

Constitutional Qualms or Politics as Usual? The Factors Shaping Public Support for Unilateral Action

Dino P. Christenson Boston University
Douglas L. Kriner Boston University

Abstract: *The formal institutional constraints that Congress and the courts impose on presidential unilateral action are feeble. As a result, recent scholarship suggests that public opinion may be the strongest check against executive overreach. However, little is known about how the public assesses unilateral action. Through a series of five survey experiments embedded in nationally representative surveys, we examine the extent to which Americans evaluate unilateral action based on constitutional, partisan, and policy concerns. We find that Americans do not instinctively reject unilateral action as a threat to our system of checks and balances, but instead evaluate unilateral action in terms of whether it accords or conflicts with their partisan and policy preference priors. Our results suggest that the public constraint on presidential unilateral action is far from automatic. Rather, the strength and scope of this check are variable products of political contestation in the public sphere.*

Replication Materials: The data, code, and any additional materials required to replicate all analyses in this article are available on the *American Journal of Political Science* Dataverse within the Harvard Dataverse Network, at: <http://dx.doi.org/10.7910/DVN/LWED0F>.

At least since Schlesinger (1973), scholars and critics alike have charged that the rise of the unilateral presidency threatens our constitutional system of checks and balances. While the terrorist attacks of September 11, 2001, were initially a unifying force, President Bush's bold assertions of unilateral power both at home and abroad quickly raised concerns that the pendulum of power had swung too far toward the presidency (e.g., Pfiffner 2008). Offering scant resistance to such threats has been a largely "invisible" Congress (Rudalevige 2005), one unwilling or unable to restore the balance of power.

Individual members of Congress have occasionally decried alleged abuses of executive power. In announcing his intention to sue President Obama, Speaker Boehner lambasted the president's penchant for unilateralism: "This is the President violating the Constitution, violating his oath of office, and frankly, not upholding the rule of law."¹ Yet, while members of Congress can loudly object

to the rise of presidential unilateralism, the legislature appears institutionally all but powerless to stop it. The collective action dilemma inherent in mobilizing 535 discrete members to the common call of institutional defense (Moe 1994), coupled with a legislative process that is riddled with supermajoritarian requirements (Krehbiel 1998) and transaction costs (Epstein and O'Halloran 1999), all but precludes Congress from successfully overturning that which the executive has wrought unilaterally (Howell 2003; Moe and Howell 1999).

The federal courts do occasionally chastise presidents for pushing the bounds of their unilateral power too far. However, such rulings are rare (see Howell 2003, 152–54). For example, in a series of mid-2000s cases, the Supreme Court struck down various unilateral actions by the Bush administration concerning the treatment of detainees in the war on terror. However, on virtually every other question, the courts have been silent. This inactivity in the face of extraordinary claims of

Dino P. Christenson is Associate Professor of Political Science, Boston University, 232 Bay State Road, Boston, MA 02215 (dinopc@bu.edu). Douglas L. Kriner is Associate Professor of Political Science, Boston University, 232 Bay State Road, Boston, MA 02215 (dkriner@bu.edu).

Authors' names are listed alphabetically.

¹<http://www.cnn.com/2015/01/28/politics/boehner-obama-immigration-lawsuit/>.

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executive power shows the stark limits of the judicial check.

Because the institutional constraints on unilateral action are weak, public opinion may be the strongest potential check on excessive presidential use of unilateral power. Within the realm of military affairs, several recent works have argued that public opinion—and the capacity of Congress to influence it—can impose a significant, if far from uniform, constraint on the strategic calculations of the commander in chief (Berinsky 2009; Howell and Pevehouse 2007; Kriner 2010). Similarly, a provocative argument in the legal literature posits that public opinion is now the strongest safeguard against the accumulation of unilateral presidential power in a post-Madisonian republic (e.g., Goldsmith 2012; Posner and Vermeule 2010). Emphasizing the central role of public opinion, Posner and Vermeule (2010, 209) conclude: “As long as the public informs itself and maintains a skeptical attitude toward the motivations of government officials, the executive can operate effectively only by proving over and over that it deserves the public’s trust.”

However, the public and how it assesses unilateral action are missing from most accounts of the unilateral presidency (though see Christenson and Kriner 2015). Public opinion does not feature in standard game-theoretic models of unilateral power (Chiou and Rothenberg 2013; Howell 2003). Some empirical studies have suggested that the level of presidential approval may affect the frequency with which the president issues executive orders. However, the direction of the relationship is unclear and the empirical evidence mixed (Deering and Maltzman 1999; Fine and Warber 2012; Krause and Cohen 1997; Mayer 2001). An important exception to this lacuna is recent research by Reeves and Rogowski (2016), which offers considerable support for the notion that public opinion provides a strong constraint on the unilateral president. Across a series of surveys, Reeves and Rogowski find supermajorities of Americans opposing presidents’ use of their unilateral tool kit to effect policy change. If generalizable, these results suggest that the constraints placed by public opinion on the unilateral presidency are great indeed.

To pave the groundwork for deeper theorizing into whether and how the public may constrain unilateral executive power, we identify the factors that shape how the public evaluates unilateral action. We explore three possibilities. First, constitutional concerns may render many Americans innately skeptical of presidential unilateralism because it appears to threaten our system of checks and balances. Second, citizens may instead use partisan cues to assess unilateral action. Citizens support unilateral action when the president is a member of their political party,

and they oppose it when the incumbent heads the partisan opposition. Finally, Americans may evaluate unilateral action according to whether it concurs with their policy preferences. Citizens support unilateral actions that move policy closer toward their preferences and oppose those that fail to do so.

We test these competing hypotheses using data from five survey experiments embedded in three nationally representative online surveys. The experiments probe the dynamics of public support for unilateral action both in the abstract and in concrete cases, which vary widely in terms of substantive focus, scope, and degree of polarization. The range of experiments employed allows us to estimate causal treatment effects that are externally valid and generalizable across policy issues. In sharp contrast to prior research (Reeves and Rogowski 2016), we find little evidence of a public inherently skeptical of unilateral action. Rather, partisan forces and policy preferences, not constitutional concerns, dominate most Americans’ evaluative calculus, a finding that is consistent with literatures emphasizing the intense polarization of our contemporary polity (e.g., Druckman, Peterson, and Slothuus 2013). Our results suggest that the public constraint on unilateral action is neither as strong nor as automatic as suggested by extant research, which has important implications for interbranch politics.

The Public and Unilateral Action

In a discussion of a hypothetical interbranch constitutional showdown, Posner and Vermeule (2010, 77–78) argue that the public, not the judiciary, is now the primary arbiter: “Through the mysterious process by which public opinion forms, the public will throw its weight behind one branch or the other, and the branch that receives public support will prevail.” We ask, through what “mysterious process” does the public evaluate contested claims of unilateral authority? While this question has received scant direct attention, previous literatures on public opinion formation suggest three factors that may influence how Americans assess unilateral action.

Constitutional Concerns

The Supreme Court has ruled that a range of presidential unilateral initiatives, when exercised pursuant to proper authority, are constitutional and have the force of law (Howell 2003, 19–21). However, the strength of the legal grounds on which presidents justify their unilateral

directives varies widely across cases and over time (Bailey and Rottinghaus 2014). Thus, when evaluating unilateral action, Americans may consider the extent to which it threatens to upset the balance of powers across the branches.

Research has long demonstrated that most Americans lack basic political information (see, e.g., Campbell et al. 1960; Delli Carpini and Keeter 1997). However, checks and balances are a cornerstone of American civics, and recent polling evidence suggests that support for this core constitutional principle remains strong. Polls consistently show widespread concern that the president is becoming too powerful and that supermajorities are reticent to entrust greater power to the president.² For example, in a 2008 poll, only 29% of Americans said they would favor giving more power to the president, even if it would strengthen national security or the performance of the economy.³ When queried about unilateral action specifically, significant majorities worry about the expansion of presidential power. In a December 2014 poll, 68% of Americans said that they were very or somewhat concerned “that Barack Obama’s use of executive orders and acting without Congressional approval may be permanently altering our country’s system of checks and balances.”⁴

Indeed, in the most relevant prior analysis of public attitudes toward unilateral action, Reeves and Rogowski (2016) find strong evidence of general skepticism toward unilateral action. Across a series of four waves of the American Panel Study, they find that support for unilateral action was low and remarkably stable over time. In each wave, less than 30% of Americans supported acting unilaterally to change policy without congressional action. Moreover, they find that attitudes toward the rule of law are important predictors of support for executive action. The more a citizen is committed to the objective rule of law, the less supportive he or she is of presidential unilateral action, which cuts against constitutional mores.

If concerns about checks and balances shape assessments of unilateral action, we would expect to see three patterns in public opinion. First, because many Americans fear that a strengthened presidency will upset the constitutional balance of power, baseline support for unilateral action should be low across a range of settings, both

in more abstract questions about support for the use of unilateral tools in general and in more concrete questions about specific unilateral actions in contemporary politics. Second, when primed to consider the threat unilateral action poses to checks and balances, support for unilateral action should fall further still. Finally, when asked to consider unilateral action in policy realms where presidents possess stronger claims of constitutional authority to act unilaterally—for example, in foreign policy (Ramsay 2007)—the public should be more willing to support unilateral action.

Partisan Cues

As an alternative to more abstract constitutional evaluations, we explore whether partisan cues may be the guiding force shaping public assessments of unilateral executive action.⁵ A long literature stemming from considerations of information processing (Kuklinski and Hurley 1994; Lupia 1994; Lupia and McCubbins 1998; Zaller 1992) has argued that heuristics (i.e., cues or cognitive shortcuts) allow the public to make reasonable choices despite lacking the relevant information (Mondak 1993b; Popkin 1991; Schaffner and Streb 2002; Sniderman, Brody, and Tetlock 1991). Perhaps the most commonly relied-upon heuristic in American politics is partisanship (Rahn 1993). Even having little to no information about a candidate or an issue, the public can rely on this simple identification to vote correctly (Lau and Redlawsk 1997), to process and recall information (Lodge and Hamill 1986), and generally to form opinions when there is a need for cognitive efficiency (Mondak 1993a, 1993b).

Evaluating unilateral action requires a level of political information that many, if not most, Americans are unlikely to possess or acquire. As a result, many Americans may rely on partisan cues to determine where they stand.⁶ Moreover, it is important to note that the intense polarization of the contemporary polity along partisan lines should only intensify the influence of partisanship

⁵For a discussion of partisan forces and policy preferences at the elite level, see the supporting information (SI).

⁶An alternative literature argues that Americans engage in partisan-motivated reasoning when processing new information and incorporating it into their political judgments (e.g., Bartels 2002; Campbell et al. 1960; Petersen et al. 2013). Following Druckman, Peterson, and Slothuus (2013, 59), we acknowledge that partisanship could influence assessments of unilateral action through both pathways and that discriminating between them is exceedingly difficult. While we believe our experiments show evidence consistent with both motivated reasoning and heuristics, we focus here on the simpler partisan cues explanation, which is consistent with our results across all five experiments.

²2007 Constitution and Governance Issues Survey. Survey by PublicInterestPolling.com, August 20–26, 2007. USPARKER.07PIP.R01.

³Survey by Associated Press, National Constitution Center. Methodology: Conducted by Abt SRBI, August 22–29, 2008. USAP.091508.R08B.

⁴Survey by Fox News, December 7–9, 2014. USASFOX.121014.R25.

on political judgments of unilateral action (Druckman, Peterson, and Slothuus 2013; Petersen et al. 2013). If Americans predominantly rely on partisan cues when assessing unilateral action, then citizens will generally support unilateral action when taken by a copartisan president and oppose unilateral action when initiated by the standard bearer of the opposition party.

Policy Preferences

Finally, Americans may also evaluate presidential unilateral action on its policy merits. Much opinion scholarship has long minimized the importance of policy concerns in opinion formation. When the two conflict—which is increasingly rare in an era of partisan sorting (Levendusky 2009)—citizens rely on the simpler partisan cues and ignore policy information when forming their political judgments (Cohen 2003; Rahn 1993). Recent studies have challenged this perspective and demonstrated that citizens are also responsive to policy information when making political assessments (Arceneaux 2008; Boudreau and MacKenzie 2014; Bullock 2011). We test whether Americans evaluate unilateral action at least in part based on its policy consequences. If so, then citizens will support unilateral action that moves policy closer to their preferences, and they will oppose unilateral action that moves policy further away from their preferences.

Justification Experiment

We test the relative explanatory power of these three factors through a series of experiments on nationally representative surveys. Experiments 1, 3, and 4 were embedded in the 2014 Cooperative Congressional Election Study (CCES). Experiments 2 and 5 were embedded in separate follow-up surveys conducted by YouGov/Polimetrix.⁷

The first experiment assesses the influence of constitutional concerns and partisan forces on support for unilateral action by examining whether public support is contingent on whether or not congressional inaction is offered as a *justification* for executive action. Subjects were randomly assigned to one of two conditions. Subjects in the control group received the following prompt: “President Obama has aggressively used unilateral executive power to pursue his priorities in both foreign and domestic policy.” These subjects received no additional information. Before receiving this same prompt, subjects in

the justification treatment were given information about congressional inaction as a justification for presidential unilateral action. These subjects were first told: “The current Congress has been one of the most obstructionist on record and is near historic lows in terms of its legislative productivity. Congress has failed to act on many of the most important issues facing the country.” To make the justification argument explicit, these subjects were then told: “As a result of this congressional inaction, President Obama has aggressively used unilateral executive power to pursue his priorities in both foreign and domestic policy.” All subjects were then asked the same question, which was adapted from a January 2014 ABC/Washington Post poll: “Presidents have the power in some cases to bypass Congress and take action by executive order to accomplish their administration’s goals. Do you support or oppose this approach?”⁸

If Americans’ assessments of unilateral action are significantly influenced by constitutional concerns about checks and balances, we would expect to see two patterns. First, support for unilateral action should be low across both conditions. As the question wording makes clear, unilateral action allows presidents to bypass Congress, which directly invokes concerns about checks and balances observed in polling data about presidential power in the abstract. Second, the justification treatment should not increase support for unilateral action. If anything, the justification treatment may decrease support for unilateral action because it makes the president’s decision to sidestep Congress even more explicit. The treatment clearly states that the president did not act unilaterally with Congress’s tacit consent. Rather, with his initiatives stalled in Congress, President Obama acted to implement those policies by executive fiat. Because unilateral action in this treatment is in direct defiance of Congress, the challenge to checks and balances is even starker.

Alternatively, if partisan forces dominate how citizens assess unilateral action, we should see two different patterns. First, partisan affiliation should predict support for President Obama’s unilateral course. Second, partisanship should moderate the influence of the justification treatment. Republicans should be unresponsive to the justification of congressional inaction. After all, this treatment reminds them that by acting unilaterally,

⁷For sample demographics, placement of experimental modules, and additional details, see the SI.

⁸Survey by ABC News/Washington Post, January 20–23, 2014. US-ABCWP.012614.R12. The dependent variable in this and each subsequent experiment (except for the partisan source experiment) was measured on a 4-point Likert scale. We collapsed the *strongly support* and *somewhat support* categories to construct a measure of the percentage of Americans supporting the president’s unilateral action, which is the most politically relevant quantity that is emphasized in media reports. For additional discussion, see the SI.

President Obama was flouting the will of a Republican-controlled Congress.⁹ Democrats, by contrast, possessed strong partisan predispositions to back the president’s unilateral actions, regardless of whether or not congressional inaction is cited as a justification. This should mute any influence of the justification treatment on support for the president.

Instead, the effects of the justification treatment should be strongest for Independents, who lack strong partisan priors (Lebo and Cassino 2007; Zaller 1992). For Independents, the constitutional concerns raised by the justification treatment could lower support. Alternately, if the average Independent prioritizes breaking the gridlock in Washington over a strict adherence to checks and balances, then the justification treatment could increase support for unilateral action among Independents.

A superficial examination of the data casts significant doubt on the hypothesis derived from previous research (Reeves and Rogowski 2016) that constitutional concerns will lead supermajorities of Americans to oppose unilateral executive action. In the control group, only a narrow majority opposed a unilateral approach, with 48% supporting or strongly supporting it. In the congressional inaction justification treatment, support rose, with 56% of respondents backing a unilateral approach.¹⁰ Both the relatively high levels of public support for unilateral action in the abstract and the increase in support observed in the justification treatment over the control group baseline are inconsistent with the hypothesis that constitutional concerns will render most Americans inherently unwilling to back unilateral action.

To probe further, we constructed a pair of logistic regression models. The dependent variable is coded 1 for subjects who strongly supported or supported a unilateral approach. The key independent variables are the justification treatment and its interaction with partisan dummy variables.¹¹ The model also controls for each subject’s partisanship, gender, educational attainment, age, and race. Results are presented in Table 1.

Model 1 shows that the estimated effect of the congressional obstruction justification treatment on support for unilateral executive action was positive, but the coefficient misses conventional thresholds of statistical significance. However, if Americans rely heavily on

TABLE 1 Effect of Congressional Justification by Partisanship

	(1)	(2)
Congressional Obstruction	0.30 (0.24)	1.36** (0.50)
Congressional Obstruction × Republican		-1.79* (0.72)
Congressional Obstruction × Democrat		-1.26* (0.60)
Republican	-1.22** (0.35)	-0.21 (0.52)
Democrat	1.74** (0.28)	2.51** (0.46)
Male	-0.11 (0.25)	-0.06 (0.25)
Education	0.05 (0.08)	0.03 (0.08)
Age	0.00 (0.01)	0.00 (0.01)
White	-0.69* (0.29)	-0.78** (0.30)
Constant	-0.27 (0.60)	-0.83 (0.69)
Observations	440	440

Note: Models are logistic regressions. Robust standard errors are in parentheses. All significance tests are two-tailed. **p < .01, *p < .05.

partisan cues to assess unilateral action, then the effects of the justification treatment should be most prominent among Independents.¹² To test this hypothesis, Model 2 includes interactions of the justification treatment with the Democratic and Republican dummy variables. The main effect (i.e., the effect for subjects who did not affiliate with either party) is positive and statistically significant. By contrast, both partisan interaction variables are negative and statistically significant, suggesting that the justification treatment had either no or a much smaller effect on Democrats and Republican respondents than it did on those who were not affiliated with either major party. This is consistent with the partisan cues hypothesis.

Figure 1 illustrates the size of the justification treatment effect for each partisan subgroup. The median Independent in the control group had only a .19 predicted

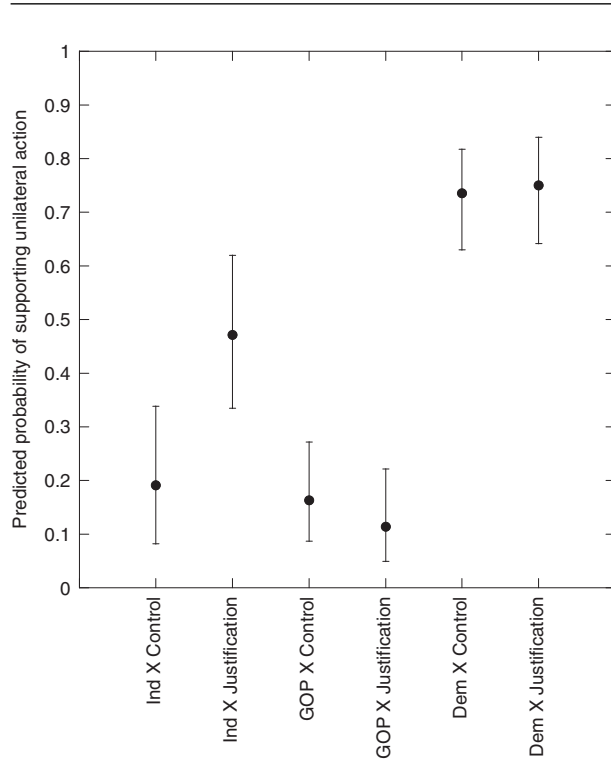
⁹Republicans controlled the House in the 113th Congress and gained control of the Senate in the 2014 elections.

¹⁰Additional summary statistics and differences-in-means tests for this and every subsequent experiment are provided in the SI.

¹¹Subjects who “leaned” toward either party are coded as partisans. The results are robust to treating these subjects as Independents. See the SI.

¹²Alternately, in the SI, we examine whether the justification treatment effect is moderated by political knowledge. We find that partisanship, not political knowledge, is the key moderating variable.

FIGURE 1 Effects of Justification Treatment by Partisanship



Note: Dots present the predicted probability of the median subject in each partisan treatment subgroup supporting unilateral action (i.e., all other variables are set equal to the median). I-bars around each point estimate present 95% confidence intervals obtained from simulations.

probability of backing presidents taking a unilateral approach.¹³ However, the justification treatment more than doubled the predicted probability of the median Independent supporting unilateral action, increasing it to .47. Far from worrying that executive initiatives threatened the constitutional system of checks and balances, most Independents were more willing to support unilateral action when told that it broke gridlock on Capitol Hill than they were in the absence of such justification.

With President Obama in the White House, the median Republican was highly unlikely to support presidents acting unilaterally to achieve their policy goals in both the control group and in the justification treatment. Similarly and consistent with partisan cue-taking, Democrats had little qualms about backing presidential unilateral action in 2014. The justification treatment did little to increase

the probability of the median Democrat supporting unilateral action from its already high level.

The justification module suggests that most Americans evaluate unilateral action through partisan-tinted glasses. Independents, who lack strong partisan priors, responded to the justification of congressional inaction by becoming more supportive of unilateral action as a means to break legislative gridlock. Partisans were not influenced by the justification treatment. The data are inconsistent with the hypothesis that most Americans instinctively recoil against unilateral action on constitutional grounds. Instead, subjects' strong reliance on partisan cues when assessing unilateral action echoes the dynamics of opinion formation observed in other polarized contexts (Levendusky 2009).

Two Presidencies Experiment

The preceding experiment informed subjects that President Obama had acted unilaterally to pursue his priorities in both domestic and foreign policy. While scholars still debate the precise constitutional distribution of power across the branches in foreign affairs, most concede that Article II grants the president greater basis for independent action in the international arena than in the domestic policy realm. More generally, an extensive literature on the two presidencies suggests that presidents have greater leverage and leeway in foreign policy than in domestic affairs (e.g., Canes-Wrone, Howell, and Lewis 2008). Indeed, Wildavsky's (1966, 9–10) original formulation of the thesis suggests that it may be driven, in part, because the public looks to the president for leadership in foreign affairs. Because presidents possess greater institutional prerogatives as commander in chief, if constitutional concerns influence Americans' assessment of unilateral action, we would expect the public to be more supportive of unilateral action in foreign affairs (Reeves and Rogowski 2016).

To examine whether support for unilateral action is indeed higher in foreign policy, we conducted a new experiment on a follow-up survey that randomly assigned subjects to one of two groups. All subjects were told: "Presidents have the power in some cases to bypass Congress and take action by executive order to accomplish their administrations' goals." Those in the control group were then asked: "Do you support or oppose presidents taking this approach in domestic and social policy?" Subjects in the foreign policy treatment group were asked: "Do you support or oppose presidents taking this approach in foreign and military policy?"

¹³In Figures 1–5, we examine the effect of each factor on the probability of supporting unilateral action while holding all other variables constant at their median values. In each experiment, the median subject was a white female, between 47 and 50 years of age (depending on the survey; see the SI for demographics), who had attended some college.

TABLE 2 Two Presidencies Experiment and Support for Unilateral Action

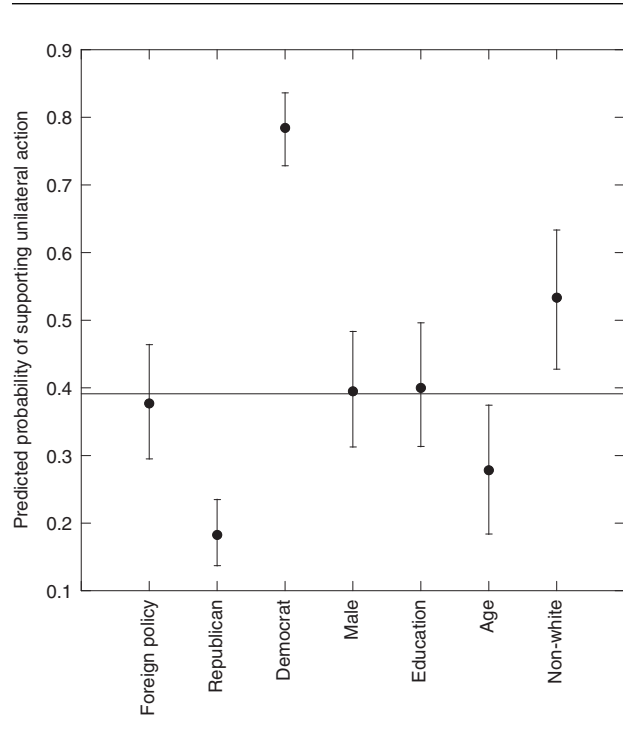
	(1)	(2)
Foreign Policy	-0.06 (0.15)	0.04 (0.28)
Foreign Policy × Republican		0.10 (0.39)
Foreign Policy × Democrat		-0.32 (0.37)
Republican	-1.07** (0.20)	-1.11** (0.28)
Democrat	1.74** (0.19)	1.90** (0.27)
Male	0.02 (0.16)	0.02 (0.16)
Education	0.02 (0.05)	0.02 (0.05)
Age	-0.01** (0.00)	-0.01** (0.00)
White	-0.58** (0.18)	-0.58** (0.18)
Constant	0.81* (0.33)	0.75* (0.35)
Observations	1,000	1,000

Note: Models are logistic regressions. Robust standard errors are in parentheses. All significance tests are two-tailed. **p < .01, *p < .05.

We found no evidence that Americans are more willing to support unilateral action in the international realm than in the domestic sphere. In the aggregate, 53.2% of subjects in the control group supported the president taking a unilateral approach in the domestic policy realm. In the treatment group, 53.4% of subjects backed the president taking a unilateral approach in military and foreign affairs.

The logistic regressions presented in Table 2 show that partisanship was the predominant driver of variation in subjects’ responses. Although President Obama was never named in our experiment, support for unilateral action divided significantly along partisan lines. Using predicted probabilities calculated from simulations, Figure 2 shows that the median Democrat was almost certain to support unilateral action, whereas the median Republican was almost certain to oppose a unilateral approach. Finally, the second model in Table 2 shows that the issue area—whether subjects were asked about foreign versus domestic policy—had no influence on support for unilateral action among any partisan subgroup.

FIGURE 2 Factors Influencing Support for Unilateral Action, Two Presidencies Experiment



Note: The horizontal line at .39 represents the predicted probability of supporting unilateral action for the median Independent in the domestic policy control group. Each dot presents the predicted probability generated by an increase in the given variable while holding all other factors constant at their median values. For binary variables, the figure plots the effect of increasing that factor from 0 to 1. For education and age, the figure presents the effect of a two standard deviation increase from the median value. I-bars around each point estimate present 95% confidence intervals obtained from simulations.

Partisan Source Experiment

We further explore the power of partisan cues to shape support for unilateral action by experimentally manipulating the elite source of the unilateral action. The preceding experiments either directly referenced President Obama or were conducted during his administration, and it is therefore plausible that our findings are specific to his presidency. To address generalizability concerns, we now examine whether the partisanship of the president drives support for unilateral action. Comparing across presidents, however, is no easy task. Republican and Democratic presidents often use their unilateral tool kit to pursue very different types of policy change. As a result, it is difficult to discern the relative influence of partisan forces and policy preferences on support for unilateral action. However, the great continuity in foreign policy executive

actions from George W. Bush to Obama (Glennon 2015) allows us to explore with strong control whether partisan forces lead many Americans to support unilateral action when it is attributed to a copartisan president and to oppose it when the very same policies are attributed to an opposition party president.

Subjects in this experiment were randomly assigned to one of two treatment groups. Those in the first group received the following prompt: “President Obama has used a variety of instruments, such as executive orders and national security decision directives, to unilaterally expand his power in the war on terror. For example, these unilateral actions have significantly increased electronic surveillance both at home and abroad.” The concrete example focused on electronic surveillance because both Presidents Obama and Bush presided over dramatic increases in National Security Agency eavesdropping and data collection programs. In both administrations, revelations of expanded spying caused an uproar and attracted significant media attention. Subjects in this group were then asked the following question adapted from a 2006 Gallup poll: “Do you think the Obama administration—has gone too far, has been about right, or has not gone far enough—in expanding the power of the presidency and executive branch to combat terrorism?”¹⁴ Subjects in the second treatment group received an identical prompt and question. The only modification was that the prompt and question referenced President Bush rather than President Obama.¹⁵

Given the serious constitutional questions raised by both presidents’ unilateral actions in the war on terror, we might expect strong majorities to believe that both had gone too far in expanding presidential power. However, this was not the case. Only a minority of Americans, 42% and 44%, respectively, believed that Obama or Bush had gone too far.

To examine the extent to which partisan forces can explain varying reactions to presidential unilateral action in the war on terror, we estimated a pair of logit models. The independent variables of interest are an indicator for the Bush treatment and the interaction of this treatment with dummy variables identifying Democratic and Republican respondents. We again controlled for each subject’s partisanship, gender, educational attainment, age, and race. Table 3 presents the results.

The first model of Table 3 shows that, on the whole, there was no significant difference in support for

¹⁴The only modification to the Gallup question was the addition of “to combat terrorism.” Survey by Gallup Organization, June 1–4, 2006. USGALLUP.200621.Q11.

¹⁵Simple past tense was also used instead of the present perfect.

TABLE 3 Bush vs. Obama and Beliefs That Unilateral Action Has Gone Too Far

	(1)	(2)
Bush Treatment	–0.05 (0.20)	0.23 (0.43)
Bush Treatment × Republican		–2.35** (0.57)
Bush Treatment × Democrat		1.36* (0.56)
Republican	0.18 (0.28)	1.37** (0.42)
Democrat	–0.18 (0.27)	–0.98* (0.41)
Male	0.46* (0.20)	0.57* (0.22)
Education	0.28** (0.07)	0.31** (0.08)
Age	0.01 (0.01)	0.01 (0.01)
White	0.31 (0.26)	0.35 (0.27)
Constant	–2.31** (0.49)	–2.66** (0.56)
Observations	445	445

Note: Models are logistic regressions. Robust standard errors are in parentheses. All significance tests are two-tailed.

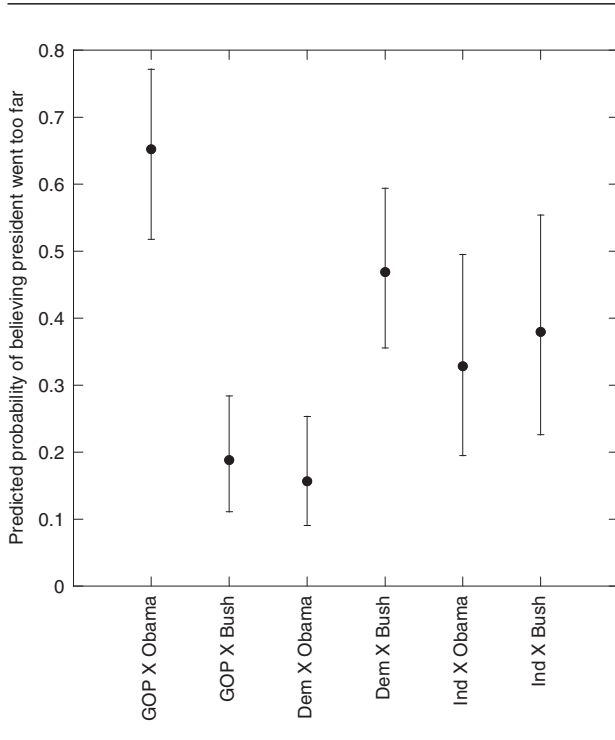
**p < .01, *p < .05.

unilateral action across the Bush and Obama treatments. This is precisely what partisan cues would predict, as different partisans should react to the same treatment in diametrically opposite ways.

Model 2 includes the partisan interactions. The coefficient for the main effect is substantively small and statistically insignificant. Among Independent subjects not affiliated with either of the two major parties, whether the question referenced Bush or Obama had no influence on the probability of a respondent backing presidential unilateral actions in the war on terror. By contrast, among Republicans, receiving the Bush treatment significantly lowered the probability of believing that the president had gone too far. Among Democrats, the Bush treatment had the opposite effect, significantly increasing the probability of believing the president had gone too far unilaterally. This partisan split was strong, despite the considerable similarities in the two presidents’ unilateral policies in the war on terror and despite the fact that the two treatments explicitly referenced the same concrete example.

Figure 3 illustrates the magnitude of the effects. The median Republican in the Obama treatment group

FIGURE 3 Effect of Bush Treatment by Partisanship



Note: Dots present the predicted probability of the median subject in each partisan treatment subgroup supporting unilateral action (i.e., all other variables are set equal to the median). I-bars around each point estimate present 95% confidence intervals obtained from simulations.

had a very high probability, .65, of replying that the president had expanded presidential power excessively. By contrast, all else being equal, the same median Republican in the Bush treatment group had less than a .20 probability of believing that the Bush administration had acted too brazenly in expanding presidential power. Among Democrats, we see a similar, but opposite, pattern. In the Obama treatment, the median Democrat was very unlikely to believe that Obama had pushed his unilateral authority too far. However, in the Bush treatment, the median Democrat had roughly a 50/50 chance of responding that the Bush administration had gone too far in expanding presidential power in the context of the war on terror. Considering the vociferous Democratic opposition to the unilateral initiatives of the “imperial” Bush presidency in the late 2000s, this relatively low retrospective figure suggests that a significant share of Democrats may recognize the similarities in the two presidents’ conduct of the war on terror.¹⁶ Nevertheless,

¹⁶In the June 2006 Gallup survey, 74% of Democrats said Bush had gone too far.

despite the two presidents pursuing virtually identical policies, Democrats were three times more likely to judge that Bush had gone too far in expanding the powers of the presidency unilaterally than has Obama.

Finally, among Independents, we observed no significant differences across the two treatment groups. The median Independent was unlikely to believe that either president had expanded presidential power too far through his unilateral actions in the war on terror. Given the questionable constitutionality of both presidents’ actions, this result among Americans without a partisan stake in the fight is another blow to the hypothesis that constitutional concerns and support for the rule of law drive Americans’ assessments of unilateral action.

Means versus Ends Experiments

Thus far, we have found little evidence that constitutional concerns circumscribe support for unilateral action; rather, partisan cues dominate most Americans’ assessments of the unilateral presidency. In the final two experiments, we ask whether citizens care at all about the means, or only the ends, of the policymaking process. This new focus also allows us to examine directly the influence of policy preferences on support for unilateral action. Accordingly, we conducted a pair of experiments to examine whether the means through which the president pursues a policy objective—through unilateral action or legislation—affects support for the president’s efforts. We do so across two different policy issues to ensure that the results do not depend on the degree of general support for or polarization on a particular issue.

Student Loans Experiment

Our first experiment examines support for a unilateral action that is limited in scope and nonpolarizing: reducing student loan debt. Subjects were randomly assigned to one of two treatment groups. Subjects in the first group were told: “President Barack Obama has publicly backed legislation in Congress that would cap student loan payments at 10% of a borrower’s income, and forgive any remaining debt after 20 years.” Subjects in the second treatment group learned of the same White House policy initiative; however, in this treatment, Obama pursued his policy goal through unilateral action. Subjects in this treatment were told: “President Barack Obama has issued an executive order to unilaterally cap student loan payments at 10% of a borrower’s income, and forgive any

remaining debt after 20 years.”¹⁷ The real-world nature of our case, chosen to alleviate concerns about external validity, required us to introduce some asymmetry into the two treatments. It is at least possible that if our first treatment read that President Obama had secured congressional passage for his legislation to cap student loan payments, support for his actions would be even higher. However, we believe that any increase in support would be modest. For example, research by Grimmer, Westwood, and Messing (2014) shows that voters give members of Congress as much credit for proposing legislation to bring dollars to their districts as they do for actually securing legislation with the funds. All subjects were then asked the same question: “Do you support or oppose President Obama’s efforts to lower student loan payments?” This question wording was chosen because it applies equally well to both the legislative and unilateral action pathways.

Does acting unilaterally decrease support for a policy initiative from a higher baseline level when the president pursues the same policy objective through the standard legislative process? Or are public attitudes almost exclusively a function of citizens’ partisan predispositions and policy preferences? To answer these questions, we estimated a logistic regression model. The independent variable of interest is a dummy variable identifying assignment to the executive order treatment. To account for the role of partisan forces, we again include partisan dummies for Republicans and Democrats. To account for policy preferences, we exploited a question included earlier on the CCES that asked: “Do you or does anyone in your household have student loan debt?” Just under 30% of subjects answered this question in the affirmative. Because these subjects would benefit directly from the policy, we argue that many will have a strong predisposition to support it. Finally, the model includes all of the control variables from the preceding analyses. Table 4 presents the results.

In Model 1, the coefficient for the executive order treatment variable is negative, but substantively small and statistically insignificant. By contrast, coefficients for both partisan dummies and the student loan debt indicator variable are all in the expected direction and statistically significant. Figure 4 illustrates the influence of each factor on the predicted probability of the median respondent supporting the president’s actions to lower student loan payments.

¹⁷Of course, executive orders are not the only option in the president’s unilateral tool kit (Lowande 2014; Rottinghaus and Maier 2007). However, given the null results for the executive order treatment in both experiments, we think it highly unlikely that the public would respond differently to unilateral action through other instruments.

TABLE 4 Effect of Policy Instrument on Support for Student Loan Relief

	(1)	(2)	(3)
Executive Order Treatment	−0.15 (0.17)	−0.32 (0.33)	−0.19 (0.19)
Executive Order × Republican		0.38 (0.41)	
Executive Order × Democrat		−0.08 (0.50)	
Executive Order × Loan Debt			0.23 (0.46)
Republican	−0.63** (0.21)	−0.83** (0.31)	−0.62** (0.21)
Democrat	1.89** (0.25)	1.92** (0.39)	1.89** (0.26)
Male	−0.50** (0.17)	−0.51** (0.17)	−0.50** (0.17)
Education	−0.14* (0.06)	−0.14* (0.06)	−0.15* (0.06)
Age	−0.02** (0.01)	−0.02** (0.01)	−0.02** (0.01)
White	−0.34 (0.23)	−0.34 (0.23)	−0.33 (0.23)
Student Loan Debt	1.27** (0.24)	1.28** (0.24)	1.16** (0.33)
Constant	2.45** (0.40)	2.56** (0.45)	2.48** (0.41)
Observations	970	970	970

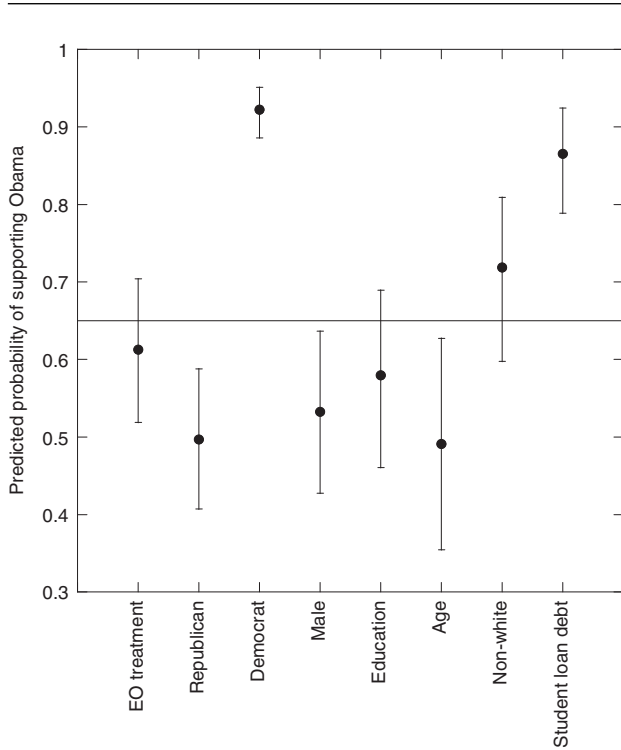
Note: Models are logistic regressions. Robust standard errors are in parentheses. All significance tests are two-tailed.

**p < .01, *p < .05.

The horizontal line indicates that the median Independent had a predicted probability of backing the president’s efforts of .65. The predicted probability in the executive order treatment is modestly lower; however, the difference is not statistically significant. Instead, partisanship was the most important predictor of support for Obama’s actions to lower student loan payments. The median Republican was as likely to oppose the president as to support him. By contrast, the median Democrat was all but certain to support the president’s initiative. Finally, policy preferences also influenced support for Obama’s actions. Subjects from families with student loan debt—our proxy for policy preference—were significantly more likely to support Obama than were families without student loan debt, all else being equal.

Finally, Models 2 and 3 of Table 4 examine whether the relationship between the executive order treatment

FIGURE 4 Factors Influencing Support for Obama’s Efforts to Lower Student Loan Payments



Note: The horizontal line at .65 represents the predicted probability of supporting Obama’s efforts to lower student loan payments for the median Independent in the lawmaking treatment group. Each dot presents the predicted probability generated by an increase in the given variable while holding all other factors constant at their median values. For binary variables, the figure plots the effect of increasing that factor from 0 to 1. For education and age, the figure presents the effect of a two standard deviation increase from the median value. I-bars around each point estimate present 95% confidence intervals obtained from simulations.

and support for Obama’s student loan efforts was moderated by partisanship or policy preferences. Model 2 includes the interactions of the executive order treatment with the Democratic and Republican indicator variables. None of the coefficients are statistically significant. Across partisan groups, whether Obama pursued limits on student loan debt repayments by legislation or unilateral action has no significant influence on the probability of a subject backing the president. Model 3 includes the interaction of the executive order treatment and the student loan debt indicator variable. The resulting coefficients both for the main effect and for the interaction are also statistically insignificant. Whether Obama pursued student loan debt relief legislatively or unilaterally had no effect on either those with student debt or those without it.

Immigration Experiment

To address concerns about generalizability, our second experiment examines support for a much broader, more high-profile, and more polarizing unilateral action: President Obama’s 2014 memoranda to shield up to five million illegal immigrants from deportation. Did Obama’s decision to pursue this change unilaterally shape the public’s evaluation of his actions? Or would public support for Obama in the immigration arena have looked similar if he had only pursued his policy agenda legislatively?

To answer this question, we embedded another experiment in a nationally representative survey conducted by YouGov in April 2015. Subjects were randomly assigned to one of two groups. Those in the first group were told: “President Barack Obama has publicly backed legislation to give temporary legal status to many undocumented immigrants.” Subjects in the second treatment group were told of Obama’s unilateral action to liberalize the nation’s immigration system. Furthermore, to prime any latent constitutional concerns in this experiment, we revised the treatment to emphasize that by acting unilaterally, Obama had turned his back on the legislative process; subjects were told: “Rather than seeking new legislation from Congress, President Obama has unilaterally directed the Department of Homeland Security to give temporary legal status to many undocumented immigrants.” All subjects were then asked the same question: “Do you support or oppose President Obama’s efforts to give temporary legal status to many undocumented immigrants?”

To explore whether unilateral action eroded support for President Obama’s efforts to liberalize the immigration system, we estimated a logistic regression model similar to that used in the previous experiment. The independent variable of interest is a dummy variable identifying assignment to the executive order treatment. To account for the role of partisan forces, we again include partisan dummies for Republicans and Democrats. As a rough proxy for immigration policy preferences, we include a dummy variable indicating subjects who identified as Latino. Table 5 presents the results.

In Model 1, the coefficient for the executive order treatment variable is positive and statistically insignificant. By contrast, coefficients for both partisan dummies and the Latino indicator variable are all in the expected direction and statistically significant. Figure 5 illustrates the influence of each factor on the predicted probability of the median respondent supporting the president’s actions to lower student loan payments. The horizontal line indicates that the median Independent had a predicted

TABLE 5 Effect of Policy Instrument on Support for Immigration Reform

	(1)	(2)	(3)
Executive Order Treatment	0.32 (0.23)	0.11 (0.41)	0.30 (0.24)
Executive Order × Republican		-0.36 (0.68)	
Executive Order × Democrat		0.53 (0.52)	
Executive Order × Latino			0.23 (0.72)
Republican	-1.85** (0.36)	-1.71** (0.47)	-1.86** (0.36)
Democrat	1.48** (0.27)	1.23** (0.37)	1.48** (0.27)
Male	0.56* (0.23)	0.56* (0.24)	0.56* (0.23)
Education	0.23** (0.08)	0.23** (0.08)	0.23** (0.08)
Age	-0.02** (0.01)	-0.02** (0.01)	-0.02** (0.01)
White	0.22 (0.29)	0.21 (0.30)	0.23 (0.29)
Latino	1.01* (0.42)	0.97* (0.43)	0.92 (0.51)
Constant	-0.99* (0.49)	-0.82 (0.53)	-0.96 (0.50)
Observations	486	486	486

Note: Models are logistic regressions. Robust standard errors are in parentheses. All significance tests are two-tailed.

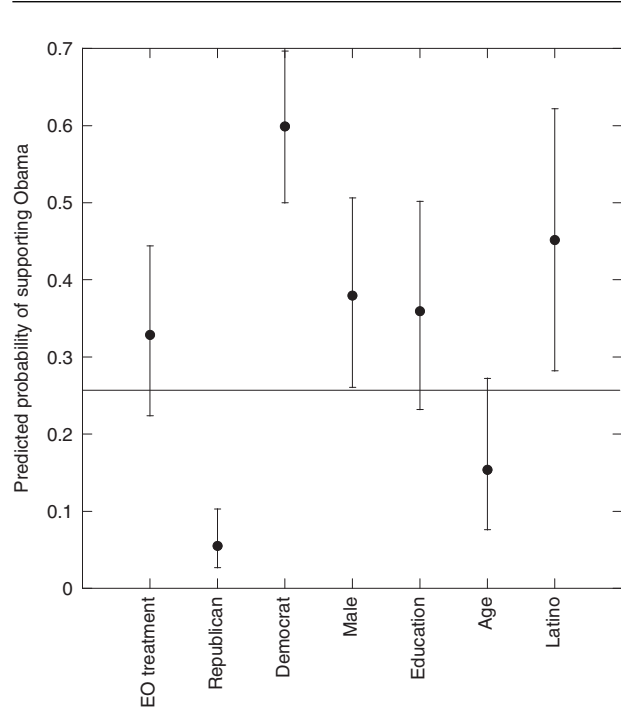
**p < .01, *p < .05.

probability of backing the president’s efforts of .26. The predicted probability in the executive order treatment is slightly higher; however, the difference is not statistically significant.

Partisanship was the most important predictor of support for Obama’s actions to liberalize immigration policy. The median Republican was almost certain to oppose the president’s course of action. By contrast, the median Democrat was highly likely to back the president. Finally, all else being equal, Latinos were significantly more supportive of Obama’s immigration efforts than other subjects; this is consistent with the argument that policy preferences also shaped support for Obama’s actions.¹⁸

¹⁸Reestimating this model with the interaction of the Latino and Republican dummies confirms that Latinos of all partisan stripes—including the approximately 20% who identified as Republicans—were more supportive of Obama’s immigration efforts, all else being equal.

FIGURE 5 Factors Influencing Support for Obama’s Efforts to Reform Immigration



Note: The horizontal line at .26 represents the predicted probability of supporting Obama’s efforts to reform the immigration system for the median Independent in the lawmaking treatment group. Each dot presents the predicted probability generated by an increase in the given variable while holding all other factors constant at their median values. For binary variables, the figure plots the effect of increasing that factor from 0 to 1. For education and age, the figure presents the effect of a two standard deviation increase from the median value. I-bars around each point estimate present 95% confidence intervals obtained from simulations.

Models 2 and 3 of Table 5 show that the effect of the executive order treatment was not conditional on partisanship or race Model 2 includes the partisan interactions; neither coefficient is statistically significant. Democrats backed Obama’s efforts and Republicans vehemently opposed them, regardless of whether the president chose a legislative or a unilateral policy course. Similarly, Model 3 shows that neither Latinos nor non-Latinos were affected by the executive order treatment. As in the student loans experiment, partisan cues and policy preferences, alone, shaped assessments of Obama’s immigration actions.

Discussion

More than 15 years ago, Terry Moe and William Howell (1999, 871) argued that presidential capacity and willingness to act unilaterally to achieve their policy goals

have become the distinguishing features of the modern presidency. The combination of ever-increasing polarization, congressional gridlock, and protean policy challenges has only strengthened the incentives for presidents to rely on their unilateral tool kit. Indeed, across a range of urgent national priorities ranging from immigration reform to climate change, unilateral executive action represents the only serious federal response since the 2010 midterms.

And yet, while the desire for action to overcome the institutional malaise in Washington is understandable, the unfettered expansion of presidential unilateral power would represent a serious challenge to our constitutional system of checks and balances. The institutional constraints afforded by Congress and the courts are weak. As a result, a growing literature has posited that the public may serve as the primary bulwark against presidential aggrandizement (e.g., Baum 2004; Posner and Vermeule 2010). But the strength and reliability of that democratic constraint critically depend on how Americans assess unilateral action. Are Americans reticent to support a president who pushes too aggressively on the bounds of his power and threatens the integrity of our checks and balances system?

The first two analyses of the microfoundations of public support for unilateral action have employed different analytic strategies and reached dramatically different conclusions. Building on an extensive literature on judicial legitimacy, Reeves and Rogowski (2016) endeavor to measure public support for unilateral action as exercised by “the office of the presidency and not any particular president.” Focusing on popular perceptions of the office and its proper exercise of power, they find strong evidence that large majorities of Americans oppose unilateral executive action in the abstract, and that core democratic values, primarily support for the rule of law, are among the main drivers of this opposition. This evidence suggests that the democratic constraint against presidential overreach afforded by the public is strong and automatic.

By contrast, our survey experiments, most of which focus on concrete instances of contemporary unilateral action to maximize external validity, suggest a much weaker and more conditional public constraint on the unilateral presidency. Instead of instinctively recoiling against unilateral action as a threat to our constitutional system of checks and balances, we find that most Americans evaluate unilateral action through the same partisan cues and policy preferences that they use to make other political judgments. In our intensely polarized polity, the dynamics driving public attitudes toward presidential use of unilateral power are remarkably similar to those driving public opinion toward other policy

actions. Consequently, our results suggest a weaker and more contingent public constraint on unilateral action.

On the one hand, these two studies paint starkly different pictures of how the public assesses unilateral action. And yet, from another perspective, the two portraits are at least partially complementary. In the abstract, most Americans appear deeply skeptical of presidents circumventing Congress and the legislative process to achieve their policy priorities unilaterally. However, when forced to consider concrete examples of unilateral action in the contemporary political arena, partisan forces and policy assessments all but overwhelm these underlying constitutional concerns.¹⁹ It seems that, in practice, Americans’ partisan demons shout down the better angels of checks and balances they embrace in the abstract.

This does not imply that the public exercises no check on unilateral action. However, it does suggest that the constraint of public opinion on the unilateral executive is not automatic, but a product of political contestation. Future research should endeavor to integrate these two portraits by examining whether and how other political actors are able to activate Americans’ underlying constitutional qualms concerning unilateral action and to convince Independents and even some presidential co-partisans to oppose a president’s unilateral policy course. For example, will public opposition rise if members of Congress or the courts raise constitutional concerns of presidential overreach? Can members of Congress combat unilateral action on policy grounds and convince enough Americans that the unilateral initiative in question is inconsistent with their policy preferences? Need such criticism be bipartisan, or can objections raised even by the opposition party shape popular assessments of unilateral action?

Even after ascertaining the conditions under which significant majorities of Americans will oppose unilateral action, new research is needed to understand precisely how public opinion influences the unilateral president’s strategic calculus. In rare cases, strong public opposition can even reverse presidential actions. For example, widespread public opposition to the Bush administration’s authorization of enhanced interrogation techniques helped entrepreneurs in Congress overcome institutional barriers to pass legislation banning torture; public pressure also persuaded President Bush to sign the law (albeit with a signing statement) rather than veto

¹⁹The sharp differences in public responses to abstract versus specific questions parallel those observed in other policy areas, such as federal spending (e.g., Jacoby 2000) and health care (Christenson and Glick 2015).

it.²⁰ Public unease over closing the terror detention camp at Guantanamo buoyed congressional opponents of one of President Obama's first executive orders; 7 years later, Guantanamo remains open. Moreover, Howell (2003) has shown that even the judiciary becomes more willing to challenge the unilateral president when support for the president is low. The widespread public opposition to President Obama's 2014 immigration executive actions, stoked by fierce opposition from congressional Republicans and even some Democrats who criticized the action on constitutional grounds, may have emboldened the district court to issue its preliminary injunction, which has thrown the initiative into legalistic limbo.

More often, public opinion may influence presidential calculations indirectly, as presidents anticipate the public's reaction and forgo unilateral action when the expected political costs exceed the policy benefits. Such calculations appear to have influenced both the timing and scope of President Obama's eventual 2014 immigration actions and caused President Obama in 2013 to forgo a unilateral strike against the Assad regime in Syria altogether (Christenson and Kriner 2015). Only by pushing forward in these new directions can scholars understand fully how the strength of the public constraint on the unilateral president varies over time and across cases with changes in the overarching political environment.

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²⁰For additional details on each case below, see the SI.

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Supporting Information

Additional Supporting Information may be found in the online version of this article at the publisher's website:

SI Table 1: Sample Demographics

SI Table 2: Difference in Means for Justification Experiment

SI Table 3: Difference in Means for Two Presidencies Experiment

SI Table 4: Difference in Means for Partisan Source Experiment

SI Table 5: Difference in Means for Student Loans Experiment

SI Table 6: Difference in Means for Immigration Reform Experiment

SI Table 7: Difference in Means for Justification Experiment, Leaners Treated as Independents

SI Table 8: Robustness Check on Justification Module

SI Table 9: Justification Experiment Controlling for Presidential Approval

SI Table 10: Partisan Source Experiment Controlling for Presidential Approval

SI Table 11: Student Loans Experiment Controlling for Presidential Approval

SI Table 12: Testing Whether Justification Treatment Effect is Moderated by Political Knowledge

SI Table 13: Testing Whether Executive Order Treatment Effect is Moderated by Political Knowledge