presidential control an important area of study.

To be sure, presidential control has been extensively studied from various angles in such diverse academic disciplines as public administration, public policy, political science, law, psychology, and communications. The attention by scholars is well deserved. Like few other actions by citizens and policymakers alike, the way in which presidential control is exercised can fundamentally shape the process by which polices are adopted and implemented. This has important implications for both governance and our foundational democratic principles. The aspects of presidential control this study examines are the coordinated use of the bully pulpit and control of administrative agencies, respectively, to promote and adopt policies apart from congressional action. Thanks to existing scholarship, we know much about how presidents frequently act through administrative agencies in pursuit of policy goals—originally coined the "Administrative Presidency" by Richard Nathan.[5]

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2. The term "bully pulpit" is attributed to Teddy Roosevelt who famously observed, "Most of us enjoy preaching, and I've got such a bully pulpit." THEODORE ROOSEVELT, THE WINNING OF THE WEST: AN ACCOUNT OF THE EXPLORATION AND SETTLEMENT OF OUR COUNTRY FROM THE ALLEGHENIES TO THE PACIFIC, at vi (1917); David Greenberg, *Theodore Roosevelt and the Image of Presidential Activism*, 78 JOHNS HOPKINS U. PRESS 1057, 1067–68 (2011). The term "bully pulpit" is especially appropriate in this context because, as Greenberg notes:

> No president before him had made such regular, skillful use of this declamatory vehicle, which Roosevelt, by naming, fairly invented; no one to that point so acutely discerned or eagerly seized the opportunity, afforded simply by being president, to command attention with rousing, morally laden speeches. *Roosevelt used speeches about policy and legislation to circumvent Congress—to lead from the White House*.

Id. (emphasis added).

3. In reflecting on the often subjective views of power, political scientist John Gaus observed that "how one feels about power depends on whether one has it." Donald F. Kettl, *Public Administration at the Millennium: The State of the Field,* 10 J. PUB. ADMIN. RES. AND THEORY 7, 16 (Jan. 2000). This is certainly true for the way presidential control is viewed by citizens and politicians alike who find themselves at various times on opposite sides of the argument depending on who's in office, the issue at hand, or both.

4. *See, e.g.*, Terry M. Moe, *The Political Presidency*, *in* THE NEW DIRECTION IN AMERICAN POLITICS (John E. Chubb & Paul E. Peterson eds., 1985) [hereinafter Moe, *The Political Presidency*]; David E. Lewis, *Revisiting the Administrative Presidency: Policy, Patronage, and Agency Competence*, 39 PRESIDENTIAL STUD. Q. 60, 60–73 (2009); Dan B. Wood & Richard W. Waterman, *The Dynamics of Political Control of the Bureaucracy*, 85 AM. POL. SCI. REV. 801, 801–28 (1991); Richard W. Waterman, *The Administrative Presidency, Unilateral Power, and the Unitary Executive Theory*, 39 UNIV. KY. 5, 5–9 (2009).

5. *See* RICHARD P. NATHAN, THE ADMINISTRATIVE PRESIDENCY (1983). The term was first used by Richard Nathan in 1976 in The Public Interest Journal. *See* Richard P. Nathan, *The "Administrative Presidency"*, 44 PUB. INT. 40 (1976), http://www.nationalaffairs.com/public_interest/detail/the-administrative-

We also know a great deal about how presidents use their position to frame policy goals, set the agenda, and "speak over the heads of Congress" to promote those very same goals—referred to as the "Rhetorical Presidency" by Jeffrey Tulis.[6] However, we may be missing important insights about the interplay, or perhaps co-production, of these presidential prerogatives because administrative action and rhetoric typically are not studied simultaneously. Using the "wicked problem" of climate change as it relates to the adoption of federal greenhouse gas regulations under the Obama Administration, this article aims to bring these two familiar phenomena together to take a fresh look into what they have to say about governance and democratic principles.[7]

Because of the divisive and often politically charged nature of wicked problems, they tend to accentuate both the rhetoric and actions surrounding them, and few policy problems in the United States rise to the level of climate change in this regard. As a result, climate policy offers a helpful window through which to study how President Obama utilized administrative and rhetorical strategies and tools to pivot away from climate change legislation that had stalled in the Senate in 2009.[8] In particular, the study addresses how Obama rhetorically constructed and rationalized his use of the Environmental Protection Agency (EPA) to implement federal climate change regulations via the federal Clean Power Plan.[9] Among the insights revealed by this analysis are how Obama viewed the role of the bureaucracy, particularly in an age of tremendous political polarization, how he invoked executive power, and what his actions reveal about executive views of democratic institutions

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presidency. However, Nathan is commonly cited from his book by the same name published in 1983; thus, this author follows the ordinary convention of citing the 1983 work.

6. JEFFREY TULIS ET AL., THE RHETORICAL PRESIDENCY 4 (1987).

7. *See* Rittel & Webber, *infra* note 18. The term "wicked problem" is borrowed from a study addressing complex urban planning and infrastructure projects in the 1970s. In the study, the authors distinguish more ordinary technical or engineering problems from "wicked problems" that by comparison are more difficult to resolve because they are value-laden, divisive, expensive, and lack easily identifiable solutions. A number of scholars have used the term in relation to natural resource conflicts, including climate change, and it remains an apt descriptor of climate change and climate change policy. *See, e.g.*, Martin Nie, *The Underappreciated Role of Regulatory Enforcement in Natural Resource Conservation,* 41 POL'Y SCI. 139, 139–64 (June 2008); Mark K. McBeth et al., *Buffalo Tales: Interest Group Policy Stories in Greater Yellowstone,* 43 POL'Y SCI. 391, 391–409 (Dec. 2010).

8. The American Clean Energy and Security Act of 2009 (also called the Waxman-Markey Bill), which would have established a federal CO_2 cap-and-trade program, passed the House of Representatives on June 26, 2009 by a vote of 219-212—the first bill of its kind addressing possible threats from climate change passed in either chamber of Congress. *See* John M. Broder, *House Passes Bill to Address Threat of Climate Change,* N.Y. TIMES (June 26, 2009), https://web.archive.org/web/20120101085737/http://www.nytimes.com/2009/06/27/us/politics/27climate.html?_r=1&hp. The bill, however, was not presented in the Senate for either discussion or a vote. In the face of insurmountable opposition, including among Democrats, Senate Majority Leader Harry Reid, a Democrat from Nevada, chose not to present the bill to the full Senate. After pulling the bill from consideration, Reid commented, "It's easy to count to 60. I could do it by the time I was in eighth grade. My point is this, we know where we are. We know we don't have the votes [for a bill capping emissions]. This is a step forward." *See* Coral Davenport & Darren Samuelsohn, *Dems Pull Plug on Climate Bill*, POLITICO (July 22, 2010), https://www.politico.com/story/2010/07/dems-pull-plug-on-climate-bill-040109.

9. Lisa Friedman & Brad Plumer, *E.P.A. Announces Repeal of Major Obama-Era Carbon Emissions Rule*, N.Y. TIMES (Oct. 9, 2017), https://www.nytimes.com/2017/10/09/climate/clean-power-plan.html.

and norms.[10] Understanding such views is particularly relevant since executive action tends to be easier to revise than congressional action, leading to a relatively less durable and more fluid state of regulatory oversight. Indeed, the Trump administration is now actively engaged in rescinding and replacing the Clean Power Plan, essentially stripping it of its most impactful regulations, through similar unilateral actions.[11] Again, presidential control is not "owned" or abused by any particular political ideology, and this example underscores that control is more about policy than it is about party.

As mentioned, the "administrative presidency" and the "rhetorical presidency" are commonly treated as two separate and distinct areas of scholarship, although they are certainly complementary—like two sides of a coin, as some scholars have noted.[12] However, the two sides may have a compounding influence on one another that alters the dynamic of presidential control in important ways. As a result, it may be more descriptive and helpful to think about the administrative and rhetorical presidency as notes on a sheet of music that are arranged and emphasized in various ways, at various times, to affect the composition and adoption of policy. By viewing the administrative and rhetorical presidency in this way, the possibility of a more interactive relationship between the two themes of presidential control becomes easier to visualize. As this article will demonstrate, adopting this perspective and studying the two in concert reveals distinct shifts in rhetoric that correspond with and signal Obama's switch to administrative action. Such shifts are at least muted by treating the two strands of scholarship separately. With this in mind, it is important to consider that the two combined may very well magnify presidential influence in ways that have been understudied.[13] What we see from presidents today seems to be a historically significant amplification of presidential power accompanied by a concomitant breakdown in legislative deliberation. Follow-on effects include deep political polarization along with dramatic swings in policy, which act as both positive and negative feedback loops.[14]

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10. *See id.*

11. *See infra* notes 26–27. Although executive action via rulemaking allows opportunities to impart new interpretations of existing rules, it is a more arduous task because of the stringent requirements of the Administrative Procedure Act. *See generally* CORNELIUS M. KERWIN & SCOTT R. FURLONG, RULEMAKING: HOW GOVERNMENT AGENCIES WRITE LAW AND MAKE POLICY (CQ Press 4th ed. 2011).

12. Sidney M. Milkis, *The Rhetorical and Administrative Presidencies*, *in* RETHINKING THE RHETORICAL PRESIDENCY 167, 167–89 (JEFFREY FRIEDMAN & SHTERNA FRIEDMAN eds., 2012).

13. ANDREW B. WHITFORD & JEFF YATES, PRESIDENTIAL RHETORIC AND THE PUBLIC AGENDA: CONSTRUCTING THE WAR ON DRUGS (2009); *see also* Milkis, *supra* note 12.

14. *See* ALAN I. & KYLE L. SAUNDERS, IS POLARIZATION A MYTH? 542–55 (2008); Roger Pielke Jr., *Pielke on Climate #12*, CLIMATE FIX (July 1, 2018), https://theclimatefix.wordpress.com/2018/07/01/pielke-on-climate-12/. Other scholars argue that deep polarization of the American electorate is generally overstated. *See, e.g.*, MORRIS P. FIORINA ET AL., CULTURE WAR? THE MYTH OF A POLARIZED AMERICA xiii (2nd ed. 2010) ("Americans are closely divided, but we are not deeply divided, and we are closely divided because many of us are ambivalent and uncertain, and consequently reluctant to make firm commitments to parties, politicians, or policies. We divide evenly in elections or sit them out entirely because we instinctively seek the center while the parties and candidates hang out on the extremes."). For a good discussion of positive and negative feedback loops in policymaking, see FRANK R. BAUMGARTNER & BRYAN D. JONES, AGENDAS AND INSTABILITY IN AMERICAN POLITICS (2d ed. 2009).

Indeed, as this study reveals, the rhetorical presidency is often used to rationalize the use of the administrative presidency, meaning that neither can be examined separately if we are to understand them fully. By examining these two areas of presidential control together as the administrative-rhetorical presidency we gain a deeper and richer understanding about the way in which presidents—President Obama in this case—wield these powerful policy tools.[15] This article serves as a starting point for doing just that and proceeds with the following outline. Part I defines the problem addressed by the study and lays the foundation for the central research question. In Part II, the article highlights the nature of climate policy in the United States, presidential action to address it, and the scholarly foundation and framework for the research, including discussions of the administrative and rhetorical presidencies. Part III sets forth the methodology of the study, and Part IV addresses the research findings. Finally, in Part V, the implications of the study's findings will be discussed, as well as some concluding thoughts and recommendations for follow-up on research.

II. PART I: DEFINING THE PROBLEM

In this Part, the article introduces the use of presidential control to address the wicked problem of climate change. As will be discussed, presidential control is primarily about seeking to control policy outcomes by whatever means necessary. While there are a multitude of tools that presidents may utilize to control policies, this study is focused on administrative action through executive agencies, sometimes referred to in this article as "the bureaucracy," and presidential rhetoric. These two aspects of control commonly fall under the broader literature of the "Administrative Presidency" and the "Rhetorical Presidency," and their use raises questions about the proper role of the bureaucracy in policymaking and the ramifications of the ongoing trend of presidents "going public,"[16] which are discussed in greater detail in Part II.

At its most fundamental level, the story of administrative action in the United States is a story about the competitive control of its policies.[17] While this is certainly true for policies that garner little attention outside those who are following them closely, it is especially true for high-profile policy problems that are by nature difficult to resolve, divisive, value laden, and therefore, political in nature. Rittel and Webber originally referred to such problems as "wicked,"[18] because in contrast to strictly technical problems, wicked problems are difficult to define, defy resolution, and teem with often conflicting values.[19] In their original work, Rittel and Webber discussed wicked problems in the context of urban planning.[20] However, as is the case with certain social policy issues (i.e., abortion, gun control, and immigration),

15. Milkis, *supra* note 12. *See also* WHITFORD & YATES, *supra* note 13.

16. *See, e.g.*, SAMUEL KERNELL, GOING PUBLIC: NEW STRATEGIES OF PRESIDENTIAL LEADERSHIP ix (2006).

17. Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2,245, 2,245–85 (2001).

18. Horst W. J. Rittel & Melvin M. Webber, *Dilemmas in a General Theory of Planning*, 4 POL'Y SCI. 155, 155–69 (1973).

19. McBeth et al., *supra* note 7, at 391–409.

20. Rittel & Weber, *supra* note 18.

some environmental policy issues exhibit wicked characteristics. As described by Nie, wicked environmental problems are "value-based political conflicts grounded in deep core human values.… [Such problems are] acrimonious, symbolic, intractable, divisive, and expensive."[21] They also defy easy problem definitions and, therefore, clearly defined and generally accepted solutions as well. Not surprisingly, then, wicked problems are prone to political influences,[22] and by logical extension, presidential administrative action, or what Nathan called the "Administrative Presidency."[23]

Such is the case with federal climate change regulations. The focus of this study begins during the period when President Obama directed the EPA to implement the Clean Power Plan, using a relatively novel interpretation of relevant Clean Air Act (CAA) statutes.[24] The Clean Power Plan followed a series of international efforts, executive orders, and policy documents set forth by the Obama Administration. It was designed to cap CO_2 emissions from fossil-fuel electric generating units and mandated a 32% reduction in CO_2 emissions from 2005 levels by 2030.[25] Two years later, the Trump Administration directed the EPA to rescind the Clean Power Plan, and the agency has now proposed a new rule to replace it with a revised, less stringent, and less prescriptive application of the CAA statutes on which it is based.[26] This "whipsaw" action has implications for industry, environmental and economic interests, and the public by creating an uncertain regulatory environment, governed by special interest lobbying and litigation instead of institutions and rules.[27]

The federal climate regulation case therefore also has important implications for democracy, including how it affects government accountability and responsibility. If wicked problems can be resolved and modified by administrative action alone,

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21. Martin Nie, *Drivers of Natural Resource-Based Political Conflict*, 36 POL'Y SCI. 307, 307–08 (2003).

22. McBeth et al., *supra* note 7, at 392.

23. *See* NATHAN, *supra* note 5.

24. *See, e.g.*, Kirsten H. Engel, *EPA's Clean Power Plan: An Emerging New Cooperative Federalism?*, 45 PUBLIUS: J. FED. 452, 452–74 (2015); WILLIAM W. HOGAN, ELECTRICITY MARKETS AND THE CLEAN POWER PLANT 9–23 (Sept. 21, 2015), https://sites.hks.harvard.edu/fs/whogan/Hogan_CPP_092115.pdf.

25. *See* Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units, 40 C.F.R. §§ 60, 70, 71, 98 (2015); *see also* Jeremy M. Tarr, *The Clean Air Act and Power Sector Carbon Standards: Basics of Section 111(d)*, DUKE NICHOLAS INST. ENVTL. POL'Y SOLUTIONS (Sept. 2013), https://nicholasinstitute.duke.edu/sites/default/files/publications/ni_pb_13-03.pdf; Jeremy M. Tarr et al., *Energy Efficiency and Greenhouse Gas Limits for Existing Power Plants: Learning from EPA Precedent*, DUKE NICHOLAS INST. ENVTL. POL'Y SOLUTIONS 3 (June 2013), https://nicholasinstitute.duke.edu/sites/default/files/publications/ni_r_13-04_0.pdf.

26. *See* Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 40 C.F.R. § 60 (2017); Revisions to Emission Guideline Implementing Regulations, 40 C.F.R. §§ 51, 52, 60 (2018).

27. Zack Colman, *Trump's Repeal Is Coming. Industry Is Watching the Clock*, CLIMATEWIRE (Oct. 5, 2017), https://www.eenews.net/climatewire/stories/1060062681/search?keyword=mccabe (quoting Janet McCabe); s*ee also* Roger Pielke Jr., *supra* note 14; Cass R. Sunstein, *There's Little Confusion About Trump's Regulatory Record: There's a Lot More Continuity Than You Might Think*, BLOOMBERG (Aug. 6, 2018), https://www.bloomberg.com/opinion/articles/2018-08-06/trump-isn-t-wrecking-obama-s-regulation-legacy.

then why not less wicked, even ordinary problems?[28] If administrative action is all that is needed, what then is the role of elected officials and the non-elected bureaucracy in making and implementing public policy? A deeply divided public thus finds itself on uncertain policy terrain with much at stake, while different administrations devise and dismantle regulations along party lines. Such actions frustrate important policy deliberations, the poignancy of which is felt most when wicked problems are involved.[29] Of course, climate policy is but one of many wicked problems subjected to whipsaw positions and unilateral regulatory actions. From foreign conflicts to immigration, United States policy is replete with unstable positions that seem to change with each election cycle. However, the handling of climate policy through administrative rulemaking, which was crafted by one president only to be dismantled by the next, provides an instructive window into a policy problem that clearly highlights the rationalization of unilateral action through the administrative presidency.

Importantly, the administrative actions of presidents, especially with respect to wicked policy problems left unaddressed by affirmative congressional action, pose serious questions about the proper role of the bureaucracy in America. As originally conceived by Nathan, the administrative presidency relies heavily on the belief that the president runs the bureaucracy and should utilize it to implement policy preferences.[30] In times of political ossification, to modify a phrase from von Clausewitz,[31] this often means administrative action is merely the continuation of legislation by other means—that is, by presidential administrative action through the bureaucracy. Of course, the appropriate extent of administrative action has long been debated in public administration. A central aspect of the debate is the proper role of the bureaucracy in making and shaping policy, especially where competing values are in conflict and interest groups seek to influence the decision-making process.[32] One purpose of this study is to take a closer look at the administrative presidency's use of the bureaucracy to shape policy on issues for which Congress either lacks the appetite or ability to address.

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28. In a sense all organized efforts, whether public or private, seek to command increasing influence over their various areas of interest. As influence expands so does control, and modern society is frequently defined by its controlling interests and an important question becomes who decides? *See* THEODORE J. LOWI, THE END OF LIBERALISM: THE SECOND REPUBLIC OF THE UNITED STATES 22–41 (1979).

29. TULIS ET AL., *supra* note 6. Tulis argues that under the rhetorical presidency policy is subject to frequent change and characterized by a lack of deliberation and "decay of political discourse." When the rhetorical presidency is used to address wicked problems, which are by nature values laden and divisive, the public is subject to the divisive rhetoric but remains bereft of deliberation that facilitates resolution. Instead, the public is subject to policy swings with each change of political wind. *See also* Bryan Garsten, *The Rhetoric Revival in Political Theory*, 14 ANN. REV. POL. SCI. 159, 159–80 (2011).

30. NATHAN, *supra* note 5.

31. The original translation is "war is a mere continuation of policy by [with] other means." *See* CARL VON CLAUSEWITZ, ON WAR 121 (Colonel J.J. Graham trans., Kegan Paul, Trench, Trübner & Co. 1908).

32. *See, e.g.*, Carl J. Friedrich, *Public Policy and the Nature of Administrative Responsibility*, *in* PUBLIC POL'Y 3, 3–24 (C.J. Friedrich & E.S. Mason eds., 1940); Herman Finer, *Administrative Responsibility in Democratic Government*, 1 PUB. ADMIN. REV. 335, 335–50 (1941); H. George Frederickson, *Toward a New Public Administration*, *in* TOWARD A NEW PUBLIC ADMINISTRATION: THE MINNOWBROOK PERSPECTIVE 309–31 (Frank Marini ed., 1971); LOWI, *supra* note 28; Lewis, *supra* note 4, at 60–73.

A primary contribution this article endeavors to make is in the bringing together of "administrative presidency" scholarship with "rhetorical presidency" scholarship in analyzing the EPA and the Clean Power Plan. "Rhetorical presidency" scholarship examines how presidents use rhetoric to not only engage the public but also to define problems, set the agenda, propose solutions, and indirectly influence political actors.[33] The term "rhetoric" is used in diverse ways by different scholars,[34] but for the purposes of this article, rhetoric is defined in the classical Aristotelian tradition as understanding what is persuasive and using it to convince others under a variety of circumstances.[35] Yet, the consequences of the rhetorical presidency, especially as it is evolving today, extend beyond just the presidential use of rhetoric to persuade.

According to Tulis, a president's rhetoric concerns the "constitutional order" and governance, and it is the vehicle by which contemporary presidents seek to influence policy and govern the citizenry.[36] Governance in this sense is taken to mean a "government's ability to make and enforce rules, and to deliver services," as well as where the locus of control lies for such services, whether at the local or centrally controlled, federal level.[37] The rhetorical presidency thus describes the willingness of presidents to bypass Congress and "mobilize the public as a routine means of governance."[38] Some scholars, such as Tulis, view this practice as destructive to American constitutional principles,[39] while others see its impact on democracy as ranging from unimportant,[40] to harmful.[41] Regardless of how scholars have come to view it, the study of the rhetorical presidency indicates that it "is, at least potentially, a potent force and a significant political resource that needs to be understood and used wisely."[42] It is important to point out that the potentially potent force of the rhetorical presidency described by Stuckey may very well be magnified when combined with the administrative presidency, making the admonition to understand and use it wisely all the more compelling.

This study lies at the intersection of these three scholarly areas: the wicked problem of climate change policy making; the administrative presidency; and the

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33. *See* TULIS ET AL., *supra* note 6, at 3–23; *see also* Paul J. Quirk, *When the President Speaks, How Do the People Respond?*, 19 CRITICAL REV. 427, 427–46 (2007).

34. *See* Garsten, *supra* note 29; *see also* David Fleming, *Rhetoric as a Course of Study*, 61 C. ENG. 169, 169–91 (1998).

35. Christof Rapp, *Aristotle's Rhetoric*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY § 4.1 (2010), https://plato.stanford.edu/entries/aristotle-rhetoric/#4.1.

36. *See* Jeffrey K. Tulis, *The Rhetorical Presidency in Retrospect*, 19 CRITICAL REV. 481, 481–500 (2007).

37. Francis Fukuyama, *What is Governance?*, 26 GOVERNANCE 347, 347–68, Section Definitions (2013).

38. MARY STUCKEY, RETHINKING THE RHETORICAL PRESIDENCY AND PRESIDENTIAL RHETORIC, 10 REV. COMM. 38, 40 (2010).

39. *See* TULIS ET AL., *supra* note 6, at 145–72; Tulis, *supra* note 36, at 492–98.

40. GEORGE C. EDWARDS, ON DEAF EARS: THE LIMITS OF THE BULLY PULPIT (Yale Univ. Press eds., 2006); *see also* David Zarefsky, *Presidential Rhetoric and the Power of Definition*, 34 PRESIDENTIAL STUD. Q. 607 (2004).

41. Roderick P. Hart, The Sound of Leadership: Presidential Communication in the Modern Age 210–14 (Chicago: Univ. Press 1987); *see* Kathleen Hall Jamieson, Eloquence in an Electronic Age: The Transformation of Political Speechmaking (New York: Oxford University Press eds., 1988).

42. Stuckey, *supra* note 38.

rhetorical presidency. Wicked environmental problems have garnered significant attention from myriad policy scholars.[43] Climate change itself remains a subject of substantial import in U.S. policy because of its high salience, entrenched views despite a well-documented scientific consensus, and elusive solutions. The administrative presidency has been extensively studied over the years by political scientists and public policy and administration scholars.[44] And the rhetorical presidency has been studied by communication scholars and political scientists over the past three decades.[45] This proposed study aims to bring these different scholarly conversations together in order to draw some larger conclusions about the current state of democratic decision-making. Ideally, the conclusions from this work will contribute to themes of significant concern to public administration scholars, such as government accountability, responsibility, and democratic principles.[46]

With Stuckey's admonition in clear view—to better understand the "potentially potent force" and "significant political resource" that is the rhetorical presidency—this study begins by asking how President Obama rhetorically constructed the role of the EPA, effectively weaponizing it to implement federal climate change regulations? Importantly, the way in which presidents rationalize their use of the administrative presidency may reveal an evolving view of the bureaucracy in implementing policy, including under what conditions strong executive action is justified and whether there are any limits to such action. Such an analysis may also provide insights into whether the administrative presidency is simply one tool of executive power, or reflects more broadly on how presidents view the bureaucracy. With respect to this last point, as discussed in more detail later, I borrow from political scientist Donald Kettl to construct a typology of how presidents view the control of government and the role of bureaucracy within it.[47] While Kettl proposed a framework rather than a typology, his original theoretical contribution will help root the analysis in historical perspectives of governance and provide a theoretical starting point for expanding our understanding of both the presidency and bureaucracy.[48]

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43. *See, e.g.*, Hank C. Jenkins-Smith et al., *The Advocacy Coalition Framework: Foundations, Evolution, and Ongoing Research*, *in* THEORIES OF THE POLICY PROCESS 183–224 (Paul A. Sabatier & Christopher M. Weible eds., 2014); Mark K. McBeth et al., *The Narrative Policy Framework*, *in* THEORIES OF THE POLICY PROCESS 225–66 (Paul A. Sabatier & Christopher M. Weible eds., 2014); Mathew C. Nisbet, *Communicating Climate Change: Why Frames Matter for Public Engagement*, 51 ENVIRONMENT: SCIENCE AND POLICY FOR SUSTAINABLE DEVELOPMENT 12 (2009); *see also* BRIDGET K. FAHEY, FRAMING A HOT ISSUE: PRINT MEDIA COVERAGE OF CLIMATE CHANGE FROM 2006 TO 2012 AND THE INFLUENCE OF ISSUE FRAMING (Western Political Science Association, Panel 03.08 - Agenda Setting in Environmental Policy 2013).

44. Kagan, *supra* note 17*; see also* NATHAN, *supra* note 5; Moe, *The Political Presidency*, *supra* note 5; Terry M. Moe & William G. Howell, *The Presidential Power of Unilateral Action*, 15 J. L., ECON., & ORG. 132 (1999); Lewis, *supra* note 4; ANDREW RUDALEVIGE, THE NEW IMPERIAL PRESIDENCY: RENEWING PRESIDENTIAL POWER AFTER WATERGATE (2005); Kenneth S. Lowande & Sidney M. Milkis, *"We Can't Wait": Barack Obama, Partisan Polarization and The Administrative Presidency*, 12 FORUM 3 (2014).

45. S*ee* MARTIN J. MEDHURST, THE PROSPECT OF PRESIDENTIAL RHETORIC (2008); Lewis, *supra* note 4; WHITFORD & YATES, *supra* note 13; KERNELL, *supra* note 16; TULIS ET AL., *supra* note 6; Tulis, *supra* note 36; Stuckey, *supra* note 38; Stephen Skowronek, *Presidency and American Political Development: A Third Look*, 32 PRESIDENTIAL STUD. Q. 743 (2002); EDWARDS, *supra* note 40.

46. LOWI, *supra* note 28; *see also* Moe & Howell, *supra* note 44; Lewis, *supra* note 4; Tulis, *supra* note 36.

47. *See* Kettl, *supra* note 3.

48. *Id.*

Ultimately, a better understanding of the "potentially potent force" of a "weaponized" bureaucracy and how presidents view it may help reveal new insights about how the use of the bureaucracy to implement presidential policies affects democratic principles.[49] Notably, while rulemakings follow a rigorous review process through the Administrative Procedures Act, using the bureaucracy in such a weaponized manner creates a mismatch between the seriousness of the policy problem and fickleness of the policy response. Such a mismatch may undermine a more appropriately deliberative response and foster policies that are driven and resolved by populist appeal, as will be discussed later in the article.

III. LITERATURE REVIEW AND THEORETICAL FRAMEWORK

In this Part, the article first addresses the concept of climate change as a wicked problem in the public policy space and how climate change acts as a marker of political ideology. The article then sets forth a theoretical framework that will help orient historical ways in which the presidency and bureaucracy have been viewed in the scholarly literature. The theoretical framework will be followed by a more detailed discussion about presidential control and the two elements of control—the administrative presidency and rhetorical presidency—that are the focus of this article.

A. Wicked Problems and Presidential Control

In terms of sheer wickedness, there is perhaps no more wicked problem in America than climate change policy. Indeed, climate change is unique in both its breadth of impact and depth of discord, joining gun control, taxation, immigration, and abortion in the way it hardens the partisan divide and "defines what it means to be a Republican or Democrat."[50] Thus, the wicked problem of climate change is among a handful of issues that are acutely steeped in partisan politics, where presidential rhetoric sets the tone for how partisans, and opponents, view the problem.[51] Combined with the way in which the underlying contributors of anthropogenic climate change are embedded in the institutions, infrastructure, and economy of the U.S., such characteristics make climate change policy ripe for presidential influence and, therefore, an ideal backdrop for studying the administrative and rhetorical presidency.

The way in which climate change is defined and framed as a policy problem also contributes to its utility as a focus of the study. For example, who defines the problem has important implications as well. As noted by Sarah Pralle, issue salience

49. The term "weaponized" is intended to be politically neutral. In this context, it is simply a description of how the EPA is utilized to address climate change policy that had previously failed in Congress and would have been sidelined but for executive action via an administrative agency. When considering a similar use of the EPA by a subsequent presidency to address the same policy issue but in the opposite direction, the term becomes even more apt.

50. Matthew C. Nisbet, *Communicating Climate Change: Why Frames Matter for Public Engagement*, 51 ENV'T: SCI. POL'Y SUSTAINABLE DEV. 12, 14 (2009).

51. Zarefsky, *supra* note 40.

waxes and wanes with how a problem is defined.[52] Issues that are defined as immediate, catastrophic, and proximate will find a higher place on the public and governmental agenda than issues that are defined as uncertain, economically expensive, socially undesirable, or occurring in the distant future.[53] Not coincidentally, this is a dividing line in the climate change debate, which is often characterized, on one hand, as the "defining issue of our time" or, on the other, as a "hoax" that is too expensive and too uncertain to worry about.[54] This dynamic creates positive and negative feedback loops, and when combined with crises, or focusing events, can lead to either long periods of equilibrium as the status quo is maintained or punctuated moments of dramatic change.[55] Arguably, climate change policy has experienced high degrees of both positive and negative feedback loops, yet with little change.

One reason for this, as Nisbet argues, is revealed in recent polling on climate change views that reflect a deep polarization of opinions, "resulting in two Americas divided along ideological lines."[56] The divide breaks along predictably political lines, with Republicans increasingly questioning the certainty of the science of climate change and urgency of its effects, while Democrats increasingly endorse climate science findings and react with growing concern about possible deleterious effects on the environment and society.[57] Notably, the partisan divide is unaffected by education or knowledge.[58] Roser-Renouf, et al., find that Americans hold a slightly more diverse, albeit similarly divided view, of global warming, resulting in six discrete groups they refer to as "Global Warming's Six Americas."[59] However, despite a more refined parsing of views on global warming, their data reflects a similar break along the same ideological lines described by Nisbet.[60] Thus, when considering climate change, whether one sees two or six Americas, the conclusion is the same: climate change is characterized by deeply divided and firmly held ideological views, making it among the most wicked of not only environmental problems but social problems as well. It also makes it susceptible to the influences of the party in control of the bureaucracy.

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52. *See* Sarah B. Pralle, *Agenda-Setting and Climate Change*, 18 ENV'TL. POL. 781, 785–91 (2009).

53. *See id.*; KAREN T. LITFIN, OZONE DISCOURSE: SCIENCE AND POLITICS IN GLOBAL ENVIRONMENTAL COOPERATION (1995); SHEILA JASANOFF, THE FIFTH BRANCH: SCIENCE ADVISERS AS POLICYMAKERS (1998).

54. The statement "the defining issue of our time" was used in reference to climate change in the February 26, 2014 report jointly issued by the U.S. National Academy of Sciences (NAS) and the Royal Society in the United Kingdom, which sought to provide a clearly written reference document for policy makers, educators, and others about the current state of climate change science. Senator James Inhofe stated in July 28, 2003 speech on the Senate floor that "catastrophic global warming is a hoax" and went on to highlight the expense of climate change mitigation and inherent uncertainties of climate change science. *See* 149 CONG. REC. S10021 (July 28, 2003).

55. BAUMGARTNER & JONES, *supra* note 14, at 3–24.

56. Nisbet, *supra* note 50, at 14.

57. *Id.*

58. *Id.*

59. *See* CONNIE ROSER-RENOUF ET AL., GLOBAL WARMING'S SIX AMERICAS IN OCTOBER 2014: PERCEPTIONS OF THE HEALTH CONSEQUENCES OF GLOBAL WARMING AND UPDATE ON KEY BELIEFS 6–8 (2014), http://climatecommunication.yale.edu/wp-content/uploads/2015/03/Six-Americas-October-2014.pdf.

60. *See* Nisbet, *supra* note 50, at 14.

B. Mapping Presidential Control

In order to understand how presidents view their authority and the role of bureaucracy, it is helpful to place the various views on the matter in historical context. Notably, political control of the bureaucracy is the quintessential element underlying the politics-administration dichotomy.[61] While this study does not focus on the dichotomy *per se*, the familiar refrain of its principal arguments certainly echoes in the background. From a normative standpoint, an important question is how active executives should be in directing administrative agencies to shape public policy, especially where Congress has not specifically acted to fill a policy void by statute or clarified the implementation standards of how more ambiguous statutes should be implemented. In other words, what role should administrative agencies play when there is both a legal and policy vacuum? And since presidents direct the actions of agencies, how proactive should executives be in filling the void of congressional inaction? Perhaps a more fundamental question is how do presidents themselves view their use of presidential control? How one views presidential control goes a long way in answering these questions and whether value-laden, polarized, and unsettled policy problems, like climate change, should be addressed through administrative action rather than through a deliberative, congressional process. Another important consideration is the sense of urgency, and even opportunity, motivated by values, priorities, and politics, presidents feel when Congress leaves a void that creates space out of which policies can be adopted through administrative action. Such occasions grant executives freedom to pursue policies that are controversial and unsettled (i.e. wicked in nature), albeit not without legal, congressional, and political challenges. After all, wicked problems like climate change remain wicked because of the vigor with which policies addressing them are promoted, defended, and opposed.[62] At the same time, presidents will utilize policy voids to pursue their own political and policy ends.

For example, scholars have long noted, some more approvingly than others, that administrative actions via the bureaucracy, as well as the independent actions of administrators themselves, are a means to social, economic, and political ends

61. The roots of the bureaucracy-democracy tension extend to Woodrow Wilson and his articulation of the politics-administration dichotomy. In its most basic construction, the politics-administration dichotomy argues for a distinction between politics and administration. Views in favor of a dichotomy during the Progressive Era were motivated by the belief that a better practice of public administration, one that was separated from the influence of politics, would lead to better outcomes. Thus, government could be improved to the extent its career bureaucrats were insulated from "political meddling." *See* Kettl, *supra* note 3, at 7, 9. As Wilson asserted, "[A]dministration lies outside the proper sphere of politics…. [a]lthough politics sets the tasks for administration, it should not be suffered to manipulate its offices." *See* Woodrow Wilson, *The Study of Administration*, 2 POL. SCI. Q. 197, 210 (1887). For historic representations and helpful modern discussions of the politics-administration dichotomy, *see also* THEORY AND PRACTICE OF PUBLIC ADMINISTRATION: SCOPE, OBJECTIVES, AND METHODS (James C. Charlesworth ed., 1968); Nicholas Henry, *Paradigms of Public Administration*, 35 PUB. ADMIN. REV. 378, 378–86 (1975); LEONARD DUPEE WHITE, INTRODUCTION TO THE STUDY OF PUBLIC ADMINISTRATION (1926); FRANK J. GOODNOW, POLITICS AND ADMINISTRATION: A STUDY IN GOVERNMENT (2017); JAMES P. PFIFFNER, *Political Appointees and Career Executives: The Democracy-Bureaucracy Nexus in the Third Century*, 47 PUB. ADMIN. REV. 57, 57–65 (1967); KENNETH J. MEIER & LAURENCE J. O'TOOLE, JR., BUREAUCRACY IN A DEMOCRATIC STATE: A GOVERNANCE PERSPECTIVE 21–23 (2006).

62. Nisbet, *supra* note 50, at 18–20.

that may or may not reflect broader and more diverse public values.[63] As such, it matters greatly who does the influencing and how it occurs. As noted by Lewis, using the bureaucracy to achieve political ends is frequently a factor of either agency capture or the influence of interest groups, neither of which tend to be broadly representative of the public interest.[64] In a similar vein, Lowi describes how the influence of special interest groups leads to "the atrophy of institutions of popular control,"[65] which describes what happens when policy becomes untethered from "clear standards of implementation," leaving the priorities of institutions to those with the greatest influence over them.[66] The same principle holds true for the executive office. Even though the president is formally in control of executive agencies, his views are not necessarily representative of even a majority of the populace.[67] Therefore, whether presidents or special interests control the bureaucracy, narrowly defined priorities may frustrate the realization of broader social values.

These insights are helpful in better understanding the criticism associated with unilateral administrative actions that deviate from clear legislative priorities and requirements. However, as noted above, legislation is rarely so clear or prescriptive, especially where wicked problems are concerned, leaving executives and administrative agencies to set policies or to sort out Congress's intent through administrative rulemaking.[68] Naturally, such actions are not universally welcome. And one clearly observable result has been an expansion of litigation surrounding agency rulemaking and priorities.[69]

The Clean Power Plan is representative of such a dynamic, as it has been in litigation since the Obama Administration EPA's final order implementing it in 2015.[70] If the Trump Administration EPA is successful in rescinding and replacing the Clean Power Plan, the regulatory landscape will change but the prevalence of litigation will not, since those favoring stronger CO_2 regulation will subsequently sue EPA for weakening it. As this dynamic plays out, EPA's interpretation of the relevant statute and views of its own interpretive discretion, while appearing schizophrenic, are merely symptomatic of the climate change policy void coupled with strikingly divergent policies of the Obama and Trump administrations.[71] In the light of expanding litigation regarding agency rulemaking, numerous scholars have observed

63. *See, e.g.*, Frederickson, *supra* note 32, at 309–10; LOWI, *supra* note 28, at 23–24.

64. Lewis, *supra* note 4, at 9–10.

65. LOWI, *supra* note 28, at 58.

66. *Id.* at 298; *see also* James Q. Wilson, *Juridical Democracy versus American Democracy*, 23 PS: POL. SCI. AND POL. 570, 570–72 (1990) [hereinafter Wilson, *Juridical Democracy*]; JAMES Q. WILSON, BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT (1991) [hereinafter WILSON, BUREAUCRACY].

67. Cynthia R. Farina, *False Comfort and Impossible Promises: Uncertainty, Information Overload, and the Unitary Executive*, 12 U. PA. J. CONST. L. 357, 373–90 (2010).

68. Wilson, *Juridical Democracy*, *supra* note 66.

69. David B. Spence, *Agency Discretion and the Dynamics of Procedural Reform*, 59 PUB. ADMIN. REV. 425, 426 (1999).

70. *See Clean Power Plan Case Resources*, ENVT'L. DEF. FUND, https://www.edf.org/climate/clean-power-plan-case-resources (last visited Mar. 23, 2019) ("Opponents of the Clean Power Plan have been suing since before the rule was even finalized in August 2015").

71. *See, e.g.*, Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 82 Fed. Reg. 48,035, 48,036–39 (proposed Oct. 16, 2017) (to be codified at 40 C.F.R. pt. 60) (proposing to repeal the Clean Power Plan in its entirety in accordance with Executive Order

that administrative agencies have become "gun-shy and produced an 'ossified' agency decision-making process that is less flexible, less rational, and less effective."[72] It is likely this predicament is in some fashion exacerbated by presidential control over agency agendas, priorities, and even the rules they promulgate, leading to more constrained agency action. Some scholars would argue this outcome speaks to the need for enhanced agency discretion to more fully represent societal values and mitigate negative, or unforeseen, consequences of implemented policies,[73] while others would argue for clearer legislation to limit agency discretion, not to mention presidential control.[74]

Regardless of the merits of either view of bureaucratic discretion, the fact remains that agencies, as well as presidents, frequently interpret congressional intent.[75] Of course, there is typically ample room for interpretation, since it is virtually impossible to draft legislation that contemplates all possible future conditions. This is particularly true when technology, goals, implementation, future conditions, and overlapping tasks (first described as polycentric tasks by philosopher Michael Polanyi)[76] cannot be defined, let alone identified, upfront.[77] This legislative ambiguity may even allow, if not invite, executive action to fill the void, or at least shape it to fit their policy preferences.[78] Given the prominent role presidents play in this regard, it is helpful to contextualize how they have done so historically. Here, Kettl is helpful in sorting out the main ways in which presidents have approached governance, in particular the way in which they view the bureaucracy as a means for promoting policies.

Although Kettl developed his framework as a way of categorizing the main academic and practitioner views on "administrative ideas and political philosophy" (i.e. the politics-administration dichotomy), it also functions well as a typology of presidential approaches to the question of the role of bureaucracy.[79] As shown in Figure 1, the first type is the Madisonian tradition, which maintains that governance

13783, "Promoting Energy Independence and Economic Growth," and the EPA's updated interpretation finding the Obama Administration EPA exceeded the agency's statutory authority under section 111(d) of the Clean Air Act).

72. Spence, *supra* note 69, at 426; *see also* MICHAEL LIPSKY, STREET-LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES 162–91 (Russell Sage Foundation, 1st ed. 1980); Thomas O. McGarity, *Some Thoughts on "Deossifying" the Rulemaking Process*, 41 DUKE L. J. 1385, 1386–87 (1992); Cass R. Sunstein, *Problems with Rules*, 83 CALIF. L. REV. 953, 955–1026 (1995).

73. Frederickson, *supra* note 32, at 328–30; Friedrich, *supra* note 32.

74. Finer, *supra* note 32; LOWI, *supra* note 28.

75. Wilson, *Juridical Democracy*, *supra* note 66.

76. *See* MICHAEL POLANYI, THE LOGIC OF LIBERTY 147 (1951). For a good general discussion on the topic, *see also* Paul D. Aligica & Vlad Tarko, *Polycentricity: From Polanyi to Ostrom, and Beyond*, 25 GOVERNANCE 237 (2012).

77. Wilson, *Juridical Democracy*, *supra* note 66; *see also* Lon L. Fuller & Kenneth I. Winston, *The Forms and Limits of Adjudication*, 92 HARV. L. REV. 353 (1978).

78. Moe & Howell, *supra* note 44.

79. Kettl, *supra* note 3, at 14.

is predicated on political power as opposed to administrative efficiency.[80] As described by Kettl, the Madisonian view is "rich . . . in balance-of-power politics," where politics is very much a part of administration.[81]

	Wilsonian (Hierarchical)	Madisonian (Balance of Power)
Hamiltonian (Strong-Executive/ Top-Down)	Strong-executive Top-down accountability Hierarchical authority	Centered on non-bureaucratic institutions Focus on political power Top-down accountability
Jeffersonian (Weak-Executive/ Bottom-Up)	Weak-executive Bottom-up responsibility Responsive to citizens	Centered on non-bureaucratic institutions Focus on local control Bottom-up responsiveness

Figure 1. Typology of Presidential Control in the U.S.[82]

The second type is in the Hamiltonian tradition, which is best characterized by the Federalist Alexander Hamilton, who argued that "energy in the executive is a leading character of the definition of good government."[83] In other words, Hamiltonians are characterized by a strong executive branch actively seeking to serve the public interest but "held in check by popular institutions."[84] The third type rests in the Jeffersonian tradition, which is characterized by the preservation of individual autonomy through grassroots, bottom-up governance that is limited in scope and power, and situated at the lowest possible level of government.[85] In the Jeffersonian tradition, the bureaucracy, if there is any at all, should be as small as possible. Finally, no typology of public administration would be complete without the Wilsonian tradition. The Wilsonian tradition adheres to the politics-administration dichotomy and is characterized by a competent and professional bureaucracy separated from the influence of politics.[86] In other words, Wilsonians believe in an accountable, technically capable bureaucracy unencumbered by politics and nonthreatening to democracy.[87]

To summarize Kettl's theoretical framework, then, the Hamiltonian and Jeffersonian types are contrasted with one another and capture views of government hierarchy. Thus, the Hamiltonian type represents a "strong-executive/top-down" construct, while the Jeffersonian type represents a "weak executive/bottom-up"

80. Kettl, *supra* note 3, at 17.

81. Kettl, *supra* note 3, at 15. *See generally* JEFFREY L. PRESSMAN & AARON B. WILDAVSKY, IMPLEMENTATION: HOW GREAT EXPECTATIONS IN WASHINGTON ARE DASHED IN OAKLAND (1973); WILSON, BUREAUCRACY, *supra* note 66; John M. Gaus, *Trends in the Theory of Public Administration*, 10 Pub. Admin. Rev. 161 (1950).

82. Kettl, *supra* note 3, at 17.

83. *Id.* at 15.

84. *Id.* at 16.

85. *Id.*

86. *Id.*; *see also* Wilson, *supra* note 61.

87. Kettl, *supra* note 3, at 16–17.

construct. The Wilsonian and Madisonian types are contrasted with one another and capture the way in which the bureaucracy is viewed respectively as "hierarchy, authority, process, and structure" versus "political balance-of-power."[88] Because the typology represents the dominant ideas in public administration and governance since the late nineteenth century,[89] it provides a useful way to begin assessing how Obama views the respective roles of government and the bureaucracy and, as I discuss below, may be used to inform the coding of presidential statements.

Notably, the role of the bureaucracy in making and shaping policy is a central aspect highlighted by the typology, and it is important to keep in mind that the typology is more than a mere abstraction. On the contrary, each type represents a dominant theme in the history of American public administration and governance. Which theme is the most appropriate depends on ideological views of the role of government as well as more pragmatic views of who's in charge of it. Thus, it may be that ideological purity fades into the shadow of expediency. Ultimately, as described by Kettl referencing an argument made by John Gaus, "how one feels about power depends on whether one has it."[90] To apply the same sentiment to this study, how one feels about administrative action depends on which administration is acting and how such actions are rationalized through presidential rhetoric, making both the administrative and rhetorical presidency important concepts for further analysis.

C. Zeroing in on the Administrative and Rhetorical Presidencies

In this Part, the article looks more closely at the administrative and rhetorical aspects of presidential control and more precisely delineates their application by various presidents. While the two aspects of control are frequently exercised somewhat independently of one another, their joint use is particularly noteworthy when presidential priorities meet congressional resistance. However, regardless of the level of resistance to policies, occupants have, without exception, entered the Oval Office intent on advancing their favored policies.[91] To that end, presidents have framed and promoted issues through campaign speeches, press conferences, inaugural and State of the Union addresses, and now through the social media venue of Twitter.[92] By doing so, each president has played an important role in signaling policy intentions. In the environmental policy arena, there arguably was no president more actively engaged in promoting environmental policies than Teddy Roosevelt,

88. *Id.* at 16–17.

89. *Id.* at 17.

90. *Id.* at 16; *see also* JOHN M. GAUS, REFLECTIONS ON PUBLIC ADMINISTRATION 135 (2006).

91. Norman J. Vig, *The American Presidency and Environmental Policy*, *in* THE OXFORD HANDBOOK OF U.S. ENVIRONMENTAL POLICY (Michael E. Kraft & Sheldon Kamieniecki eds., 2012) [hereinafter Vig, *The American Presidency*].

92. *Id. See generally* Brian L. Ott, *The Age of Twitter: Donald J. Trump and the Politics of Debasement*, 34 CRITICAL STUD. IN MEDIA COMM. 59 (2016).

who put the power and energy of the president fully behind the conservation movement through his rhetoric and actions.[93] Indeed, according to historian Paul Cutright, meaningful strides in the conservation movement were achieved only after Roosevelt applied his presidential heft to what he saw as a moral, even religious, response to the mismanagement of natural resources.[94] In more recent times, presidents have framed issues and employed their powers to both expand and restrict environmental regulations, sometimes with the help of Congress but often on their own.[95] Thus, presidents have played an integral role by word and deed in shaping and implementing polices since the inception of the environmental movement and will continue to do so in the climate change era as well.

To illustrate the point, in the modern era, presidents Richard Nixon, Jimmy Carter, George H. W. Bush, Bill Clinton, and Barack Obama used the executive office to advance environmental protections, in such diverse areas as the establishment of the EPA, energy conservation, acid rain, environmental justice, and greenhouse gas reductions.[96] On the other hand, presidents Gerald Ford, Ronald Reagan, George W. Bush, and Donald Trump have used the same office to blunt or even reverse the actions of prior presidents, punctuated by Reagan's and Trump's deregulatory activities.[97] The effort of presidents in this regard has attracted the attention of scholars interested in both environmental policy and presidential studies, although not commonly at the intersection of the two.[98] Scholars also have devoted considerable effort studying environmental policy disputes, with their highly politicized and polarized nature, conflicting values, and intractable positions.[99]

As noted, such problems also are prone to rhetorical influences. While not a topic of this study, it bears mentioning that because of the importance of the president in agenda setting, presidential rhetoric plays a prominent role in framing wicked problems. This is particularly important because the U.S. legislative system tends to reinforce the status quo, and implementing policy solutions requires the

93. Vig, *The American Presidency*, *supra* note 91, at 306–08. *See generally* PAUL RUSSELL CUTRIGHT, THEODORE ROOSEVELT: THE MAKING OF A CONSERVATIONIST (1985); Leroy G. Dorsey, *Preaching Conservation: Theodore Roosevelt and the Rhetoric of Civil Religion*, *in* GREEN TALK IN THE WHITE HOUSE: THE RHETORICAL PRESIDENCY ENCOUNTERS ECOLOGY 37 (Tarla Rai Peterson ed., 2004).

94. Dorsey, *supra* note 93, at 38.

95. *See* Vig, *The American Presidency, supra* note 91; Norman J. Vig, *Presidential Powers and Environmental Policy, in* ENVIRONMENTAL POLICY: NEW DIRECTIONS FOR THE TWENTY-FIRST CENTURY 80–98 (Norman J. Vig & Michael E. Kraft eds., 9th ed. 2016) [hereinafter Vig, *Presidential Powers*]; Michael E. Kraft, *Environmental Policy in Congress: From Consensus to Gridlock*, *in* ENVIRONMENTAL POLICY: NEW DIRECTIONS FOR THE TWENTY-FIRST CENTURY 127 (Norman J. Vig & Michael E. Kraft eds., 2016).

96. Vig, *The American Presidency*, *supra* note 91, at 306–28; Michael E. Kraft & Norman J. Vig, *Environmental Policy from the 1970s to the Twenty-First Century*, *in* ENVIRONMENTAL POLICY: NEW DIRECTIONS FOR THE TWENTY-FIRST CENTURY 13–20 (Norman J. Vig & Michael E. Kraft eds., 2016).

97. Vig, *The American Presidency*, *supra* note 91, at 306–28; *see also* JUDITH A. LAYZER, OPEN FOR BUSINESS: CONSERVATIVES' OPPOSITION TO ENVIRONMENTAL REGULATION 41–49, 83–133 (2012).

98. Vig, *The American Presidency*, *supra* note 9191, at 324; *see also* Terry M. Moe, *The Revolution in Presidential Studies*, PRESIDENTIAL STUD. Q. 701, 701–24 (2009) [hereinafter Moe, *Revolution in Presidential Studies*].

99. *See, e.g.*, LESLIE R. ALM ET AL., TURMOIL IN AMERICAN PUBLIC POLICY: SCIENCE DEMOCRACY, AND THE ENVIRONMENT (2010); Jasanoff, *supra* note 53; Litfin, *supra* note 53; Jenkins-Smith ET AL., *supra* note 43; BRUCE A. WILLIAMS & ALBERT R. MATHENY, DEMOCRACY, DIALOGUE, AND ENVIRONMENTAL DISPUTES (1995).

aid of focusing events, policy entrepreneurs, executive action, or all the above.[100] Such is the context for climate policy and legislative action intended to mitigate harmful impacts attributed to a warming planet. Consequently, future policies to address such impacts, or maintain the status quo of not addressing them, are influenced and rationalized by the rhetorical presidency and the way in which problems and solutions are framed.

Therefore, unilateral presidential action remains prominently at the heart of making and shaping environmental policy.[101] For example, from 1970 to 1990 in a unique act of bi-partisan cooperation on environmental policy, Congress passed nearly every prominent environmental law on which today's regulations are based.[102] Since the passage of the Clean Air Act Amendments of 1990, however, Congress has had extremely limited success in enacting or amending any nationally significant environmental laws, making the unilateral, administrative action of the president one of the primary means of implementing environmental reform and advancing new policies.[103] While some scholars, such as Richard Neustadt and John Burke, have pointed out that the fragmented, polarized, and systemic structural constraints in the U.S. political system contributes to a weak executive office, presidential studies—especially recent studies—point to growing presidential powers through executive management of the bureaucracy and an increasing willingness to rely on such power rather than an uncertain legislative process.[104] This primarily has taken the form of centralizing power in the White House and politicizing the bureaucracy to circumvent an uncertain, and sometimes hostile, legislative process by attempting to control policy outcomes through administrative action.[105] According to Vig, scholars have thus focused presidential studies "increasingly on the rational exercise of administrative powers, especially during periods of divided government, gridlock in Congress, and national emergency."[106] Of course, seeking to influence outcomes and direct policy through the bureaucracy gets at the heart of the administrative presidency, a subject to which this article now turns in more depth.

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100. *See generally* BAUMGARTNER & JONES, *supra* note 14; Thomas A. Birkland, *Focusing Events, Mobilization, and Agenda Setting* 18 J. PUB. POL'Y 53 (1998); JOHN KINGDON, AGENDAS, ALTERNATIVES, AND PUBLIC CHOICES (1984); Litfin, *supra* note 53; Tora Skodvin & Steinar Anderson, *An Agenda for Change in US Climate Policies? Presidential Ambitions and Congressional Powers*, 9 INT'L ENVT'L AGREEMENTS: POL., L. & ECON. 263 (2009). For a description of the policy process that is more dynamic and interpretive, yet leading to similar conclusions, *see* DEBORAH STONE, POLICY PARADOX: THE ART OF POLITICAL DECISION MAKING 248–68 (3d. ed. 2002).

101. Vig, *The American Presidency*, *supra* note 91, at 306–08.

102. *Id.*

103. Kraft & Vig, *supra* note 96; Vig, *The American Presidency*, *supra* note 91, at 306–08.

104. RICHARD E. NEUSTADT, PRESIDENTIAL POWER AND THE MODERN PRESIDENTS: THE POLITICS OF LEADERSHIP FROM ROOSEVELT TO REAGAN (Free Press 1990); John P. Burke, *Organizational Structure and Presidential Decision Making*, *in* OXFORD HANDBOOK OF THE AMERICAN PRESIDENCY 501–27 (G. C. Edwards III et al. eds., 2009); Vig, *The American Presidency*, *supra* note 91; Barry Rabe, *Environmental Policy and the Bush Era: The Collision Between the Administrative Presidency and State Experimentation*, 37 PUBLIUS: J. FED. 413 (2007); Lowande & Milkis, *supra* note 44.

105. Moe, *The Political Presidency*, *supra* note 4; Vig, *Presidential Powers*, supra note 95, at 80–98; Vig, *The American Presidency*, *supra* note 91.

106. Vig, *The American Presidency*, *supra* note 91, at 308; *see also,* Moe, *The Political Presidency*, *supra* note 4; Lewis, *supra* note 4; Moe & Howell, *supra* note 44; Waterman, *supra* note 4.

D. Describing the Administrative Presidency

As described by Kagan, writing prior to her Supreme Court appointment, "[t]he history of the American administrative state is the history of competition among different entities for control of its policies."[107] These entities include the president, Congress, and the courts, all of which possess potent constitutional powers that make it unlikely that any single entity will emerge ultimately triumphant, although at various points in history each seems to hold sway on important policy matters.[108] According to Kagan and other scholars, the rise of the administrative presidency since the 1970s means the executive office currently enjoys a more dominant policymaking position than either Congress or the courts.[109] In fact, since the initial expansion of presidential powers under President Nixon, executive influence over administrative agencies has increased with each subsequent presidency, leading to increasingly greater influence over policy matters either unilaterally or by directing agency activities.[110] In addition to the gridlock and divided government noted above, scholars have observed that the ongoing shift is due to a number of factors, including a deeply divided electorate, an inordinate focus on re-election, and Polanyi's polycentric circles resulting from an increasingly complex political and bureaucratic system.[111]

In the light of such factors, the expansion of the administrative presidency is understandable, especially since presidential success is often defined by presidential competence in implementing policies.[112] Presidents also are concerned with their legacies. They want to be "regarded in the eyes of history as strong and effective leaders" and, in order to succeed, they must exert administrative control over policies and priorities to achieve desired outcomes.[113] As noted by a number of scholars, such demands are overwhelming and actually surpass the power of the executive office to realize presidential goals, thus, incentivizing the expansion and exertion of power and control over agencies.[114] However, while the rise of administrative presidencies in this context is perhaps predictable, it has neither come easily nor without controversy.

From the beginning, presidents have endeavored to shape and control the outcomes of administrative agencies.[115] Not surprisingly, such endeavors have historically been difficult to accomplish. Presidents through the decades have frequently commented on the difficulty of prompting a recalcitrant bureaucracy to implement presidential will or a resistant Congress to consider policy solutions. In speaking of the difficulty of controlling agencies, President Harry Truman is quoted

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107. Kagan, *supra* note 17, at 2246.

108. *Id.*

109. *Id.*; Moe & Howell, *supra* note 44.

110. *Id.*

111. *Id.*; *see also* Joel D. Aberbach & Bert A. Rockman, *Mandates or Mandarins? Control and Discretion in the Modern Administrative State*, 48 PUB. ADMIN. REV. 606 (1988).

112. Kagan, *supra* note 17.

113. Moe & Howell, *supra* note 44, at 136.

114. Moe & Howell, *supra* note 44, at 158–59; THEODORE J. LOWI, THE PERSONAL PRESIDENT: POWER INVESTED, POWER UNFULFILLED (1985).

115. Kagan, *supra* note 17, at 344-45.

as exclaiming, "I thought I was the president, but when it comes to these bureaucrats, I can't do a damn thing."[116] Similarly, President John F. Kennedy is said to have once remarked about a request for administrative action, "I agree with you, but I don't know if the government will."[117] Similar quotes can be added for Carter, Reagan, and others.[118] Of course, it is not just the bureaucracy that sometimes frustrates presidents. With respect to legislation, one recent example occurred during President Obama's last term, when he eschewed an uncooperative Congress in favor of executive action predicated on a "We Can't Wait" policy.[119] Again, this mindset is neither novel nor uncommon—it extends back to Theodore Roosevelt, who argued that presidents have the duty, unless explicitly prohibited by the Constitution, to take whatever steps necessary to promote the nation's interest.[120]

While presidents have justified their exercise of power, expansion of executive control has largely occurred at the expense of legislative control.[121] Yet, Congress has done little in reaction, despite the many substantive changes enacted by presidents in addition to "merely" clarifying policies and priorities.[122] As Nathan and others argue, the expanding administrative presidency highlights the tension in the traditional public administration model of a distinction between politics and administration.[123] Notably, after four years in office, Nixon favored the view that the president, as the chief executive, should employ a more managerial approach to agency action, undercutting the Wilsonian view of an administration free from the influence of politics.[124] In writing about the administrative presidency, Nathan agrees and argues, "[t]he basic premise is that management tasks can and should be performed by partisans. This concept is not only appropriate, but necessary, to a functioning democracy in a large and technologically advanced nation such as the United States."[125] For those who hold this view, it is not a question of whether a president should intervene in administrative agencies, it is rather a question of how, how much, and to what end.[126]

In this light, it is interesting to note that ever since its inception, the Environmental Protection Agency (EPA) purportedly has either been captured by industry

116. *Id.* at 2272.

117. *Id.*

118. *See id.* at 2273-75.

119. Lowande & Milkis, *supra* note 44, at 5-6.

120. Moe & Howell, *supra* note 44, at 157. In employing his "stewardship theory" Roosevelt observed, "Under this interpretation of executive power I did and caused to be done many things not previously done by the president and the heads of departments. I did not usurp power, but I did greatly broaden the use of executive power." *Id.*

121. Alfred C. Aman Jr., *Administrative Law in a Global Era: Progress Deregulatory Change and the Rise of the Administrative Presidency*, 73 CORNELL L. REV. 1101, 1106 (1988).

122. *Id.* at 1236. *See also* A. Rudalevige, *Old Laws, New Meanings: Obama's Brand of Presidential Imperialism*, 66 SYRACUSE L. REV. 1, 38–39 (2016).

123. NATHAN, *supra* note 5, at 41-42; James H. Svara, *Complementarity of Politics and Administration as a Legitimate Alternative to the Dichotomy Model*, 30 ADMIN. & SOC'Y 676, 676–705 (Jan. 1999).

124. NATHAN, *supra* note 5, at 7; *see also* Kettl, *supra* note 3, at 16-17; *see also* NORMA M. RICCUCCI, PUBLIC ADMINISTRATION: TRADITIONS OF INQUIRY AND PHILOSOPHIES OF KNOWLEDGE 74 (2010); *see generally* Wilson, *supra* note 61.

125. NATHAN, *supra* note 5, at 7; *Presidential Leadership and Administrative Coordination: Examining the Theory of a Unified Executive*, 36 PRESIDENTIAL STUD. Q. 433, 436 (2006).

126. Michael E. Kraft & Norman J. Vig, *Environmental Policy in the Reagan Presidency*, 99 POL. SCI. Q. 415, 422 (1984).

or colluded with environmental activists, depending on which party occupies the Oval Office.[127] Regardless of the veracity of such claims, the view that the EPA is weaponized to achieve policy goals reflects the common understanding that natural resource agencies in general and the EPA in particular are subject to the policy priorities of whichever presidential administration is in power.[128] As Durant argues, there is a longstanding practice of using administrative mechanisms for policy implementation by other means as a way for presidents to achieve policy goals in the face of recalcitrant political adversaries.[129] By way of example, Durant highlights the *greening of the government* (a frame) during the Clinton Administration through executive orders and government-wide administrative reform.[130] The Obama and Trump administrations have taken similar approaches in recent times, albeit from different perspectives on the role of government. Perhaps not coincidentally, then, presidents Clinton, Obama, and now Trump have employed similar administrative tactics after multiple-term presidencies of the opposite party. In the cases of Obama and Clinton, the environmental agencies emerged from eight and twelve years, respectively, of significant pressure to limit or constrict environmental regulatory activity.[131] With new administrations and new priorities more aligned with environmental agency missions, administrative mechanisms became an expedient way of implementing previously neglected regulations and policies, especially in the absence of bipartisan cooperation.[132]

In practice, then, the administrative presidency cuts both ways across the political spectrum and is a common tool among modern presidents. Indeed, history has shown and scholars have noted that every modern president since Nixon has employed any means necessary to advance his policy goals.[133] The relevant point being that where roadblocks exist, administrative presidencies will find a way around. In fact, as already mentioned, legal ambiguity may even allow, if not altogether invite, executive action to fill the void. As a result, administrative presidencies play an active role in establishing values and priorities, especially when there is

127. Joel A. Mintz, *Has Industry Captured the EPA?: Appraising Marver Bernstein's Captive Agency Theory After Fifty Years*, 17 FORDHAM ENVTL. L. REV. 1, 6 (2005); Ben Tyson, *An Empirical Analysis of Sue-and-Settle in Environmental Litigation*, 100 VA. L. REV. 1545, 1569–77 (2014). For example, during the Obama Administration, the U.S. Senate Committee on Environment and Public Works (EPW) conducted oversight on the role of the Natural Resources Defense Council (NRDC), and other environmental groups, in what the EPW majority staff concluded was an improper influence of "policy options, technical support, legal rationale, and public relations campaign" for the CPP. U.S. SENATE COMM. ON ENV'T & PUB. WORKS, 114th CONG., OBAMA'S CARBON MANDATE: AN ACCOUNT OF COLLUSION, CUTTING CORNERS, AND COSTING AMERICANS BILLIONS 2 (Aug. 2015).

128. *See generally* Vig, *Presidential Powers and Environmental Policy*, *supra* note 95; Vig, *The American Presidency*, *supra* note 91.

129. Robert Durant, *Back to the Future? Toward Revitalizing the Study of the Administrative Presidency*, 39 PRESIDENTIAL STUD. Q. 89, 93 (2009).

130. *Id.* at 95–96.

131. *See generally* LAYZER, *supra* note 97. *See generally* Jody Freeman & Adrian Vermeule, Massachusetts v. EPA*: From Politics to Expertise*, 2007 SUP. CT. REV. 51 (2007).

132. Jim Rossi, *Bargaining in the Shadow of Administrative Procedure: The Public Interest in Rulemaking Settlement*, 51 DUKE L. J. 1015, 1026 (2001); *see also* Freeman & Vermeule, *supra* note 131, at 108.

133. *See* Kagan, *supra* note 17, at 2275-76; *see also* Kraft & Vig, *supra* note 126, at 416-17; Lewis, *supra* note 4; *see generally* Lowande & Milkis, *supra* note 44; NATHAN, *supra* note 5; Vig, *The American Presidency*, *supra* note 95; LAYZER, *supra* note 97.

no clear direction from Congress, or at times of deep political divide when legislatively addressing an existing void is impossible.[134] However, presidents do not just act, they rather mobilize the public and set the governmental agenda by signaling their intentions to act through formal and informal proclamations through the rhetorical presidency.[135] In so doing, presidents are able to embark on a process of policy change through the rhetorical presidency, whereby they bypass Congress in pursuit of political ends.[136] As discussed in the following Part, the rhetorical presidency covers the bully pulpit of the executive office. However, the rhetorical presidency is more than just arousing sentiment, setting the agenda, and signaling priorities; it is also mobilizing public support in an effort to displace the less certain, less expeditious, and more methodical process of congressional deliberation.

E. Describing the Rhetorical Presidency

As originally conceived by Tulis, the rhetorical presidency encompasses the way in which presidents use rhetoric to bypass Congress and engage the public to define problems, set the agenda, propose solutions, and indirectly influence political actors.[137] Yet, the rhetorical presidency is much more than just the presidential use of rhetoric to persuade; it concerns the "constitutional order" and governance, and it is the vehicle by which contemporary presidents seek to influence policy and govern the citizenry.[138] At its most basic level, it describes the willingness of presidents to bypass Congress and "mobilize the public as a routine means of governance."[139]

While Tulis's work formally marks the beginning of the rhetorical presidency as a branch of study, Neustadt's seminal and influential study, *Presidential Power,* is an important beginning point for presidential studies in general. As Skowronek points out, the aspirations of the progressive era to create a government with the president at the center was complicated by the institutional barriers against sweeping reform.[140] Neustadt describes the resulting environment as one where presidents are limited by a constitutional system designed to allow incremental change but frustrate sweeping reform.[141] Because of this, according to Neustadt, presidents must rely on their personal skills and become adept at bargaining and persuasion to successfully meet the often-overinflated public expectations of the office.[142] Echoing Moe's criticism of Neustadt's approach, Tulis argues that viewing the presidency from the president's perspective ignores more prevailing institutional factors. Indeed, viewing the presidency "from over the President's shoulder,"

134. *See generally* TULIS ET AL., *supra* note 6.

135. *Id. See generally* Dorsey, *supra* note 93; Martin Carcasson, *Global Gridlock: The American Presidency and the Framing of International Environmentalism, 1988-2000*, *in* GREEN TALK IN THE WHITE HOUSE: THE RHETORICAL PRESIDENCY ENCOUNTERS ECOLOGY 258 (Tarla Rai Peterson ed., 2004).

136. TULIS ET AL., *supra* note 6, at 3–13.

137. *Id.*; *see also* Quirk, *supra* note 33, at 441–42*; see generally* Whitford & Yates, *supra* note 13.

138. Whitford & Yates, *supra* note 13, at 27–32.

139. Stuckey, *supra* note 38, at 43.

140. Skowronek*, supra* note 45, at 744–45.

141. NEUSTADT*, supra* note 104.

142. *Id.*

as Neustadt does, creates an impression of an institutionally weak executive office.[143] However, presidential studies indicate increasing presidential powers and the liberty with which presidents wield them.[144]

With this in mind, Skowronek observes that Tulis identifies a trend by modern presidents to become policy activists as they "attempt to displace the original constitutional structures that had supported the politics of the past."[145] Under the original constitutional order of governance, as Tulis argues, the U.S. Constitution proscribed demagoguery, or popular leadership, and favored deliberation among the elected representatives of the people.[146] The modern presidency, on the other hand, ushered in by the Progressive leadership of Theodore Roosevelt and Woodrow Wilson, placed more energy in the executive by prescribing popular appeals to the public, marking the beginning of a "second constitution" under which presidents now govern.[147] The effect of the transaction is that presidential appeals to the public subvert the original constitutional order, which leads to a decline in policy deliberation and ascension of demagoguery.[148]

In addressing the state of deliberation, Kernell observes that presidential rhetoric, by way of "going public" as a policy strategy, has a destabilizing effect on deliberative processes—that is, traditional pluralistic bargaining processes are discarded in favor of insular and unilateral decision making.[149] The result of this political exchange means policy is made and rationalized by public opinion.[150] Scholars have mixed views on what this means for democracy. As previously discussed, some view this practice as undercutting constitutional principles,[151] while others view it as inconsequential[152] or even expected.[153]

However, as Edwards argues, the rhetorical presidency may be more limited in its power to persuade than conventional wisdom suggests.[154] Edwards finds little support in the literature for the power of presidential rhetoric to significantly move public opinion.[155] Indeed, after examining public opinion polls assessing presidential actions and approval, as well as legislative initiatives, Edwards finds no systemic evidence that presidential rhetoric significantly influences public views on either the president or the president's initiatives.[156] However, subsequent studies suggest

143. *Id.* at xxi; *see also* Moe, *The Political Presidency*, *supra* note 4; TULIS ET AL., *supra* note 6, at 10.

144. NEUSTADT, *supra* note 104.

145. Skowronek, *supra* note 45, at 745.

146. TULIS ER AL., *supra* note 6, at 17–19.

147 *Id.* at 18; *see also* Milkis, *supra* note 12; WHITFORD & YATES, *supra* note 13.

148. TULIS ET AL., *supra* note 6.

149. KERNELL, *supra* note 16, at 3–4; *see also* WHITFORD & YATES, *supra* note 13.

150. KERNELL, *supra* note 16, at 213–42.

151. *See, e.g.,* James W. Ceaser, et al., *The Rise of the Rhetorical Presidency*, 11 PRESIDENTIAL STUD. Q. 158 (1981); Hart, *supra* note 41; Jamieson, *supra* note 41; Milkis, *supra* note 12; TULIS ET AL, *supra* note 6, at 202–04.

152. GEORGE C. EDWARDS III, ON DEAF EARS: THE LIMITS OF THE BULLY PULPIT? (2006).

153. Garsten, *supra* note 29, at 174. *See also* Stuckey, *supra* note 38.

154. *See generally* EDWARDS, *supra* note 152.

155. *Id.*

156. *Id.*; *see also* Andrew W. Barret, *Gone Public: The Impact of Going Public on Presidential Legislative Success*, 32 AM. POL. RES. 338 (2004).

that presidential rhetoric can be influential in certain respects, such as when presidents go public on congressional appropriations or simply to improve their standing.[157] In any event, while presidential appeals to the public have some effect, it may not be the overwhelming influence of the bully pulpit that is frequently assumed, leading some scholars to sound the death knell of the rhetorical presidency. Although like Mark Twain, the reports of the rhetorical presidency's death may be greatly exaggerated.[158]

While the ongoing debate about the importance and influence of the rhetorical presidency and the propriety of the administrative presidency are beyond the scope of this study, the practice of both are unquestioningly relied upon by Obama in the context of the CPP. The aim of this study, therefore, is to better understand and explicate the way in which Obama rationalizes his use of the administrative presidency through the rhetorical presidency. A deeper understanding may reveal important insights about how the bureaucracy is viewed from the presidential perspective and whether it includes any limits to presidential control. Finally, the study strives to uncover insights into whether the administrative presidency is simply a tool of the executive or a reflection of a president's view of the role of the bureaucracy. Taken together, the deeper understanding and explication of the *potentially potent force* of a weaponized bureaucracy may help ensure that it is used wisely in the preservation, rather than deterioration, of democratic principles.

IV. METHODOLOGY

This Part of the article discusses the iterative, modified grounded theory approach used to analyze Obama's rhetorical presidency. It begins with a brief overview of grounded theory and proceeds through how Obama's statements were selected and analyzed. The research presented here is just one part of a larger research project, which covers presidential speeches, memos, executive orders, and agreements, collectively referred to as presidential statements. This article includes a smaller subset set of Obama's speeches, as discussed below.

Insights from approaches used in qualitative social science and rhetorical analysis (typically used in the humanities) informed the methodological approach. This hybrid approach allowed for the consideration of emergent questions, insights, and ongoing assessment of the method of analysis.[159] While the administrative presidency, rhetorical presidency, and climate change have been extensively studied over the past several decades, this is the first research putting the two ideas together to analyze the wicked problem of climate change. Although, scholars have commented on the need to simultaneously examine the administrative presidency and rhetorical presidency as executives continue to entrepreneurially create and

157. Brandice Canes-Wrone, *The Public Presidency, Personal Approval Ratings, and Policy Making*, 34 PRESIDENTIAL STUD. Q. 477 (2004); *see also* Jeffery E. Cohen & Richard J. Powell, *Building Public Support from the Grassroots Up: The Impact of Presidential Travel on State-Level Approval*, 35 PRESIDENTIAL STUD. Q. 11 (2005); B. Dan Wood et al., *Presidential Rhetoric and the Economy*, 67 J. OF POL. 627 (2005).

158. *See* WHITFORD & YATES, *supra* note 13, at 22–24.

159. *See generally id.*

enforce public policy.[160] The lack of knowledge specific to this area of study makes it well suited generally for qualitative analysis and specifically for a modified grounded theory approach, whereby the data is analyzed inductively to identify emergent themes that are "grounded" in the data, as opposed to being deductively verified.[161] Such an approach is similar to the approach scholars might take when doing discourse analysis. The larger goal of the study was to generate new knowledge and form a deeper understanding of how presidents explain and promote their policy choices and rationalize their use of the administrative presidency. An important element of the study, therefore, is the incorporation of rhetorical analysis as a system of investigation rather than as a specific methodology.[162] As such, rhetorical analysis in this study was used to explicate arguments for specific policies and rationalizations of administrative action.[163] In this manner, Obama's rhetoric was viewed, in the words of rhetoric scholar Martin Medhurst, as "both a strategic and a productive art directly related to leadership in public contexts."[164]

The presidential statements analyzed here include Obama's speeches and White House statements from December 2009 through October 2011. Presidential statements were selected based on their content explicitly or implicitly related to greenhouse gases, climate change, or the Clean Power Plan, as well as related topics, such as energy policy, climate agreements, and executive action when relevant. In all, twelve presidential statements were selected for analysis. The statements include a diverse range of public addresses covering Obama's summation of the 2009 United Nations Climate Change Conference held in Copenhagen (Copenhagen Climate Summit), State of the Union addresses, speeches articulating energy and climate policy related to the Waxman-Markey bill, and the Obama administration's pivot to a "We Can't Wait" campaign in the face of an uncooperative Congress.[165]

The speeches were read through multiple times each. The first time through was to become familiar with the topic and delivery of each speech, with subsequent readings leading to two rounds of coding that were documented in a code book. The first, or initial, round involved interacting closely with the data to define and label what is "going on" or being expressed in the statements, including what is said

160. *See, e.g.*, WHITFORD & YATES, *supra* note 13; *see also* Vanessa B. Beasley, *The Rhetorical Presidency Meets the Unitary Executive: Implications for Presidential Rhetoric on Public Policy*, 13 RHETORIC & PUB. AFFS. 1, 7–35 (2010); Sidney M. Milkis et al., *What happened to post-partisanship? Barack Obama and the New American Party System*, 10 PERSPECTIVES ON POLITICS 1, 57–76 (2012).

161. *See generally* KATHY CHARMAZ, CONSTRUCTING GROUNDED THEORY: A PRACTICAL GUIDE THROUGH QUALITATIVE ANALYSIS (2006); BARNEY G. GLASER & ANSELM L. STRAUSS, THE DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH (1967); KRISTEN LUKER, SALSA DANCING INTO THE SOCIAL SCIENCES: RESEARCH IN AN AGE OF INFO-GLUT (2008); SARAH J. TRACY, QUALITATIVE RESEARCH METHODS: COLLECTING EVIDENCE, CRAFTING ANALYSIS, COMMUNICATING IMPACT (2013).

162. *See*, *e.g.*, Martin J. Medhurst, *Thirty Years Later: A Critic's Tale*, 24 RHETORIC REV. 379, 380–82 (2006), in which Medhurst discusses his move away from theory and method and toward investigation and explication. As Medhurst explains, "I am interested in substantive matters, which I choose to study through the instrumentality of rhetoric. To focus on matters of public affairs is to incur the responsibility to understand, as best one can, the factors that contribute to those affairs." *Id.* at 381.

163. *Id.* at 380–82. *See also id.* at 383 (referring to Thomas W. Benson, *Rhetoric and Autobiography: The Case of Malcom X*, 60 Q. J. SPEECH 1 (1974)).

164. *Id.* at 381.

165. *See generally* Lowande & Milkis, *supra* note 44.

and left unsaid.[166] The initial coding was essentially a familiarizing process with the content of the presidential statements and first step in attaching descriptive characteristics to the data. The second, or focused, round of coding deepened the analysis by synthesizing and focusing the key analytical direction of initial codes.[167] The outcome of the second round facilitated the connection of the data to theory and opened the way for a deeper and more explicit understanding of the way key rhetorical elements are rendered in the data. Finally, during the coding cycles, analytic memos were written to capture observations, insights, and reactions to the data that served to create the underlying themes in the presidential statements and to connect the coding, analysis, and findings portions of the research.[168] In other words, the analytic memos formed the basis for synthesizing the data and established the foundation for building to the findings and outcome of the research.[169]

As will be discussed, a number of intriguing codes emerged from this process, which were then synthesized within three broad streams of rhetorical theory. The data revealed Obama's evolving and fluid use of rhetorical approaches to defend international and domestic action on climate change, promote the Waxman-Markey bill, and rationalize his use of executive action when the bill was derailed in the Senate during the summer of 2010.[170] Notably, Obama's rhetoric took a dramatic turn away from a collaborative and, at times, conciliatory tone of unification around a common cause, which characterized his pre-Waxman-Markey addresses, to one of urgency and increasing stridency as he signaled his "going-it-alone" approach to policymaking.[171] Obama's rhetoric not only coincided with his shifting strategic emphasis—first deliberation, then executive action—but publicly made the case for how and why he employed each strategy. As will be argued, such an approach places Obama within the Wilsonian tradition of governance, which includes both Wilson's views on the relationship between politics and administration and his championing of the Progressive Era's goal of expanding political, social, and economic opportunities to a more diverse representation of American citizens by bridging "the gap between the promise of American ideals and the performance of American political institutions."[172]

166. CHARMAZ, *supra* note 161, at 115.

167. *Id.* at 138–40.

168. TRACY, *supra* note 161, at 184.

169. JOHN W. CRESWELL, QUALITATIVE INQUIRY AND DESIGN: CHOOSING AMONG 5 APPROACHES (2012); JOHNNY SALDAÑA, THE CODING MANUAL FOR QUALITATIVE RESEARCHERS (2013).

170. *See infra* Part V.C.

171. Other scholars have made similar observations about Obama's earlier speeches, which they connected to the themes of community centered on American exceptionalism and the American dream. *See, e.g.*, James W. Ceaser, *The Origins and Character of American Exceptionalism*, 1 AM. POL. THOUGHT 3 (2012); Jason Gilmore et al., *Make No Exception, Save One: American Exceptionalism, the American Presidency, and the Age of Obama*, 83 COMM. MONOGRAPHS 505 (2016); JONATHAN D. RIEHL, THE NEXT GREAT COMMUNICATOR 7 (Nov. 20, 2018), http://citation.allacademic.com/meta/p_mla_apa_research_citation/2/5/6/7/2/pages256720/p256720-1.php; Deborah F. Atwater, *Senator Barack Obama: The Rhetoric of Hope and the American Dream*, 38 J. BLACK STUD. 121, 121 (2007).

172. George W. Ruiz, *The Ideological Convergence of Theodore Roosevelt and Woodrow Wilson*, 19 PRESIDENTIAL STUD. Q. 159 (1989).

V. FINDINGS

Multiple rhetorical categories emerged from the data, indicative of Obama's impressive and diverse array of rhetorical approaches throughout his presidency. This study focuses specifically on Obama's use of polysemy and locus of the irreparable as the most prominent rhetorical approaches of the speeches analyzed. Notably, Obama employs numerous approaches in his speeches and, while they will not be analyzed in detail, the various connections to rhetorical theory will be highlighted. The following section begins with an overview of what polysemy is in rhetorical theory and then progresses with an analysis of Obama's use of the rhetorical approach in promoting his climate policies. Throughout the analysis, the emergent codes are contextualized alongside specific quotations that capture the sense in which they are used and discussed in relation to how they connect to rhetorical theory. The connection to theory is important for understanding how Obama animates his rhetorical presidency and rationalizes his use of the administrative presidency. The section concludes with a discussion of possible theoretical connections to public administration, which serves to synthesize the research findings with broader public administration scholarship.

A. The Rhetorical Use of Polysemy

As with many of his speeches during the early years of his administration, Obama engaged in a form of rhetorical dance as he finessed arguments about clean energy and climate change rather than attempting to debunk opposition altogether.[173] Obama's more circumscribed arguments at this time were intended to channel attention away from divisive positions and shape perceptions about energy policy through his careful framing of policy choices. Obama attempted this maneuver with a careful use of polysemy, especially through strategic ambiguity, to appeal to disparate points of view. Polysemy is the concept of attaching different fundamental understandings to a single, unifying message.[174] Thus, a message that is strategically ambiguous appeals to multiple understandings originating from diverse points of view—dramatically so in the case of climate change—without having to resolve, or even address, the inherent differences among them. In other words, the message has a little something for everyone and does not require the various interests to give up firmly held beliefs.

Obama's strategic ambiguity can be seen in his appeals to both those advocating swift and significant action against climate change as well as those concerned with harmful economic impacts of doing so. The appeal to the disparate interests was then wrapped in a patriotic sentiment of American exceptionalism as captured in the following excerpt: "Even if you doubt the evidence, providing incentives for energy efficiency and clean energy are the right thing to do for our future, because

173. *See*, *e.g.*, Robert L. Ivie, *Obama at West Point: A Study in Ambiguity of Purpose*, 14 RHETORIC & PUB. AFF. 727, 732 (2011) (recounting Obama's West Point speech and treating drug use as a health issue).

174. *See generally* Leah Ceccarelli, *Polysemy: Multiple Meanings in Rhetorical Criticism*, 84 Q. J. SPEECH 395 (1998); Celeste M. Condit, *The Rhetorical Limits of Polysemy*, 6 CRIT. STUD. MASS COMM. 103 (1989).

the nation that leads the clean energy economy will be the nation that leads the global economy. And America must be that nation."[175]

For good measure, Obama then adds that if all else fails Americans need to act on behalf of their children and grandchildren (coded as "Transgenerational Trust" as discussed below) to provide them with a safe and secure future.[176] In these statements, Obama was shaping the attitude of American citizens. As Ivie observes, "[a]ttitude was embryonic action," and Obama rhetorically shapes that attitude in order to gain support for his energy and climate policies.[177] As he shapes attitudes, Obama also recognizes that transforming America's energy policy would be a long-term and difficult task. Thus, his motif of a clean energy revolution is tempered with a dose of realism as he observes, "Americans also understand that the problems we face didn't happen overnight, and so we're not going to solve them all overnight either."[178]

B. A Clean Energy Utopia

Consistent with his circumscribed approach to strategic ambiguity, Obama also treats climate change in his early speeches as mostly an afterthought, as if it were a minor actor in the "clean energy revolution."[179] In his familiar, easy and controlled manner,[180] Obama observes, "...oh, and by the way, [being the leader in clean energy] also solves the climate problem."[181] Obama's casual reference reveals a sensitivity to the deep ideological divide of climate change views in the U.S. and an understanding that focusing on the divide makes agreement more difficult.[182] As such, Obama attempts to focus attention on what Americans have in common in order to obviate the need to resolve what Americans do not. Thus, prior to the Waxman-Markey Bill failing in the Senate, Obama argues that actions to address climate change are not simply ideological or climate catastrophism, they are instead pragmatic.[183] They are a path to broader economic prosperity and security that also "solves the climate problem."[184] In other words, such actions are "smart" regardless of what anyone thinks about climate change and help solidify the argument that a

175. President Barack Obama, Address before a Joint Session of the Congress on the State of the Union (Jan. 27, 2010) [hereinafter Obama, 2010 State of the Union Address] (transcript available at https://www.govinfo.gov/content/pkg/DCPD-201000055/pdf/DCPD-201000055.pdf).

176. *Id.*

177. Ivie, *supra* note 173, at 732.

178. President Barack Obama, Remarks in Las Vegas (Oct. 24, 2011) [hereinafter Obama, 2011 Las Vegas Remarks] (transcript available at https://www.govinfo.gov/content/pkg/DCPD-201100787/pdf/DCPD-201100787.pdf).

179. President Barack Obama, Remarks on Health Care Reform and Climate Change (Dec. 19, 2009) [hereinafter Obama, Health Care Reform and Climate Change] (transcript available at https://www.govinfo.gov/app/details/DCPD-200901007).

180. Joshua Gunn, *On Speech and Public Release*, 13 RHETORIC & PUB. AFF. 175, 196 (2010).

181. President Barack Obama, Interview with Jim Lehrer on PBS' "The News Hour" (Dec. 23, 2009) [hereinafter Obama, Lehrer Interview] (transcript available at https://www.presidency.ucsb.edu/documents/interview-with-jim-lehrer-pbs-the-news-hour).

182. *See, e.g.*, EZRA MARKOWITZ ET AL., CONNECTING ON CLIMATE: A GUIDE TO EFFECTIVE CLIMATE CHANGE COMMUNICATION 1 (2014), http://ecoamerica.org/wp-content/uploads/2014/12/ecoAmerica-CRED-2014-Connecting-on-Climate.pdf.

183. Obama, Lehrer Interview, *supra* note 181.

184. *Id.*

"clean energy economy" will satisfy economic, environmental, social, and intergenerational obligations.

Obama's strategic ambiguity also incorporates his campaign motif of "hope and change," which is seen in his speech addressing the outcome of the Copenhagen Climate Summit.[185] By almost all accounts the summit was a dismal failure because of its lack of substantive agreement.[186] However, Obama characterizes the outcome in more hopeful terms by noting that it was the "first time in history that all of the . . . world's major economies have come together to accept their responsibility to take action to confront the threat of climate change."[187] Referencing "extremely difficult and complex negotiations," Obama concludes that the summit would lay the "foundation for international action in the years to come."[188] These statements were coded as "Collective Action," a theme that Obama frequently revisits to link U.S. action on climate change with broader international action, without which the efforts of any individual nation would not have an appreciable impact on global greenhouse gas emissions or resulting global temperatures.[189] In the same speech, Obama shifts to a message of opportunity in America where developing a "clean energy economy" and leading the clean energy revolution would potentially "create millions of new jobs [and] power new industries."[190] Obama also reasons in later speeches that "whoever builds a clean energy economy, whoever is at the forefront of that, is going to own the twenty-first century global economy."[191] The binary nature of collective international action and American dominance continue the idea of strategic ambiguity where collaboration and fierce economic competitiveness coexist in the clean energy economy. Such statements became a recurring theme for Obama and also indicate a strategic use of utopian rhetoric—coded as "Clean Energy Utopia"—to make an economic, nationalistic, and ultimately pragmatic argument, as discussed below, for transitioning to low-carbon energy.

In a broader context, the theme invokes patriotic, American traditions linked to the founding of the nation where unity is emphasized over diversity.[192] This emphasis is a continuation of Obama's campaign speeches where he de-emphasized the differences among Americans and instead argued that their core identity is simply that of being an American.[193] Such an emphasis on unity supports Obama's

185. President Barack Obama, Address at the 2009 Copenhagen Climate Change Conference (Dec. 18, 2009) [hereinafter Obama, 2009 Copenhagen Address] (available at https://www.youtube.com/watch?v=xkHRU4pcSvA).

186. *See, e.g.*, *Why Did Copenhagen Fail to Deliver a Climate Deal?*, BBC NEWS (Dec. 22, 2009, 4:33 PM), http://news.bbc.co.uk/2/hi/8426835.stm.

187. Obama, 2009 Copenhagen Address, *supra* note 185.

188. *Id.*

189. RAJENDRA K. PACHAURI ET AL., INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2014: SYNTHESIS REPORT 17 (Rajendra K. Pachauri et al. eds., 2015), http://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_FINAL_full_wcover.pdf.

190. Obama, 2009 Copenhagen Address, *supra* note 185.

191. President Barack Obama, Remarks at a Democratic National Committee Fundraiser Question-and-Answer Session (Feb. 4, 2010) [hereinafter Obama, 2010 DNC Q&A Session] (transcript available at https://www.govinfo.gov/app/details/DCPD-201000079).

192. RIEHL, *supra* note 171.

193. *Id.*

argument that there are many compelling economic, environmental, and social reasons to adopt a clean energy economy where all interests are better off than the status quo. As Obama reasons during an interview with Jim Lehrer on PBS's *The News Hour*, there is much work to be done in the area of climate policy, but adds, "my main responsibility here is to convince the American people that it is smart economics and it is going to be the engine of our economic growth for us to be a leader in clean energy."[194] These types of statements were coded as "Voice of Reason" because they reflect a view that recognizes the difficulty of the task ahead but sees clearly through the inherent complexity and conflict of climate policy toward a rational solution where everyone benefits. Obama is essentially standing above the fray pointing the way to the "smart" and inevitable expansion of a clean energy economy.

In carrying his polysemous message to the American public, Obama articulates his version of the American Dream, framed in this case by a clean energy revolution that emphasizes community over individualism.[195] The communal responsibility is expressed by governmental action to set in motion a clean energy economy that will help people, including the children, realize their own American dream.[196] And by being the "Voice of Reason," Obama makes a rational, yet inspirational, appeal for the "smart choice" that will improve economic conditions, protect the children, and solve the climate crisis.[197] Such an approach has been characterized as the process of "persuading through reason, and motivating through emotion."[198] It is also embryonic action that Obama intends to translate into policy action by making strategically ambiguous appeals to diverse interests.

C. The Rhetorical Use of Locus of the Irreparable

Once the Waxman-Markey Bill stalled in the Senate during the summer of 2010, Obama's rhetoric takes a noticeable turn that signals a pivot away from legislation and toward administrative action. One gets an early glimpse of where Obama is headed when he offers support of the Waxman-Markey Bill and the Senate's rejection of Senator Murkowski's amendment to prohibit EPA from regulating CO_2 as a pollutant, along with other greenhouse gases from stationary sources.[199] The noteworthy aspect of Obama's statement is his emphasis on the distinction between progress toward a "clean energy economy," a direction that will also protect

194. Obama, Lehrer Interview, *supra* note 181.

195. *See, e.g.*, Atwater, *supra* note 171, at 121. Atwater explicates Obama's version of the American Dream. *Id.* In the case of clean energy transitions to address climate change, Obama connects the American Dream to energy and all the benefits to society of bringing a clean energy revolution to fruition.

196. *Id.* at 127. In describing Obama's views of politics and governance, Atwater explains, "For him, the Constitution envisions a road map by which we marry passion to reason, the ideal of individual freedom to the demands of the community. His explanation for being a Democrat is simply this, 'It is this idea that our communal values, our sense of mutual responsibility and social solidarity should also be expressed through our government.'" It is this core understanding, predicated on community, of the relationship between governance and the governed that Obama brings to his policies on energy and climate change.

197. DICK WIRTHLIN & WYNTON C. HALL, THE GREATEST COMMUNICATOR: WHAT RONALD REAGAN TAUGHT ME ABOUT POLITICS, LEADERSHIP, AND LIFE 32, 56 (Wiley ed. 2005).

198. RIEHL, *supra* note 171, at 9.

199. Tim Dickinson, *Climate Bill, R.I.P*, ROLLING STONE (July 21, 2010), https://www.rollingstone.com/politics/politics-news/climate-bill-r-i-p-190512/.

the children, and regressing "backward to the same failed policies that have left our Nation increasingly dependent on foreign oil."[200] As a result, Obama's message clearly highlights a choice between, on the one hand, safety, security, and prosperity and, on the other hand, a society stuck in reverse, clinging to its coal and oil. At this stage, the Waxman-Markey Bill was floundering in the Senate, and Obama was being roundly criticized by the environmental community for not taking a stronger position on climate change, with *Rolling Stone* even accusing Obama of "lead[ing] from behind on climate change."[201]

In the spring of 2011, Obama began to signal a new policy direction at a Democratic National Convention fundraiser in San Francisco.[202] In that address, Obama strikes a tone of increasing impatience and urgency, stating:

> There are climate change deniers in Congress, and when the economy gets tough, sometimes environmental issues drop from people's radar screens. But I don't think there's any doubt that unless we are able to move forward in a serious way on clean energy that we're putting our children and our grandchildren at risk.[203]

By the time Obama addressed the United Nations General Assembly in September 2011, he had turned his attention from Congress to the international community and unilateral executive action.[204] For example, in his speech to the United Nations, Obama declares:

> To preserve our planet, we must not put off action that climate change demands. We have to tap the power of science to save those resources that are scarce. And together, we must continue our work to build on the progress made in Copenhagen and Cancun, so that all the major economies here today follow through on the commitments that were made. Together, we must work to transform the energy that powers our economies and support others as they move down that path. That is what our commitment to the next generation demands.[205]

In this short paragraph, Obama reiterates in summary fashion a number of the statements he made beginning in 2009. These statements were coded as "We Can't Wait," "All of the Above Energy," "Collective Action," and "Transgenerational Trust." As discussed above, the "Collective Action" code captures the idea that con-

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200. President Barack Obama, Statement on Senate Action on Energy Legislation (June 10, 2010) [hereinafter Obama, June 2010 Statement]. (transcript available at https://www.govinfo.gov/app/details/DCPD-201000479).

201. Dickinson, *supra* note 199.

202. *See* President Barack Obama, Remarks at a Democratic National Committee Fundraiser in San Francisco, California (April 20, 2011) [hereinafter Obama, April 2011 Remarks] (transcript available at https://www.govinfo.gov/app/details/DCPD-201100273).

203. *Id.*

204. President Barack Obama, Remarks at the Clinton Global Initiative Annual Meeting in New York City (Sept. 21, 2011) [hereinafter Obama, Sept. 2011 Remarks] (transcript available at https://www.govinfo.gov/app/details/DCPD-201100668).

205. *Id.*

sequential action addressing climate change requires the collective effort of all nations acting together, while "All of the Above" underscores the idea that all forms of energy are on the table thus attempting to assuage the economic and energy security concerns of those invested in traditional energy sources. The "We Can't Wait" code captures the sense that the time to act is now, and delay will bring the world to a point of no return at which climate catastrophism is inevitable.

Such appeals can be grouped under a general rhetorical appeal to the "locus of the irreparable."[206] The use of locus of the irreparable in rhetoric seeks to motivate those less willing to act with requisite urgency, as well as to convert those who are less committed to a no action alternative.[207] Just as there are diverse views about climate policy, there are equally diverse views about how urgently action should be taken on those policies.[208] Of those interested in the policies, some will be motivated to take immediate action, while others will be less committed.[209] Of those less committed, some will be interested but not quite ready to commit to action.[210] Still others, while not holding opposing views, will be more or less ambivalent.[211] Taken together, this large group of the public requires a compelling reason to get behind urgent action.[212] Obama's appeal in the "We Can't Wait" campaign is directed at this large group and the locus of the irreparable is his rhetorical approach to winning them over. The locus of the irreparable captures the idea that not acting now means foreclosing the opportunity to act in the future.[213] In this case, Obama is arguing that the consequences of not acting now through a clean energy economy lead to a future where actions will no longer be effective. It will be too late to secure a bright economic future for America and safety for the children.

Locus of the irreparable also captures the notion that what is lost cannot be replaced.[214] Accordingly, it speaks to the uniqueness of what is lost and demands exceptional action to ensure it persists.[215] This, of course, echoes the precautionary principle but in a more urgent way because it suggests that the outcome is definite and promises that it cannot be reversed.[216] The locus of the irreparable also implies that a limit is fast approaching and highlights the precarious nature of the situation, which demands immediate action.[217] Yet, despite the urgency, there is hope that what is threatened need not be lost and can be preserved by an "agent's active

206. CHAIM PERELMAN & LUCIE OLBRECHTS-TYTECA, THE NEW RHETORIC: A TREATISE ON ARGUMENTATION 91–92 (John Wilkerson & Purcell Weaver trans., Univ. of Notre Dame Press 1971).

207. *Id.* at 92.

208. *Id.* at 27–35.

209. *Id.*

210. *Id.*

211. *Id.*

212. PERELMAN & OLBRECHTS-TYTECA, *supra* note 206.

213. *Id.* at 92; *see also* J. Robert Cox, *The Die is Cast: Topical and Ontological Dimensions of the Locus of the Irreparable*, 68 Q. J. SPEECH 227, 232 (1982).

214. Cox, *supra* note 213, at 229.

215 *Id.*

216. *Id.* at 231.

217. *Id.* at 230; *see also* PERELMAN & OLBRECHTS-TYTECA, *supra* note 206, at 91.

intervention to ensure its continued existence."[218] Finally, the locus of the irreparable frames the issue in such a way that it focuses attention on the objects of shared agreement, rather than those of disagreement, and places society in a position of looking beyond itself at two future possibilities separated by one fateful action.[219]

In the spring of 2011, Obama began employing the locus of the irreparable to signal a full pivot to administrative action in the face of an uncooperative Congress. As noted above, Obama was growing increasingly impatient and he underscored the need for immediate action by calling out members of Congress who were no longer focused on climate policy.[220]

Then, in introducing his "We Can't Wait" campaign, Obama makes a stark shift in both style and substance by proclaiming, "We can't wait for an increasingly dysfunctional Congress to do its job. Where they won't act, I will."[221] In his speech, which was focused on jobs and the economy but alluded to other policies as well, Obama embraces a level of stridency and unilateral action that were absent in earlier speeches when he struck a more collaborative, even conciliatory, tone with Congress and the American people. Obama did not completely pull back from Congress, rather he offered an alternative path that he was willing to pursue should Congress continue to ignore his policies. However, Obama was clear about his intent should Congress not do what he called "the right thing" when he proclaimed:

> But we can't wait for that action. I'm not going to wait for it. So I'm going to keep on taking this message across the country. Where we don't have to wait for Congress, we're just going to go ahead and act on our own. And we're going to keep on putting pressure on Congress to do the right thing for families all across the country.[222]

In addition to "We Can't Wait," these statements were coded as "Going it Alone" to capture the idea that Obama was focused on administrative action as much as, if not more, than legislative action. Indeed, over the course of the next year, the Obama administration produced no less than forty-five distinct executive actions, ranging from executive orders and presidential memos to recess appointments and waivers.[223] With respect to climate change, Obama had already begun to work through the EPA to achieve the goals of the Waxman-Markey Bill and emerging international climate agreements. While Obama's plan for executive action on climate change would not be revealed until June of 2013, the Obama administration was already laying the groundwork for the release of "the President's Climate Action Plan" and a related presidential memo directing the EPA to regulate

218. Cox, *supra* note 214, at 230.
219. *Id.*
220. Obama, June 2010 Statement, *supra* note 200.
221. Obama, 2011 Las Vegas Remarks, *supra* note 178.
222. *Id.*
223. Lowande & Milkis, *supra* note 44, at 9.

CO_2 emissions from the power sector.[224] The EPA issued its regulations to do so under the Clean Power Plan.[225]

Also worthy of note is that with his rhetorical shift, Obama was now "speaking over the heads of Congress" to appeal directly to and motivate the American people reasoning, "And that's why [we] need all of . . . [these major voices]. Tell Congress to stop playing politics and start taking action on jobs."[226] This statement was coded as "Populist Appeals" to capture direct appeals to the public to intervene in the policymaking process. The line seems fairly standard for a president attempting to get Congress to budge on a gridlocked policy. However, it becomes a more populist overture when Obama sets up Congress as the foil for not doing "the right thing" of passing legislation that would otherwise help the American people.[227] Such an approach is consistent with the way in which Tulis envisions the rhetorical presidency functioning when policies fail to gain traction in Congress.[228] Whether populist or not, Obama's combined use of the rhetorical and administrative presidency moved the executive branch closer to what has been described as an "executive party system" that appeals to partisan support as it adopts partisan policies.[229] Perhaps more profoundly, in light of Trump's actions to unravel the Clean Power Plan, the combination advances a new paradigm where unilateral action becomes the "habitual solution to partisan polarization."[230]

D. Connections to Administrative Theory

Hearkening back to Kettl's typology, partisan appeals are consistent with the Wilsonian view of governance, especially with respect to how presidents view the role of the bureaucracy in implementing policy. Wilson's articulation of the politics-administration dichotomy was a reaction against partisan politics implemented through political patronage, a view that is consistent with the original meaning of the dichotomy advocated by the civil service reformers of the late 1800s.[231] In this

224. Power Sector Carbon Pollution Standards, 78 Fed. Reg. 39,535 (Jul. 1, 2013). EXECUTIVE OFFICE OF THE PRESIDENT, THE PRESIDENT'S CLIMATE ACTION PLAN (2013); *see also* Lowande & Milkis, *supra* note 44, at 22.

225. Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662 (Oct. 23, 2015) (to be codified at 40 C.F.R. pt. 60).

226. Barack Obama, *The President's Weekly Address*, AM. PRES. PROJECT (Oct. 29, 2010), https://www.presidency.ucsb.edu/documents/the-presidents-weekly-address-17.

227. *See generally* Bart Bonikowski & Noam Gidron, *The Populist Style in American Politics: Presidential Campaign Discourse, 1952–1996*, 94 SOC. FORCES 1593 (2015). For the purpose of their research, Bonikowski and Gidron define populism as "a discursive strategy that juxtaposes the virtuous populace with a corrupt elite." *Id.* Moreover, populism considers the virtuous populace to be the "sole legitimate source of political power." *Id.* The authors point out that most prior research has treated populism as a stable attribute of political actors, and their operationalization of populism allows them study how it is impacted by "contextual factors." *Id.* at 1594. As argued by the authors, both Republicans and Democrats commonly employ populist rhetoric but do so in relation to their political opponent. *Id.*

228. *See generally* TULIS ET AL., *supra* note 6.

229. Lowande & Milkis, *supra* note 44, at 24; *see also* Sidney M. Milkis, Jesse H. Rhodes & Emily J. Charnock, *What Happened to Post-Partisanship? Barack Obama and the New American Party System*, 10 PERSP. ON POL. 57, 57 (2012).

230. Lowande & Milkis, *supra* note 44, at 3.

231. David Rosenbloom, *The Politics–Administration Dichotomy in US Historical Context*, 68 PUB. ADMIN. REV. 57, 57–58 (2008).

view, free from "politics" means free from partisan, electoral politics, not the policies that are a natural outgrowth of democratic outcomes.[232] In other words, Wilson and the reformers envisioned a bureaucracy free from the influence of "boss"-led, partisan politics operating from a posture of neutral competence, while recognizing that genuine neutral competence means "loyalty that argues back."[233] Viewed in this light, the dichotomy never envisioned an administration devoid of politics or policymaking.[234] In fact, as expressed by Wilson, "Our own politics must be the touchstone for all theories. The principles on which to base a science of administration for America must be principles which have democratic policy very much at heart."[235] Thus, a Wilsonian understanding of the politics-administration dichotomy is one in which administrative agencies grapple with vexing policy choices set forth by political leaders. Of course, this means that rather than partisan "bosses" directing extra-constitutional institutions, such policy choices would instead be the priorities of an acting president, as principle, expressed through the actions of administrative agencies, as agent.[236] In announcing his "We Can't Wait" policy of administrative action, Obama was simply following a model of governance in the Wilsonian tradition as he pivoted to administrative action via the EPA.

In further support of this conclusion, Woodrow Wilson theorized as much about presidential rhetoric as he did administrative action.[237] As expressed by Wilson, "Policy—where there is no absolute an arbitrary ruler to do the choosing for a whole people—means massed opinion, and the forming of the mass is the whole are and mastery of politics."[238] In other words, rather than being the handmaiden of public opinion, the rhetorical presidency was instead the mechanism by which public opinion would be both formed and informed. Such an approach would necessarily involve fathoming the will of the people, which may only be vaguely known to them, and interpreting that opinion in order to inform public policy and, in the case of this study, rationalize unilateral executive action.[239] The rhetorical president would then educate and persuade the populace by connecting public desire with public policy.[240] This is precisely the approach that Obama took when he observed:

> [M]ost Americans also understand that the problems we face didn't happen overnight, and so we're not going to solve them all overnight either. What people don't understand though is why some elected officials in Washington don't seem to . . . share the same sense of urgency that people all around the country [share].[241]

232. *Id.* at 57.
233. TULIS ET AL., *supra* note 6, at 120.
234. Rosenbloom, *supra* note 231, at 58–59.
235. *Id.* at 57.
236. Kenneth J. Meier & Laurence J. O'Toole Jr., *Political Control Versus Bureaucratic Values: Reframing the Debate*, 66 PUB. ADMIN. REV. 177, 177 (2006).
237. TULIS ET AL., *supra* note 6, at 119–32.
238. Woodrow Wilson, *Leaderless Government*, 3 VA. L. REG. 337, 340 (1897).
239. TULIS ET AL., *supra* note 6, at 124.
240. *Id.* at 124–32.
241. Obama, 2011 Las Vegas Remarks, *supra* note 178.

Then, connecting his interpreted sense of public opinion and expressing it as both executive action and public mobilization, Obama concluded:

> But we can't wait for that action. I'm not going to wait for it. So I'm going to keep on taking this message across the country. Where we don't have to wait for Congress, we're just going to go ahead and act on our own. And we're going to keep on putting pressure on Congress to do the right thing for families all across the country. And I am confident that the American people want to see action. We know what to do. The question is whether we're going to have the political will to do it.[242]

Thus, with the "We Can't Wait" campaign, we see Obama in the Wilsonian tradition educating, informing, and mobilizing the support of the populace by rhetorically rationalizing his administrative pivot. The force behind this dual action of rhetoric and policy is an executive party system that readily moves forward when Congress stands pat. The effect of which is a governance determined by party, especially where highly politicized issues are concerned. This is not to say that such governance is improper. The post-New Deal application of the administrative state to make and interpret rules in lieu of Congressional action has been widely supported by both scholars and the courts.[243] Indeed, practical considerations, such as time and expertise, require administrative agencies to promulgate rules that would ordinarily cripple Congress.[244] Further, administrative action, while at times favoring narrow interests, also serves national interests.[245]

However, it does mean increasingly partisan governance characterized by an expanding gap between deliberation about national priorities and the adoption of rules reflecting more partisan views about those policies. Meanwhile, that gap represents a hardening of political differences that becomes the justification for executive action. In this case, rather than signaling new rounds of negotiation, the breakdown in deliberation signaled legislation by other means—that is, administrative action as the "habitual solution to partisan polarization." Thus, the interaction of the policy captured by the pivot and the corresponding political language rationalizing it combine to create a reciprocal relationship that, as described by Stuckey, "is capable of reconstituting the reality in which those things are embedded."[246] And that reality has become one in which presidents are justified in taking unilateral action when the partisan divide is too wide for Congress to cross.

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242. *Id.*

243. *See, e.g.*, Cass R. Sunstein, *Beyond Marbury: The Executive's Power to Say What the Law Is*, 115 YALE L. J. 2580, 2582–83 (2005); *see also* Maggie McKinley, *Petitioning and the Making of the Administrative State*, 127 YALE L. J. 1538, 1612–19 (2017) (countering recent criticisms of the modern administrative state). *But see* Lisa Shultz Bressman, *Beyond Accountability: Arbitrariness and Legitimacy in the Administrative State*, 78 N.Y.U. L. REV. 461, 485–91 (2003) (discussing concerns about the Presidential Control model).

244. Bressman, *supra* note 243, at 512.

245. Lisa Schultz Bressman & Michael P. Vandenbergh, *Inside the Administrative State: A Critical Look at the Practice of Presidential Control*, 105 MICH. L. REV. 47, 51 (2007).

246. RIEHL, *supra* note 171, at 18 (quoting MARY E. STUCKEY, PLAYING THE GAME: THE PRESIDENTIAL RHETORIC OF RONALD REAGAN 4 (1990)).

VI. CONCLUSION

This study began with a focus on better understanding and explicating the way in which President Obama rationalized his use of the administrative presidency through the rhetorical presidency. The study endeavored to uncover how Obama viewed the bureaucracy, especially with respect to whether any limits remain to presidential control over it, and whether the administrative presidency was simply an expedient tool in the hands of an entrepreneurial president or a reflection of that president's view of governance. Clearly, Obama viewed the EPA as an expedient way to move climate policy that he would have preferred to enact through Congress. In other words, administrative action to Obama was simply legislation by other means, and he used what he characterized as the looming and irreversible impacts of climate change and economic loss as justification for not only speaking over the heads of Congress but bypassing it altogether. However, in addition to the pragmatic leveraging of administrative action, there are a number of telling observations that can be drawn from the findings.

First, by pivoting to executive action Obama was continuing a well-preserved presidential tradition of implementing policy by any means necessary. Yet, merely continuing the tradition is a far less compelling observation than the way in which he continued it. Indeed, Obama's approach draws fascinating parallels with Woodrow Wilson's progressive philosophy. Wilson saw the office of the president as a unifying force—both the leader of the nation and the leader of his party.[247] As such, Wilson not only saw his role as leading the nation, but also as shaping national views to reflect his own.[248] Obama assumed a similar view of his role as president and attempted to shape national views on climate policy while Congress deliberated the Waxman-Markey bill. However, as a reformer in the Wilsonian tradition, Obama readily adapted to a disinterested Congress, and largely unmotivated public, by addressing an urgent problem on his own that was predictably interpreted as an indirect attack on the customs and conventions of democratic principles. [249] And we now see the "counterattack" as an opposing party undoes executive action by executive action.

The swing of this political pendulum leads to the second observation, which confirms what others have observed as a system of policy formulation and adoption achieved through an executive party system.[250] If all policy is now partisan policy, then deliberation is now an anachronism or, at best, something that should be attempted but not favored. Accordingly, unilateral action is justified whenever Congress ignores, ineffectively addresses, or altogether opposes presidential overtures. It is in this space where the interaction of the administrative presidency and the rhetorical presidency become particularly profound. That is, when administrative

247. Marshall E. Dimock, *Woodrow Wilson as Legislative Leader*, 19 J. POL. 3, 11 (1956).

248. *Id.*

249. *Cf.* Kendrick A. Clements, *Woodrow Wilson and Administrative Reform*, 28 PRESIDENTIAL STUD. Q. 320, 321 (1998). For a retrospective and generally representative view on how Obama's unilateral action was interpreted by conservatives, *see* Veronique De Rugy, *Obama's Imperial Presidency*, NAT. REV. (Jan. 12, 2017), https://www.nationalreview.com/corner/obama-imperial-presidency/.

250. *See* Milkis, Rhodes & Charnock, *supra* note 229, at 57.

action becomes the default means by which policy is formulated, adopted, implemented, and defended, then a president's rhetoric may serve to harden the divide rather than unify the populace. Thus, unlike the progressive era ideals, populist appeals are in reality partisan appeals, while rhetoric is weaponized, along with the bureaucracy, to gain and exploit any advantage to keep and wield power. This is the demagoguery our Founding Fathers were concerned about, and it is the demagoguery we may now face as the administrative presidency and rhetorical presidency become business as usual. At this juncture, Congress has the means but not the will to address the very manifestation of what the Founding Fathers feared. The result of which ultimately means that wicked policy problems will remain unsettled and national interests will suffer from the absence of robust deliberation.

Finally, it would be a mistake to conclude that Obama's rhetoric was in any way ineffectual. Notwithstanding whatever manifestations Obama's rhetorical presidency has on future presidencies and democratic principles, his rhetoric at least signaled a policy direction that, even though it fell short of implementation, likely influenced future energy decisions.[251] Indeed, while the Clean Power Plan was never implemented, its CO_2 reduction goals remain on target due to a combination of policy, market, and regulatory forces.[252] What has been understudied is the degree to which the threat of policy action motivated the electricity industry to begin to move away from coal. While it is well publicized that states are increasingly taking action to reduce CO_2 emissions, less publicized is the fact that major electric utilities that have traditionally relied upon coal-fired generation are making similar decisions.[253] Policy, market, shareholder, and regulatory factors certainly combined to influence these low-carbon moves, but it is also likely that such moves were made in anticipation of future CO_2 regulation, which Obama ultimately may be responsible for ushering in rhetorically, if not administratively. If that is the case, then the administrative and rhetorical presidencies must be viewed simultaneously if we are to understand them fully.

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251. The Clean Power Plan was finalized by EPA but stayed by the Supreme Court in a rare and surprising ruling that blocked its implementation barring the resolution of the pending litigation. *See* West Virginia v. E.P.A., 136 S. Ct. 1000 (2016).

252. *See generally* Jeffery J. Anderson et al., *Will We Always Have Paris? CO2 Reduction without the Clean Power Plan*, 52 ENVTL. SCI. & TECH. 2432, 2432–33 (Feb. 15, 2018), https://pubs.acs.org/doi/pdf/10.1021/acs.est.8b00407; U.S. DEP'T ENERGY, U.S. ENERGY-RELATED CARBON DIOXIDE EMISSIONS, 2016, 1–16 (Oct. 5, 2017), https://www.eia.gov/environment/emissions/carbon/archive/2016/pdf/2016_co2analysis.pdf; U.S. DEP'T ENERGY, STAFF REPORT TO THE SECRETARY ON ELECTRICITY MARKETS AND RELIABILITY 22 (Aug. 2017), https://www.energy.gov/sites/prod/files/2017/08/f36/Staff%20Report%20on%20Electricity%20Markets%20and%20Reliability_0.pdf.

253. *See, e.g.*, AM. ELEC. POWER, STRATEGIC VISION FOR A CLEAN ENERGY FUTURE (Feb. 2018), http://aep.com/investors/docs/AEP2018CleanEnergyFutureReport.pdf; *Duke Energy's New Climate Report Details the Company's Ability to Adapt to a Low-Carbon Future*, DUKE ENERGY (Mar. 22, 2018), https://news.duke-energy.com/releases/duke-energy-s-new-climate-report-details-the-company-s-ability-to-adapt-to-a-low-carbon-future; SOUTHERN COMPANY, PLANNING FOR A LOW-CARBON FUTURE 6 (Apr. 2018), https://www.southerncompany.com/content/dam/southern-company/pdf/corpresponsibility/Planning-for-a-low-carbon-future.pdf.