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Unilateral Powers and Donald Trump Presidency

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Abstract

The paper is an exploration of using unilateral presidential powers by Donald Trump. The Author hypothesizes that Trump, due to his lack of political experience, was less keen on detailed negotiations of legislative projects with Congress, and more willing to act unilaterally. Analyzing frequency of issuing selected unilateral directives by American presidents since Jimmy Carter, the Author claims that Trump was moderate user of unilateral tools, as several of his immediate predecessors issued more unilateral directives. However, Trump was most eager to act unilaterally in his fourth year of the presidency, due to emergency and national security concerns after the pandemic hit the United States.

Streszczenie

Stosowanie uprawnień jednostronnych prezydenta USA w okresie administracji Donalda Trumpa

Poniższy artykuł jest eksploracją na temat stosowania uprawnień jednostronnych prezydenta Stanów Zjednoczonych Ameryki w okresie administracji Donalda Trumpa. Autor sta-

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wia hipotezę iż Trump, ze względu na brak doświadczenia politycznego, był mniej skłonny do negocjowania szczegółów projektów legislacyjnych z Kongresem, a bardziej do rządzenia za pomocą jednostronnych dyrektyw. Analizując częstotliwość wydawania rozporządzeń wykonawczych, proklamacji, memorandumów oraz oświadczeń przy podpisywaniu ustaw wydawanych przez prezydentów USA od czasów Jimmy'ego Cartera, artykuł wskazuje, że Trump korzystał z wybranych uprawnień jednostronnych w sposób umiarkowany. Jednocześnie Trump wydał najwięcej jednostronnych dyrektyw w czwartym roku prezydentury, w okresie wzmożonych obaw o bezpieczeństwo narodowe po wybuchu pandemii koronawirusa.

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I. Introduction

If Donald Trump shocked the political world by winning U.S. presidential election in 2016, the end of his presidency was equally stunning. Trump never accepted defeat to Joe Biden stating that the election was stolen, even though neither president nor his lawyers were able to substantiate these claims in dozens of court trials. While some scholars depicted Trump's actions as filled with „authoritarian inclinations and disdain for the rule of law”², painting the president himself as a threat to democracy, others argued that while erratic in style, Trump presidency was rather ordinary in substance³.

This paper intends to take a closer look at the four years of Donald Trump administration from the perspective of the unilateral powers of the American presidency. Due to journal content limits, the analysis will be of a preliminary character, presenting frequency of unilateral presidential tools issued by president Trump. Based on descriptive statistics, the paper will focus on quantity of using selected unilateral powers and is designed as an introduction to more detailed, qualitative study of content of unilateral directives and their policy implications during Trump's four years in office.

The design of the American constitutional system created three equal branches of government that would check and balance each other. However, the prac-

² W.G. Howell, T.M. Moe, *America's Crisis of Democracy*, „Political Science Quarterly” 2021, vol. 131, no. 1, p. 105.

³ J. Herbert, T. McCrisken, A. Wroe, *The Ordinary Presidency of Donald Trump*, Cham 2019.

tice of exercising power along with bureaucratic transformation and the birth of mass media, converted the presidency into a leading political institution, „expected by citizens to do something about everything”⁴. While being constitutionally deprived of legislative initiative, separation of powers required that presidents, shall cooperate with federal Congress. When Richard Neustadt argued that „presidential power is the power to persuade”⁵, he elaborated that in order to convince lawmakers to convert ideas into legislation, presidents were using a variety of negotiating tools to make Congress going along with presidential initiatives. If the imperative of *going Washington* (bargaining) or *going public*⁶ (pressuring legislators by appealing to public opinion) proved not effective, chief executives developed another path. *Going alone* relates to presidential activity focused on „direct presidential actions or unilateral actions [that] refers to wide array of public policies that presidents set without Congress”⁷. While there is a variety of types of unilateral directives, „most of these instruments establish policy, and may have the force of law”⁸. In other words, „unilateral directives are documents that the president issues to direct the executive branch. As such, they afford presidents an independent means of controlling a wide range of governmental actions. More controversially, they may enable president to unilaterally enact their own policy preferences by a mere stroke of a pen”⁹.

Moe and Howell claim that the ambiguity of the U.S. Constitution ensures that „the actual powers of the three branches, both in absolute sense and relative to one another (...) must, of necessity be determined in the ongoing practice of politics”¹⁰. The argument is that the president is better equipped to set political agenda in the United States. As an institution, the presidency has access to all the necessary information, staff able to craft policy, and bully pulpit to make news

⁴ R.E. Neustadt, *Presidential Power and the Modern Presidents*, 3rd ed., New York 1990, p. 7.

⁵ Ibidem.

⁶ S. Kernell, *Going Public: New Strategies of Presidential Leadership*, Washington D.C. 2007.

⁷ W.G. Howell, *Power Without Persuasion: The Politics of Direct Presidential Action*, Princeton 2003, p. xiv.

⁸ H.C. Relyea, *Presidential Directives: Background and Overview*, CRS Report for Congress, November 26, 2008, p. 2.

⁹ G.G. Dodds, *Take Up Your Pen: Unilateral Presidential Directives in American Politics*, Philadelphia 2013, p. 4.

¹⁰ T.M. Moe, W.G. Howell, *The Presidential Power of Unilateral Action*, „Journal of Law, Economics and Organization” 1999, vol. 15, no. 1, p. 135.

whatever they do, including policy proposals. Politically, the president acts alone as sole responsibility is his. At the same time, federal legislative is frequently trapped with collective action problems, as 535 members of Congress may have differing interests for a timely settlements on variety of policy initiatives¹¹.

While American constitutional contract leaves numerous vacuums to be filled with presidential leadership, presidents cannot do whatever they want. They are limited by constitutional provisions, boundaries of congressionally delegated authorities, congressional power of the purse, or federal judiciary actions. Nevertheless, „constitutionally and legally, a unilateral presidential directive is an authoritative and compulsory as regular law, at least until such time as it is done away by Congress, courts, or by a future unilateral presidential directive”¹². However, the first two institutions rarely counter address presidential unilateral acts¹³. This makes presidents willing to less bargain with Congress, turning to unilateral directives instead. It also encourages chief executives to broaden the scope of their unilateral power and making it an integral feature of the presidency, inherited by each individual taking the presidential oath.

II. Scope of the problem

This paper focuses on the unilateral presidential activities of Donald Trump, compared to his recent predecessors. As Trump is by far a one-term president, the analysis will address only on administrations of Jimmy Carter, George H.W. Bush and Trump himself, and first four years of the presidencies of Ronald Reagan, Bill Clinton, George W. Bush and Barack Obama. The presidency of Jimmy Carter, inaugurated in 1977, is a starting point as the American presidency was fully institutionalized in the 1970’s¹⁴. This very decade also brought

¹¹ T.M. Moe, W.G. Howell, *Unilateral Action and Presidential Power: A Theory*, „Presidential Studies Quarterly” 1999, vol. 29, no. 4, pp. 854–865.

¹² G.G. Dodds, *op.cit.*, p. 10.

¹³ Ch. Deering, F. Maltzman, *The Politics of Executive Orders: Legislative Constraints on Presidential Power*, „Political Research Quarterly” 1999, vol. 52, no. 4; T.M. Moe, W.G. Howell, *The Presidential Power of Unilateral Action...*

¹⁴ As „it attained high levels of autonomy, adaptability, complexity, and coherence”. See L. Ragsdale, J.J. Theis, *The Institutionalization of the American Presidency*, „American Journal of Political Science” 1997, vol. 41, no. 4, p. 1280.

so-called party reforms, as major parties transformed their presidential nomination rules. While before the reforms the nominees were effectively decided by the party leaders, now presidential hopefuls had to personally campaign for voter support in series of caucuses and primaries. As a result, nominations were won by politicians from outside Washington – mainly governors or individuals with limited congressional or political experience¹⁵. Without expertise and skills in coalition building, those outsiders were less willing (or able to) work with Congress once in the White House¹⁶. Dynamics of that process is depicted in Table 1, showing that in recent years presidents seem to find less common ground with Congress, at least in terms of passed legislation. It is not surprising that Donald Trump, who had none political experience prior to the presidency, was second last in securing public law passage in Congress in the analyzed period. The question is thus whether Trump was able to equal that out with policies introduced with unilateral presidential directives. In other words, did he extend the use of unilateral directives? Or rather did he scale it down?

Table 1. Number of bills enacted in Congress during first term of the presidency, 1977–2020¹⁷

Jimmy Carter	1247
Ronald Reagan	1096
George H.W. Bush	1240
Bill Clinton	798
George W. Bush	875
Barack Obama	666
Donald Trump	726

Source: own study.

¹⁵ M. Turek, *Prawybory w Stanach Zjednoczonych Ameryki. Bilans czterech dekad, 1976–2016*, Kraków 2017.

¹⁶ N. Polsby, *The Consequences of Party Reform*, New York 1983.

¹⁷ Data 1977–2018 from: Vital Statistics on American Politics, Table 6-4, <https://www.brookings.edu/wp-content/uploads/2019/03/Chpt-6.pdf> (15.07.2021); 2019 from: Resume of Congressional Activity, <https://www.govinfo.gov/content/pkg/CREC-2020-01-07/pdf/CREC-2020-01-07-pt1-PgD17.pdf> (15.07.2021); 2020 from: <https://www.govinfo.gov/content/pkg/CREC-2021-04-20/pdf/CREC-2021-04-20-pt1-PgD381.pdf> (15.07.2021).

Frequency of using selected presidential unilateral powers will be accessed on a year by year basis. Literature states that American presidents generally issue more unilateral directives at the time of national emergency¹⁸. If existential danger hits the nation, there is simply no room for timely negotiations with Congress, as the president is expected to act swiftly and immediately to ensure security of their fellow citizens. It seems the perfect circumstances to demonstrate the leadership was when the global pandemic stroke in the initial months of 2020. Additionally, on February 5, Trump was acquitted by the U.S. Senate in his first impeachment process. Therefore, he should have been more inclined to act unilaterally, as he received a proof that he had not much to be afraid of the Congress. The existing scholarship demonstrates that presidents are generally more willing to issue unilateral directives at times of unified government¹⁹, when president's party control bouth houses of Congress. Otherwise chief executives are less inclined to act unilaterally. Apparently, they are afraid their actions are more overturn by Congress²⁰, or that legislative branch would intensify congressional control and other oversight means, including the ultimate one, presidential impeachment. Freed from that fear and with the emergence of Covid-19, Trump had the opportunity to execute the presidency the way he always liked and wanted – going alone, without spending much time negotiating with the lawmakers.

Therefore, considering Trump's lack of political experience, inattention to and impatience with policy details and inability to negotiate with congressional leaders I hypothesize that H_1 Donald Trump issued more selected unilateral directives in first four years of his presidency than any other chief executive since 1977. Outbreak of the global pandemic that eventually spread into the United States, causing national emergency, leads to H_2 in the fourth year of his presidency Donald Trump issued more selected unilateral directives that in each previous three years in office. To test the above hypothe-

¹⁸ Rottinghaus, J. Maier, *The Power of Decree. Presidential Use of Executive Proclamations, 1977–2005*, „Political Research Quarterly” 2007, vol. 60, no. 2; W.G. Howell, J. Pevehouse, *Presidents, Congress, and the Use of Force „International Organization”* 2005, vol. 59, no. 1.

¹⁹ S. Shull, *Presidential-Congressional Relations: Policy and Time Approaches*, Ann Arbor 1997.

²⁰ Ch. Deering, F. Maltzman, *The Politics of Executive Orders: Legislative Constraints on Presidential Power*, „Political Research Quarterly” 1999, vol. 52, no. 4.

ses, I will present descriptive statistics on usage of executive orders, proclamations, memoranda and signing statements by American presidency since 1977 in their first four years in office.

American presidents tend to apply unilateral tools since the beginning of the republic. While some are of merely symbolic nature, many other impose substantial policy changes. For instance, Abraham Lincoln freed the slaves by issuing the Emancipation Proclamation (1863), while Harry Truman desegregated the army with Executive Order 9981 (1948). Even the very first American presidents, George Washington and Thomas Jefferson acted without congressional consent when deciding issues that had profound policy inclinations – the Neutrality Proclamation of 1793 (Washington) or accepting the Louisiana Purchase in 1803 (Jefferson). Donald Trump himself had few times referred to presidential prerogatives arguing that he had „the right to do whatever he wanted as President”²¹. One of his first acts was the so-called travel ban, as on January 27, 2017 Trump issued Executive Order 13769, limiting refugee entry and immigration to the U.S. from six countries.

While Congressional Research Service study identified as many as 27 various unilateral presidential policy tools²², this paper focuses on four of them – executive orders, proclamations, memoranda and signing statements. Dood contemplates that it is hard to distinguish between executive orders and proclamations. He writes that they lack clear definition and „an executive order is basically a document the Presidents issues and designates as such”²³. Executive proclamations, on the other hand, „are generally written documents that the President issues to direct governmental actions and they lack a strict definition.”²⁴ Rottinghaus and Maier explain that „the difference between the two is that executive orders are aimed at those *inside* government while proclamations are aimed at those *outside* government.”²⁵ The third instrument consid-

²¹ D. Trump, *Remarks at Turning Point U.S.A’s Teen Student Action Summit 2019*, The American Presidency Project, <https://www.presidency.ucsb.edu/documents/remarks-turning-point-usas-teen-student-action-summit-2019> (5.07.2021).

²² H.C. Relyea, *Presidential Directives: Background and Overview*, CRS Report for Congress, November 26, 2008.

²³ G.G. Dodds, *op.cit.*, p. 6.

²⁴ *Ibidem*, pp. 6–7.

²⁵ B. Rottinghaus, J. Maier, *The Power of Decree. Presidential Use of Executive Proclamations, 1977–2005*, „Political Research Quarterly” 2007, vol. 60, no. 2, p. 339.

ered is presidential memorandum, defined as „presidential action that contains order to administrators”²⁶, that use has been recently increased and is claimed to being a substitute of the executive orders²⁷. Finally, signing statements are often issued by the presidents upon signing legislation, where chief executives „announces their intention to interpret”²⁸ selected provisions of the particular bill. While in use for decades, they received scholarly attention since the administration of Ronald Reagan, and some scholars argued they became equivalent of a line-item veto²⁹. These four are the most important and commonly used unilateral presidential tools³⁰.

III. Results and Discussion

Data presented in Figure 1, depicting overall usage of executive orders, proclamations, memoranda and signing statements by recent U.S. chief executives in their first four years in office presents Donald Trump as one of the most frequent users of these most common and most popular unilateral presidential directives. Trump is only second to Jimmy Carter in number of executive orders and presidential memoranda and third in proclamations (to George H.W. Bush and Barack Obama). He is however second last in relying on signing statements. At the same time, his frequency of applying unilateral tools seems moderate. If Trump’s intention had been to govern unilaterally, it might have been demonstrated in his first years in office. As can be seen in Table 2, he was the least frequent user of signing statements and two presidents issued

²⁶ K.S. Lowande, *After the Orders: Presidential Memoranda and Unilateral Action*, „Presidential Studies Quarterly” 2014, vol. 44, no. 4, p. 725.

²⁷ K.S. Lowande, *After the Orders*; J.T. Wooley, G. Peters, *Do Presidential Memo Orders Substitute for Executive Orders*, „Presidential Studies Quarterly” 2014, vol. 44, no. 4, p. 725.

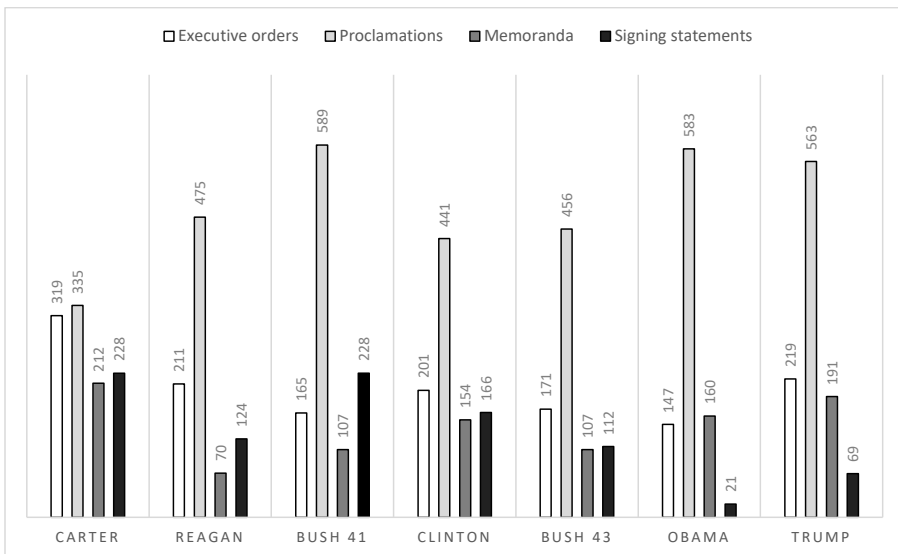
²⁸ L.L. Rice, *Statements of Power: Presidential Use of Statements of Administration Policy and Signing Statements in the Legislative Process*, „Presidential Studies Quarterly” 2010, vol. 40, no. 4, p. 687.

²⁹ P.J. Cooper, *By Order of the President. The Use and Abuse of Executive Direct Action*, Lawrence 2014, pp. 323–384.

³⁰ G.G. Dodds, op.cit., s. 10; J.D. Bailey, B. Rottinghaus, *Reexamining the Use of Unilateral Orders: Source of Authority and the Power to Act Alone*, „American Politics Research” 2014, vol. 42, no. 3, p. 481.

more executive orders, proclamations and memoranda than Trump, making his record average. It thus seems that despite lack of political experience, alleged inability to negotiate with Congress and incentive for providing quick if not impulsive solutions, Trump had rather moderate inclinations to act unilaterally. Clearly, it was a resort he turned into frequently, but was far from being an extreme unilateral president. In this sense, he continued the trend, but overall his presidency was rather ordinary in this aspect. Having in mind his political inexperience, lack of patience for negotiations and willingness to operate he had always had – taking decisions on his own and acting quickly as he always did as a CEO – Trump did not attempt to circumvent Congress the way the individual like him might have been expected. Quite the contrary, any dramatic increase in using unilateral presidential tool cannot be observed in the Donald Trump administration.

Fig. 1. Number of selected unilateral presidential tools in the first year of the presidency, 1977–2020³¹



Source: own research.

³¹ Data on usage of selected unilateral powers, presented in Figure and Tables 2–5, compiled by the Author from The American Presidency Project, <https://www.presidency.ucsb.edu> (7.07.2021).

Table 2. Using selected unilateral presidential tools in the first year of the presidency, 1977–2020

	Executive orders	Proclamations	Memoranda	Signing statements
Jimmy Carter	65	61	72	32
Ronald Reagan	50	72	22	22
George H.W. Bush	31	149	30	43
Bill Clinton	58	119	33	33
George W. Bush	54	114	25	24
Barack Obama	39	127	46	8
Donald Trump	55	119	45	7

Source: own research.

Table 3. Using selected unilateral presidential tools in the second year of the presidency, 1977–2020

	Executive orders	Proclamations	Memoranda	Signing statements
Jimmy Carter	78	88	50	78
Ronald Reagan	63	119	11	28
George H.W. Bush	43	156	26	62
Bill Clinton	54	120	44	38
George W. Bush	31	119	25	35
Barack Obama	35	152	45	6
Donald Trump	37	147	42	30

Source: own research.

Table 4. Using selected unilateral presidential tools in the third year of the presidency, 1977–2020

	Executive orders	Proclamations	Memoranda	Signing statements
Jimmy Carter	77	78	63	26
Ronald Reagan	57	135	21	26
George H.W. Bush	46	158	21	36
Bill Clinton	40	96	33	21
George W. Bush	41	113	21	28
Barack Obama	34	151	30	6
Donald Trump	45	140	31	14

Source: own research.

Table 5. Using selected unilateral presidential tools in the fourth year of the presidency, 1977–2020

	Executive orders	Proclamations	Memoranda	Signing statements
Jimmy Carter	73	103	72	91
Ronald Reagan	41	149	16	22
George H.W. Bush	40	122	29	48
Bill Clinton	49	106	44	87
George W. Bush	45	110	26	25
Barack Obama	39	153	39	1
Donald Trump	67	151	67	18

Source: own research.

Clearly, the coronavirus was the source of the increased usage of unilateral powers by Trump. President issued more executive orders, memoranda and proclamations in his last year in office than in previous three each, fitting the pattern of presidents acting alone more frequently during times of an emergency.

Yet compiling only basic, descriptive statistics about when and how often president Donald Trump issued selected unilateral tools does not give full insight into the nature of his direct presidential actions.

Only further analysis examining also their content would give an answer to the questions of what part of Trump's unilateral directives was of a merely symbolic or rhetorical value and what part included serious policy moderations. For instance, the most important policy changes that Trump set to modify unilaterally included travel ban (Executive Order 13769 and 13780; Presidential Proclamation 9645), limiting opportunities of U.S. citizens to travel or conduct business in Cuba (Memorandum on Strengthening the Policy of the United States Toward Cuba, June 16, 2017) or directing to build a wall along the U.S.-Mexico border (Executive Order 13767) and then declaring The National Emergency Concerning the Southern Border of the United States (Presidential Proclamation 9844) that ordered diverting Department of Defense funding for the wall construction. It may indicate that on issues that Trump campaigned on and was concerned about but was otherwise unable to agree with the lawmakers, he did not hesitate to act forcefully without congressional approval.

Therefore, further analysis that would explore not only the quantity but also quality, that is the content of all unilateral directives issued by Donald Trump, would demonstrate what part of them was merely symbolic and what part included serious policy moderations. Thus while on the surface, basing on descriptive statistics, Trump's unilateral presidency might seem ordinary, content analysis of each unilateral directive would indicate what Trump sought to achieve on policy grounds by issuing them. It would also give an answer to the question of how Donald Trump has changed the institution of the American presidency with its relations with Congress and in the area of unilateral powers.

Literature

- Bailey J.D., Rottinghaus B., *Reexamining the Use of Unilateral Orders: Source of Authority and the Power to Act Alone*, „American Politics Research” 2014, vol. 42, no. 3.
- Cooper P.J., *By Order of the President: The Use and Abuse of Executive Direct Action*, Lawrence 2013.
- Deering Ch., Maltzman F., *The Politics of Executive Orders: Legislative Constraints on Presidential Power*, „Political Research Quarterly” 1999, vol. 52, no. 4.
- Dodds G.G., *Take Up Your Pen: Unilateral Presidential Directives in American Politics*, Philadelphia 2013.
- Herbert J., McCrisken T., Wroe A., *The Ordinary Presidency of Donald Trump*, Cham 2019.
- Howell W.G., *Power Without Persuasion: The Politics of Direct Presidential Action*, Princeton 2003.
- Howell W.G., *Unilateral Powers: A Brief Overview*, „Presidential Studies Quarterly” 2005, vol. 35, no. 3.
- Howell W.G., Moe T.M., *America’s Crisis of Democracy*, „Political Science Quarterly” 2021, vol. 131, no. 1.
- Howell W.G., Pevehouse J., *Presidents, Congress, and the Use of Force* „International Organization” 2005, vol. 59, no. 1.
- Kernell S., *Going Public: New Strategies of Presidential Leadership*, 4th ed., Washington D.C. 2007.
- Lowande K.S., *After the Orders: Presidential Memoranda and Unilateral Action*, „Presidential Studies Quarterly” 2014, vol. 44, no. 4.
- Moe T.M., Howell W.G., *The Presidential Power of Unilateral Action*, „Journal of Law, Economics and Organization” 1999, vol. 15, no. 1.
- Moe T.M., Howell W.G., *Unilateral Action and Presidential Power: A Theory*, „Journal of Law, Economics and Organization” 1999, vol. 15, no. 1.
- Neustadt R.E., *Presidential Power and the Modern Presidents*, 3rd ed., New York 1990.
- Polsby N.W., *The Consequences of Party Reform*, New York 1983.
- Ragsdale L., Theis J.J., *The Institutionalization of the American Presidency*, „American Journal of Political Science” 1997, vol. 41, no. 4.
- Relyea H.C., *Presidential Directives: Background and Overview*, CRS Report for Congress, 26.11.2008.
- Rice L.L., *Statements of Power: Presidential Use of Statements of Administration Policy and Signing Statements in the Legislative Process*, „Presidential Studies Quarterly” 2010, vol. 40, no. 4.
- Rottinghaus B., Maier J., *The Power of Decree. Presidential Use of Executive Proclamations, 1977–2005*, „Political Research Quarterly” 2007, vol. 60, no. 2.

Shull S.A., *Presidential-Congressional Relations: Policy and Time Approaches*, Ann Arbor 1997.

Turek M., *Prawybory w Stanach Zjednoczonych Ameryki. Bilans czterech dekad, 1976–2016*, Kraków 2017.

Wooley J.J., Peters G., *Do Presidential Memo Orders Substitute for Executive Orders*, „Presidential Studies Quarterly” 2014, vol. 44, no. 4.