

No Blank Check

Concerns about unaccountable executive power have featured recurrently in political debates from the American founding to today. For many, presidents' use of unilateral power threatens American democracy. *No Blank Check* advances a new perspective: Instead of finding Americans apathetic towards how presidents exercise power, it shows the public is deeply concerned with core democratic values. Drawing on data from original surveys, innovative experiments, historical polls, and contexts outside the United States, the book highlights Americans' skepticism towards presidential power. This skepticism results in a public that punishes unilaterally minded presidents and the policies they pursue. By departing from existing theories of presidential power which acknowledge only institutional constraints, this timely and revealing book demonstrates the public's capacity to tame the unilateral impulses of even the most ambitious presidents. Ultimately, when it comes to exercising power, the public does not hand the president a blank check.

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No Blank Check

*The Origins and Consequences of Public Antipathy
towards Presidential Power*

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As the semester began in the fall of 2013, it seemed that the United States was moving towards a war footing in Syria. Near the end of August, more than a thousand people had been killed outside Damascus in a chemical weapons attack. Intelligence reports indicated that the attack had been carried out by the Syrian government under its president, Bashar al-Assad. A year earlier, American President Barack Obama indicated that the use of chemical weapons by the Assad regime would constitute a “red line” and prompt a US military response. As haunting images of those killed and injured by the attacks circulated around the world, military personnel, defense analysts, and even Obama himself appeared to believe that military intervention was inevitable.

But that isn’t what happened. Rather than initiate military strikes by invoking the president’s war powers, as Obama and his predecessors had done in similar situations, at the end of the month President Obama instead announced that he would seek congressional authorization before conducting military strikes in Syria.

Like many other projects, this book has its origins in hallway conversations. *Why had Obama forgone the opportunity to exercise a power he conceivably could have claimed? Why didn’t he follow through on a threat he himself had made?* That we were asking these questions suggested to us that political science scholarship on the presidency had missed something important about presidential decision-making. Through these discussions in Seigle Hall at Washington University in St. Louis, we began our collaboration to discover why presidents sometimes choose *not* to exercise authority they might claim to advance preferences they appear to hold.

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We conducted a survey later in the fall 2013 in a first attempt to make headway on this question. Fortuitously, our colleague John Patty invited us to co-organize a conference at Washington University in St. Louis that was held the following summer. There, we presented our initial findings on the nature of public attitudes about presidential power. We are grateful to John for the opportunity to invite an impressive group of scholars to St. Louis. We are also grateful to conference participants, particularly Chuck Cameron, for incisive and formative feedback on the project at this early stage.

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I

Introduction

Joe Biden sought the presidency for most of his professional life. After winning election to the US Senate in 1972, Biden entered the race for the 1988 Democratic Party nomination but withdrew before the first contest. He didn't last much longer when he sought the 2008 nomination. But 2020 was his year, and what a year it was.

Even for a man who had eyed the presidency for more than thirty years, Biden entered the White House with no shortage of challenges to address. He was inaugurated on January 20, 2021, in the midst of the deadliest four weeks of the COVID-19 pandemic in the United States (Gamio and Leatherby 2021). The nation's economy contracted at the highest rate in recorded history in spring 2020 (Siegel and Van Dam 2020), and annual growth in 2020 was the lowest it had been since World War II (Siegel, Van Dam, and Werner 2021). After the killings of George Floyd, Breonna Taylor, and other Black Americans by police, race relations were at their lowest point in decades (*Economist* 2020). The country's reputation among foreign allies had declined precipitously (Pew Research Center 2020). And the riot at the US Capitol two weeks before Biden's inauguration had shocked the nation and the world.

While running for president, Biden had issued a slew of policy pledges (Moore 2020). Yet upon becoming president-elect, Biden expressed reluctance to advance those promises with the stroke of a pen through unilateral action. On a call with civil rights leaders in December 2020, for example, Biden explained his views about the limits to executive power:

So there's some things that I'm going to be able to do by executive order. I'm not going to hesitate to do it, but ... I am not going to violate the Constitution. Executive authority that my progressive friends talk about is way beyond the

bounds. And as one of you said ... there is a Constitution. It's our only hope. Our only hope and the way to deal with it is, where I have executive authority, I will use it to undo every single damn thing this guy has done by executive authority, but I'm not going to exercise executive authority where it's a question, where I can come along and say, "I can do away with assault weapons." There's no executive authority to do away that. ... you can't do it by executive order. We do that, next guy comes along and says, Well, guess what? By executive order, I guess everybody can have machine guns again. So we gotta be careful. (Grim 2020)

Despite his reluctance, Biden made quick use of his presidential pen during his first days in office. Most of his efforts rolled back directives that had been issued by the Trump administration and implemented emergency measures for addressing the raging pandemic. Yet for some observers, this was a case of too much, too soon. A week into his administration, the *New York Times* Editorial Board (2021) implored the president to "ease up" on unilateral action. This plea came despite the Board's full-throated endorsement of Biden during the 2020 campaign in which it cited approvingly his "bold agenda aimed at tackling some of America's most pressing problems."

Biden's cautious approach to executive power helps illustrate a central claim of this book. Americans have deep-seated skepticism about presidential power. This skepticism is not always made explicit in the public's day-to-day political expressions, but it is a latent force in American political culture forged at the founding of the nation and ingrained in grade-school civics lessons. It is not a legalistic or intellectual understanding of the text of the US Constitution or Declaration of Independence. Rather, this skepticism reflects a belief that the separation of powers, especially in their protection from tyranny, is sacrosanct. Just as Americans celebrate the Declaration of Independence – an indictment against monarchical executive power – or cheer against King George III in the musical *Hamilton*, the public has inherited a wariness towards executive power. This latent force influences how Americans evaluate presidents and their policies and provides the political incentives for the familiar push-and-pull found in interbranch political conflict.

1.1 THE POLITICS OF PRESIDENTIAL POWER

Nowhere is political power more contested in the American political system than it is with the presidency. The approaches of recent presidential administrations underscore the point. President George W. Bush embraced the unitary presidency theory as a justification for conducting

1.1 *The Politics of Presidential Power*

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twin wars abroad and domestic surveillance at home. President Obama used the administrative presidency to overcome congressional recalcitrance to change policies ranging from immigration to drug enforcement. And President Trump aggressively utilized unilateral directives and emergency power to fulfill campaign promises and policy objectives. Critics challenge recent administrations on the bounds of presidential authority just as they contest the merits of the presidents' policy objectives.

The terms of these interbranch disputes are clear: when political institutions share power, clashes over who holds authority and to what ends are inevitable. The public's extraordinary expectations for its presidents provide incentives for presidents to claim additional authority in hopes of meeting public demand. Yet presidents' congressional opponents waste little time in pushing back. They accuse presidents of subverting the US Constitution by claiming power that belongs to the legislative branch. For instance, when President Obama directed the Department of Homeland Security in 2014 to modify its enforcement of deportation laws, Republican leaders criticized the president's "brazen power grab" (Shear 2014c).

This conflict over power is a fact of life for virtually every presidential administration. This conflict unfolds on a public stage as presidents and their allies justify the exercise of presidential authority while opponents criticize its use. These exchanges are inherently political and invite the public to evaluate the competing arguments. The public's response to these debates is an important determinant of their political resolution.

Over the last century, concerns about weak and ineffectual presidents have been supplanted by worries of an imperial presidency (Schlesinger 1973). These worries focus on whether and how presidents are held accountable for the use of power. The framers of the Constitution intended their system of checks and balances to keep any one branch of government from accumulating too much power, but, as Madison observed in *Federalist*, no. 48, "a mere demarcation on parchment of the constitutional limits" was not self-enforcing. Instead, the political process also enforces limits on presidential power. Because the president and members of Congress require popular support for their continued service in office, public opinion provides a means to resolve conflict over presidential power vis-à-vis Congress.

How do Americans evaluate presidential power? Have they inherited the skepticism of executive power, as expressed by the founding generation? Or, owing to their embrace of the presidency as the best

institutional vehicle for advancing the public interest, do they endorse a more expansive view of presidential authority? Or, as yet another alternative, on questions of presidential power, do Americans' partisan and ideological affiliations carry the day without regard for the principles that shaped the design of the US Constitution? These are the questions we address in this book.

1.2 THE RISE OF PRESIDENTIAL POWER

Textbook accounts of American government identify the emergence of the modern presidency in the early twentieth century. Scholars differ about why and when exactly this transformation occurred, but it is indisputable that contemporary presidents confront challenges largely unimaginable by their predecessors. With these new trials come elevated expectations. In response, modern presidents have claimed authority and exercised power in ways that broke with the practices of their predecessors.

The presidencies of Theodore Roosevelt and William Howard Taft are an instructive contrast in theories of presidential power. Roosevelt championed a stewardship theory of the presidency, and he viewed the powers of his office as expansive especially when they were in the service of the desires of the American people. Reflecting in his autobiography on how this theory guided his approach to the presidency, President Roosevelt recalled, "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" (1913, 357).

Roosevelt's successor, William Taft, did not follow Roosevelt's philosophical lead, hewing instead to a more traditional philosophy regarding presidential governance. Taft's more conservative view was that "the President can exercise no power which cannot be fairly and reasonably traced to some specific grant of power" from the Constitution or an act of Congress (Taft 1916, 140).

Roosevelt's and Taft's divergent philosophies of the presidency were pitted head-to-head as they ran against each other for president in 1912. Taft, the incumbent, viewed the contest as "a crusade to defend the Constitution and the rule of law against the pure democracy threatened by Roosevelt, who was increasingly sounding like a demagogue" (Rosen 2018, 94). In the end, Taft was crushed in the contest, receiving the fewest electoral votes of any incumbent president in history. In the three-way contest, Woodrow Wilson, with his expansive view of presidential powers closely akin to that of Roosevelt, was the victor.

1.2 The Rise of Presidential Power

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With few exceptions, since the Taft administration, presidents have seen it in their political interests to claim powers that may extend beyond even a Hamiltonian view of the presidency. Summing up the trajectory of presidential power, one account notes that,

Although Presidents Calvin Coolidge and Herbert Hoover adhered to Taft's strict constructionist vision of the presidency, all presidents since Franklin D. Roosevelt have embraced what the historian Arthur M. Schlesinger, Jr. called the imperial presidency, drawing on Theodore Roosevelt's and Woodrow Wilson's idea of the president as a steward of the people. (Rosen 2018, 123)

The transformation of the presidency following Roosevelt's vision represented a victory for Progressives. Around the turn of the twentieth century, Progressive reformers sought to modernize and democratize government administration and its procedures. Recasting the role of the presidency in the American system of government lay at the center of many of these efforts. The key argument for Progressives – which is often articulated by contemporary proponents of presidential supremacy – relates to the president's unique relationship with the mass public. No other political actor, they argue, is elected by the entire country. Therefore, the president is best positioned to understand and advance the national interest and to represent the political views of a national constituency.

Yet Progressive-era reformers recognized that achieving their vision required that the presidency acquire more institutional authority. As Henry Jones Ford (1898, 215) proclaimed, "While the presidential office has been transformed into a representative institution, it lacks proper organs for the exercise of that function . . . [N]o constitutional means are provided whereby he may carry out his pledges." Presidents and political observers thus used Progressives' arguments to advocate for shifting institutional power towards the presidency and away from Congress. For instance, Congress endorsed the theory of presidential representation to endow the president with greater agenda-setting powers and administrative capacity in the decades following the Progressive Era (Dearborn 2019a, 2019b). As presidential expectations steadily grew during the second half of the twentieth century, presidents lay claim to an increasingly wide range of powers. Today, presidents routinely act on their own to effect policy outcomes through a wide range of means – all without involving Congress.¹ The ascendance of the presidency in the American

¹ It bears mentioning that this phenomenon is by no means new. Presidents since Washington have drawn upon their powers to create the nation's policies on their own. Yet

political system has been accompanied by debates over how far, exactly, presidents can and should wield power to meet their herculean expectations. While Theodore Roosevelt's theory of the presidency has won out over the past century, we argue that the public's deference for the rule of law and related skepticism of executive power is more reflective of Taft's philosophy.

1.3 CAMPAIGNING ON UNILATERAL POWER

Presidents could hardly be blamed for seeking new ways to achieve their goals when their formal authority is so limited. The assumption that presidents seek to employ whatever means allow them to achieve their goals is found in virtually every standard account of the presidency. Just as pursuing the reelection imperative is a prerequisite for legislators who hope to achieve their political and programmatic goals, maintaining and expanding the presidential toolkit is essential for success-oriented presidents. According to this view, pursuing a robust approach to power is inherent in the contemporary presidency.

While modern-day presidents may embrace Roosevelt's governing philosophy, their rhetoric suggests a reluctance to stray from Taftian principles. As candidates pursue the presidency, their ambivalence or downright antipathy towards unilateral powers is apparent. As questions of executive power have become increasingly salient in recent presidential campaigns, candidates have repeatedly gone out of their way to run *against* the presidency and have promised to restore it to its more humble roots. During the 2008 campaign, for example, Barack Obama argued, "[t]he biggest problems that we're facing right now have to do with George Bush trying to bring more and more power into the executive branch and not go through Congress at all. And that's what I intend to reverse when I'm president of the United States of America" (quoted in Karl 2014).

Then-candidate Obama also criticized the Bush administration for its aggressive use of signing statements, arguing that "it is a clear abuse of power to use such statements as a license to evade laws that the president does not like or as an end-run around provisions designed to foster accountability" (Savage 2007). Obama further argued that the American people ought to evaluate presidents on the basis of how they intended

the extent to which presidents rely on these tools as part of their governing strategy is unique to the modern era.

1.3 Campaigning on Unilateral Power

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to exercise power while governing. “Any President takes an oath to, ‘preserve, protect and defend the Constitution of the United States,’” he said. “The American people need to know where we stand on these issues before they entrust us with this responsibility – particularly at a time when our laws, our traditions, and our Constitution have been repeatedly challenged by [the Bush] Administration” (Savage 2007).

Obama’s chief opponent for the 2008 Democratic presidential nomination, then-Senator Hillary Clinton, expressed similar views in similarly direct terms. “I think you have to restore the checks and balances and the separation of powers, which means reining in the presidency,” she argued (Bombardieri 2007). Clinton further expressed opposition to the unitary executive theory most prominently attributed to Vice President Dick Cheney, which Clinton said, “[had] been a concerted effort by the vice president, with the full acquiescence of the president, to create a much more powerful executive at the expense of both branches of government and of the American people” (Bombardieri 2007). Obama’s running mate, then-Senator Joe Biden, further addressed Cheney’s contribution to presidential power during the 2008 vice presidential debate. According to Biden, “Vice President Cheney has been the most dangerous vice president we’ve had probably in American history. The idea he doesn’t realize that Article I of the Constitution defines the role of the vice president of the United States, that’s the Executive Branch. He works in the Executive Branch” (*New York Times* 2008).

During the 2008 presidential campaign, Obama, Clinton, and Biden each made clear their opposition to not only the Bush administration’s policies but also its embrace of a stronger and more unilateral presidency. Though each of these Democrats sought the presidential office for themselves in the 2008 campaign, they promised to pursue their policy objectives through a more constrained vision of executive power.

Four years later, President Obama found himself on the receiving end of criticism from Republican presidential candidates for his use of executive power. According to Representative Ron Paul, for instance, Obama did not “respect constitutional limits on executive power” and proved to be even “worse than his predecessor” (*New York Times* 2011). Senator Rick Santorum went further, accusing the Obama administration of an “arrogance” that “surpasses the Nixonian period ... This is a president who uniformly disregards the Constitution, disregards the rules that are put in place” (Lee 2012).

The 2016 presidential campaign saw even more pointed criticism of Obama’s use of power from candidates vying to replace him. Ben

Carson said that Obama’s “executive self-aggrandizement has elevated political interests over the executive duty of faithfully enforcing the law”; if elected, Carson committed to refraining from “the unconstitutional practices of making law through executive orders” (Savage 2016). Senator Rand Paul sounded a similar note, arguing that “unconstitutional claims of authority by the President” had dramatically increased presidential power over the previous decade. In contrast, Paul pledged “to restore our constitutional system of separation of powers, which allows the American people to decide how they are to be governed” (Savage 2016). Senator Ted Cruz went a step further, arguing that the first thing he would do after taking the oath of office would be to “rescind every illegal and unconstitutional executive action taken by Barack Obama” (Chen 2015).

Candidate Donald Trump sounded the harshest and most persistent criticisms of President Obama’s use of executive power. In January 2016, Trump objected to what he referred to as the “executive order concept” in response to Obama’s use of administrative action to regulate gun access. According to Trump,

You know, it’s supposed to be negotiated. You’re supposed to cajole, get people in a room, you have Republicans, Democrats, you’re supposed to get together and pass a law. [Obama] doesn’t want to do that because it’s too much work. So he doesn’t want to work too hard. He wants to go back and play golf. (Krieg 2016)

In another interview that month, Trump elaborated upon his objections to Obama’s use of unilateral powers, telling a morning news show that “the problem with Washington [is] they don’t make deals. It’s all gridlock. And then you have a president that signs executive orders because he can’t get anything done. I’ll get everybody together” (*Fox and Friends* 2016). At a town hall the following month, Trump told his audience that “the country wasn’t based on executive orders . . . you can’t do it” (Lemire and Colvin 2017). He went even further in March 2016, promising that he would scale back his use of unilateral powers were he to be elected. Candidate Trump said that, while Obama “sign[s] them like they are butter,” President Trump would “do away with executive orders for the most part” (Trump 2016a). His criticism of President Obama’s unilateral actions continued through the general election. In September 2016, for instance, Trump noted that, as if to draw a contrast between Obama and himself: “Right now, we have an executive order president” (Benen 2017).

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Unilateral power once again figured prominently in the candidates' rhetoric during the 2020 election cycle – and this time among candidates from both parties. A feature in the *New York Times* profiled 2020 candidates' proposals for “reforming executive power after Trump” (Bewetherick et al. 2019). In announcing a long-shot primary challenge to President Trump, former Representative Joe Walsh accused the Trump administration of being a “walking billboard for the need to curb abuses of presidential power” and echoed the familiar refrain of presidential candidates to work with Congress to reign in the powers of the imperial presidency. Democratic candidates were just as adamant and expressed nearly unanimous calls for scaling back unilateral powers. Senator Cory Booker observed, as so many other candidates had, that the US system of separation of powers was imperiled because of the “unhealthy” flow of authority to the executive branch. Senator Kamala Harris expressed support for the “goal of restoring our constitutional separation of powers and reducing opportunities for abuse.” Similarly, Senator Amy Klobuchar argued that the Trump administration had “ignored ... checks and balances” and that the president had instead “pursued his divisive agenda by undermining our democracy and exploiting executive power.”

As this evidence suggests, candidates in recent presidential elections have avoided advocating for a more muscular set of powers. This observation raises several questions. First, why would presidential candidates back away from unilateral power if voters were generally unconcerned with it? If, as conventional wisdom suggests, the public is unaware of or disinterested in questions of political procedure, presidents (and presidential candidates) should not bother dedicating precious time to discussing this issue. Second, why would would-be presidents dissociate themselves from unilateral power if this position could limit their ability to achieve their political objectives? Contemporary presidents and presidential candidates promise to do something about virtually everything. Voters expect nothing less. Increased levels of congressional gridlock reduce the opportunities for presidents to achieve their promises via legislation. Such conditions would seem to increase the appeal of unilateral approaches for presidents who hope to satisfy their constituencies. Yet their rhetoric suggests that as candidates, the men and women who want to become president (some of whom do) perceive limits to the acceptability of unilateralism as a means to an end.²

² Scholarship on presidential rhetoric provides a fuller treatment of how presidents convey their understanding of the office and its powers (Campbell and Jamieson 1990, 2008;

1.4 ACCOUNTABILITY AND UNILATERAL POWER

Concerns over executive power featured prominently in the founding of the United States and have, at various times in American history, been represented in robust political debates. Along with presidential claims to new powers come cries that presidents are exceeding or abusing their authority. Each new presidential administration begets alarming books, law review articles, and op-eds that warn of the increasing power of the presidency.

Accountability – and its absence – is usually front and center in debates over presidential power. In *The Imperial Presidency*, one of the most prominent indictments of presidential power, Schlesinger viewed presidential accountability and presidential power as inextricably linked. According to Schlesinger (2004, ix), “The American Constitution ... envisages a strong Presidency within an equally strong system of accountability. When the constitutional balance is upset in favor of Presidential power and at the expense of Presidential accountability, the office can be said to become imperial.”

Political scientists and other observers have leveled similar criticisms of presidents’ uses of unilateral authority. Some view executive orders as incidents of “unaccountable power and a way of evading both public opinion and constitutional constraints” (Mayer 2002, 9). In comments on the nomination of Brett Kavanaugh to the Supreme Court, one constitutional scholar complained of Judge Kavanaugh’s “indulgent interpretation” of “constitutional questions of executive power,” which would “effectively undermine a President’s accountability to law” (Shane 2018, 1). Following the Senate’s acquittal of President Trump after his first impeachment by the House, one commentator lamented the “degrading of presidential accountability” (Sorkin 2020).

Debates over presidential power are arguments over the appropriate scope of political power. In the extreme, unbound executive power is a dictatorship whereby an executive exercises absolute authority without regard for the rule of law. In the US system of separation of powers, members of Congress often complain about executive power in these very terms. Near the end of President George W. Bush’s administration, Senator Arlen Specter argued that historians would regard the post-9/11 Bush presidency as an era of “unbridled executive power”

Tulis 1988). In contrast with this research, we are interested primarily in how the public understands the office and its powers.

1.4 *Accountability and Unilateral Power*

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(Mahler 2008). Eight years later, Senator Mike Lee (R-UT) sounded similar notes and argued forcefully against the “arbitrary, unaccountable government-without-consent that Congress now for its own selfish reasons enables the executive branch to practice” (Lee 2016). In his opening statement supporting Congress’s 2019 impeachment inquiry into President Trump, Representative Adam Schiff (D-CA) argued that “the balance of power between our two branches of government will be irrevocably altered” if the president is exempt from Congress’s efforts to hold the president accountable through oversight (Paz 2019). Speaker Pelosi (D-CA) likewise criticized the Senate’s “betrayal of the Constitution” for acquitting President Trump, arguing that Senate Republicans had “embraced this darkest vision of power” offered by the president’s legal team in which “Congress and the American people have no right” to hold the president accountable for abuses of power (Pelosi 2020).

Unaccountable unilateral power is tyranny, the fear of which loomed large in debates about institutional design at the American founding. Delegates to the Constitutional Convention considered the presidency with their rebellion against the “absolute Tyranny” of King George III over the North American colonies still fresh in their minds. The absence of an executive under the Articles of Confederation contributed substantially to governmental failures in the early republic. This experience underscored the need to enshrine robust executive power in the young nation’s new constitution. After debate, convention delegates settled on an executive branch headed by a single individual – the president. Keenly aware of the anti-Federalists’ skepticism towards executive power, authors of the Constitution proposed that an elected executive, along with interbranch competition, would limit the president’s accumulation of power. As Mansfield (1989, 295) argues, “the task of political science in *The Federalist* was to show that an energetic executive could be republicanized.”

For the Founders, presidential accountability was the antidote for tyranny. *The Federalist Papers* emphasized that the need for popular support constrained American presidents. The task of creating an accountable chief executive was “the objection that most concerned the Founding Fathers” (Schlesinger 1973, 386). In *Federalist*, no. 68, therefore, Alexander Hamilton emphasized that “the sense of the people should operate in the choice” of the president “to whom so important a trust” is invested. Hamilton went on to argue that the president “should be independent for his continuance in office on all but the people themselves.” Concerns about accountability motivated the design of the office

itself, as Hamilton justifies the unitary executive in *Federalist*, no. 70, on the basis of accountability considerations. If executive authority were to be divided across members of a plural office, Hamilton argued, it would be difficult to attribute specific decisions to individual executives and would therefore be more difficult for the public to hold those individuals accountable for their behavior. In his words, “the plurality of the Executive tends to deprive the people of ... the restraints of public opinion.” Arguments at ratification further turned on the accountability relationship enshrined in the office’s design. The Founders accomplished the twin goals of creating an energetic yet accountable president because “the Constitution would facilitate presidential energy and enable the people, Congress, and the courts to detect and prevent abuses of the same” (Kitrosser 2015, 49).

The nature of this accountability was a distinguishing characteristic of the newly created presidency. A political commentator in Virginia noted that “[t]he United States are the scrutinizing spectators of [the president’s] conduct” (quoted in Kitrosser 2015, 48). The Supreme Court further affirmed the political constraints on presidential action in *Marbury v. Madison*, a case that involved the reach of presidential authority. Chief Justice John Marshall wrote that “the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience.” In addition to establishing the principle of judicial review, *Marbury v. Madison* speaks to the accountability of presidents in exercising their power to appoint judges. Even while establishing the judiciary’s most important power, Marshall noted the nebulous nature of presidential power and the influential role of the public in holding it to account.

Questions about presidents’ accountability for the exercise of power have been raised in some of the most extraordinary moments in the history of the republic. Even as President Abraham Lincoln contemplated unprecedented measures in his attempt to preserve the Union, scholars linked public opinion with the president’s ability to act with Hamiltonian “decision, activity, secrecy, and dispatch.” Rossiter (1956, 47) noted that

Lincoln is supposed to have said that he could do anything with “public sentiment” but nothing without it or against it... The President draws immense authority from the support of the American people, but only if he uses it in ways they understand and approve, which generally means ways that are fair, dignified, traditional, and familiar.

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The public reaction to some of Lincoln's orders tempered his subsequent exercise of authority. In 1863, former congressman and Ohio gubernatorial candidate Clement Vallandigham was arrested for violating an order issued by one of Lincoln's generals that prohibited speaking out against the Union or expressing favor for the Confederacy. The act caused consternation among his cabinet and "roused" a "furor of anger ... in the country," and one newspaper declared the act "the tyranny of military despotism" (Donald 2011, 420). In response, Lincoln commuted Vallandigham's sentence. Shortly thereafter, the same general attempted to suspend an anti-war newspaper. Lincoln, who had been chastened by the response to the previous arrest, overruled him (Donald 2011, 21). Public opinion also factored heavily into Lincoln's decision to ultimately issue the Emancipation Proclamation. He "began preparing public opinion for a proclamation of freedom" by consulting with African American leaders and by publishing a letter where he argued that his primary goal was to save the Union (Donald 2011, 366–369). During the Civil War, Lincoln expanded the powers of the presidency in unprecedented ways, yet even in this context, public opinion shaped his political options.

During the administration of Franklin Roosevelt, the Brownlow Committee convened to discuss how to better organize the White House to allow the president to meet contemporary governing challenges. The committee proposed "giv[ing] the President authority commensurate with his responsibility ... [and] hold[ing] him to strict accountability for the exercise of that authority" (Brownlow 1955, 114). Acknowledging the expansion of presidential authority during the Roosevelt administration, Rossiter (1956, 54–55) argued that the public would hold these powers to account. He observed that,

If [the President] flouts either the considered judgments or ill-considered prejudices of any vocal segment of the people, if he chooses to roam too far outside the accepted limits of presidential behavior, he will find himself exposed to all those enemies who multiply like mosquitoes in a Jersey August whenever a President plays the game too hard. No President, certainly no peacetime President, ever wielded more power with less need to worry about the political consequences than Franklin Roosevelt in 1933, yet even then the assumption was abroad that there were some steps he could not take, some measures he could not recommend to Congress, in his effort to rescue "a stricken Nation in the midst of a stricken world."

Presidents must anticipate how their behavior influences future public opinion. Popularity can be fleeting, and thus presidents cannot rely solely

on their public standing today to determine what political boundaries may exist tomorrow. Even popular presidents eschew actions that they might prefer to take because of their calculation about the potential political reaction. Observers of politics must consider not only how public opinion affects what presidents do but also what dissuades them from undertaking that which they would otherwise choose to do. If the president forges ahead, “he invites the one disaster from which Presidents rarely recover: the loss of genuine popular support” (Rossiter 1956, 56).

Consistent with the arguments advanced by the authors of the Constitution, a president’s need for continued political support provides a source of accountability for his behavior. Theories of democratic accountability posit that voters supply incentives for elected officials to represent their interests. Election-seeking presidents, for instance, are understood to pursue policies and generate outcomes that voters support. Should presidents stray too far from public opinion, this perspective posits, they risk declining approval ratings and damaging their (or their partisan successor’s) electoral fortunes.

The rhetoric of the authors of the Constitution and others invokes a public that carefully monitors how presidents exercise their power and dutifully sounds the alarm when the commander-in-chief exhibits tyrannical impulses. But does this accountability exist? If so, how does it operate? Elections facilitate popular control of political officials through the principal-agent relationship. Voters (the principals) select officials (the agents) to act on their behalf. If officials fail to behave in ways desired by the principals, voters can replace them at the next election. Therefore, elections provide incentives for officials to reflect public preferences by virtue of voters’ abilities to sanction or reward them based on their performances.

For public accountability to exist in the context of presidents’ exercise of power, two conditions must be satisfied. First, the American public must have preferences over how presidents wield power. Second, they should apply those preferences when evaluating presidential performance. Evidence that the public satisfies these two conditions means that presidents and their use of authority are subject to “the discipline of consent” that reflects “the genius of democracy” (Schlesinger 2004, 388).

1.5 PUBLIC EVALUATIONS OF PRESIDENTIAL POWER

Elite rhetoric aside, do Americans care about the use of presidential power? Do they have opinions over how presidents get things done?

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Do they hold presidents accountable for the *means* with which they pursue their policy *ends*? In other words, do citizens hold presidents accountable for exercising unilateral political power? We briefly survey three competing perspectives on how Americans view presidential power and its use.

1.5.1 The Partisan Electorate

One dominant view of mass political behavior emphasizes the partisan nature of the electorate. This view offers a pessimistic perspective on the potential for presidential accountability. According to this view, presidential power is not a salient or accessible topic for most Americans, and thus they do not view it through a principled lens. Instead, Americans apply short-term heuristics – particularly partisanship – when evaluating presidential power. In particular, Americans who share the president’s partisanship may support expanding the president’s power while those who are aligned with the opposing political party may not. Pundits and political scientists consistently assert the dominance of partisanship in contemporary public opinion (Klein 2016; Mellman 2017), as the public reflexively applies its partisan identities when evaluating political events, receiving political information, and even while participating in the labor market and making decisions about whom to date (Gerber and Huber 2010; Huber and Malhotra 2017; McConnell et al. 2018). Americans may also engage in partisan “cheerleading” (Sears and Lau 1983) by expressing greater support for presidential power with a copartisan president in office as a means of expressing their affinity for the president. In this view, Americans vacillate between expressing support for and opposition to presidential power depending on their alignment with the president’s political orientation. This perspective therefore expresses a rather dim view of the potential for Americans to hold presidents accountable on the basis of their use of power.

A related view emphasizes Americans’ attitudes towards the president currently in office. Americans who think highly of the president – because, for example, they support his policies, approve of his job performance, or admire his leadership – may express greater support for expanded presidential power. For example, critics of President Trump note that “the higher President Trump’s approval rating, the more dangerous he is” (Levitsky and Ziblatt 2018, 192). This view holds that presidential approval is the currency of presidential power; as presidents accrue more

of the former they can expect to marshal more of the latter. Applied to public opinion, Americans' beliefs about presidential power may pivot with their support for the person holding the office as opposed to their attitudes towards the office itself.

1.5.2 Deciders-in-Chief

A second perspective suggests that Americans entrust the presidency with great power and support its exercise. Political commentators, campaign consultants, the public, and presidents themselves routinely extol the virtues of presidential leadership. According to survey research, supermajorities of the public endorse the view that “[a]n ideal president provides strong leadership” (Kinder et al. 1980, 319), prompting political strategist David Moore (1995, 205) to argue that “the single most important value of the American public is respect for strong presidential leadership.” Likewise, presidents perceived as strong leaders are viewed more favorably by the electorate (Cohen 2015). Americans' support for strong leadership may be expected to manifest in their support for a muscular and robust set of powers belonging to the presidency.

This view is consistent with scholarship that links the development of the modern presidency to Americans' increased appetites for presidential power. According to this scholarship, presidents now occupy a more central role in American government than in earlier periods of the nation's history. As Lowi (1986, 20) explains, “[H]aving given presidents maximum power to govern and all the help they have ever asked for, the public has rationally focused its expectations on them, counting on them to deliver on all the promises they explicitly made.” Accordingly, the public may accept and even demand vigorous presidential activity, even if it comes through the exercise of illegal or constitutionally dubious powers. This view asserts that “opting not to act – indeed, merely being perceived as not acting – comes at a great political cost” to American presidents (Howell 2013, 125). Rather than recoiling at the ambitions of power-seeking executives, this perspective posits that Americans endorse bold action from their presidents and evaluate them based on whether they wield power in a sufficiently assertive manner.

1.5.3 Constitutional Veneration

We advance an alternative perspective that argues that Americans have attitudes over how presidents exercise power. These attitudes reflect

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values over the inviolability of the system of government expressed in the Constitution. Americans embrace a “literary theory” of separation of powers and express hostility towards presidential power (Pious and Pyle 1984, 153). This view emphasizes Americans’ high levels of reverence for and approval of the Constitution (Brown and Pope 2019; Levinson 2006; Stephanopoulos and Versteeg 2016; Zink and Dawes 2016). Americans’ constitutional affinities are ingrained from an early age and in the classroom as they learn civics and American history (Pious and Pyle 1984). Accordingly, Americans may be hostile to the concentration of power within the presidency and exhibit what Posner and Vermeule (2010) characterize as “tyrannophobia.” This view suggests that Americans harbor negative evaluations of presidential power and hold presidents accountable by withholding their support following its use.

Despite the importance of accountability in democratic systems, we know little about how these mechanisms operate with respect to the exercise of power. Our analyses here provide the first empirical record and systematic evaluation of how the public views presidential power and its use. As Hibbing and Theiss-Morse (1996, 29) wrote a quarter-century ago, “In the case of the executive branch, almost nothing exists on public support for the institution itself. Much attention has been devoted to support for the person occupying the position of president, but not so for the institution of the presidency.” That remains largely the case today.

On the theoretical side, no existing account explains how the public evaluates the power of the presidency against their own partisan interests, ideological loyalties, and approval ratings of individual presidents. What Americans think about presidential power and the conditions under which those attitudes are deployed when evaluating presidents, then, is the stuff of speculation. Understanding how the mass public views presidential power and holds leaders accountable for its use is important not only because “[p]ower restrained by accountability and consent is more likely than arbitrary and unrestrained power to produce wise policy” (Schlesinger 2004, 491) but also because the nature of accountability shapes the potential “scope of executive abuses” (Posner and Vermeule 2010, 113).

1.5.4 Presidential Responsiveness to Public Opinion

Theories of political accountability emphasize how elections induce officials to respond to public opinion. There is considerable evidence of issue-based accountability, particularly in the context of legislative

(Adams et al. 2017; Ansolabehere and Jones 2010; Canes-Wrone, Brandice, and Cogan 2002; Shor and Rogowski 2018) and judicial (Ansolabehere and White 2020; Bartels and Johnston 2013; Christenson and Glick 2015) politics. These findings generally show that the public bases their evaluations of legislators and judges on whether they behave in ways that reflect the public's political leanings. A smaller body of literature documents issue-based accountability in the context of the presidency. In studies on presidential elections, voters select presidential candidates on the basis of issue congruence (Jessee 2009, 2010, 2012). These findings are consistent with the role of elections as a screening mechanism that allows the public to choose candidates who will advance policies they support. Analyses of voters' responses to presidential unilateral actions show that presidential approval ratings are responsive to the public's level of agreement with the policies presidents have created (Ansolabehere and Rogowski 2020).

Research on presidential behavior, moreover, provides evidence that electoral incentives encourage presidents to behave in ways consistent with the public's policy views. For instance, presidents propose budgets that are conditionally responsive to the public's spending preferences (Canes-Wrone and Shotts 2004). Presidents' support for congressional legislation is also strongly responsive to the public's policy preferences (Erikson, MacKuen, and Stimson 2002; Stimson, MacKuen, and Erikson 1995). American foreign policy decisions, including those made by the president, are also constrained by the level of public support for them (Baum and Potter 2015). And Rogowski (2019) provides evidence of an association between public opinion and presidents' uses of unilateral directives, showing that presidents issue more directives for topics that the public believes are salient and for which they support more governmental involvement. This scholarship provides evidence consistent with the conclusion that "popularity-seeking presidents take a stand in response to public opinion or in anticipation of it" (Page and Shapiro 1992, 349). In an important exception, however, Druckman and Jacobs (2015) argue that presidents strategically manipulate public opinion to simulate responsiveness while they advance policy ideals that are often at odds with most Americans' interests.

Though theories about strategic interactions among political institutions often have not explicitly incorporated public opinion (but see Groseclose and McCarty 2001 for a prominent exception), some accounts of presidential behavior entertain the possibility of such a function. In discussing how presidents use vetoes, Cameron (2000, 17–18) considers

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whether public opinion might “stop a president from pursuing his supporters’ objectives even in the teeth of congressional opposition.” Likewise, Moe and Howell (1999a, 866) argue that courts’ decisions to uphold or strike down unilateral actions may be influenced by the popularity of the presidents’ actions.

Understanding the nature of public accountability of executive power strikes at the heart of democratic viability. As in most presidential systems, the chief executive occupies a unique position within the American political system. Unlike Congress and the courts, the president and the presidency are one and the same. As a consequence of the unitary presidency:

The President is in a position to do serious damage, if not irreparable injury, to the ideals and methods of American democracy. Power that can be used decisively can also be abused grossly. No man can hold such a concentration of authority without feeling the urge, even though the urge be honest and patriotic, to push it beyond its usual bounds. We must therefore consider carefully the various safeguards that are counted upon to keep the President’s feet in paths of constitutional righteousness. (Rossiter 1956, 33)

Levitsky and Ziblatt (2018, 191–192) underscore the importance of public opinion for the safety of democracy. They argue that “would-be authoritarians” endanger democracy to the extent they have widespread public support. Yet this account conflates support for individual politicians and public attitudes about how those officeholders should rule. If the mass public responds to how officeholders go about achieving their objectives, even politicians with high levels of popularity may risk public blowback.

The assumption that the public evaluates presidents on the basis of outcomes alone dominates the study of the presidency – and to great consequence. Presidents enter office with a variety of objectives and goals, and perhaps chief among them is to secure subsequent electoral support from voters (Kriner and Reeves 2015; Moe 1985). To do so, presidents have incentives to respond to public opinion (Cohen 1999; Edwards 1983; Jacobs and Shapiro 2000) and thus pursue policies that the public supports. As a consequence of this singular focus on the purposes of presidential action, scholars attribute a wide range of presidential behavior – including vetoes (McCarty 2009), executive orders (Howell 2003; Rogowski 2019), and public appeals (Canes-Wrone 2006; Kernell 2006) – to the president’s focus on the public’s policy preferences. Indeed, the public’s demand for increased policy responsiveness from presidents is

widely posited to explain the ascendance of the modern presidency (Lowi 1986; Neustadt 1990) and presidents' increased reliance on unilateral tools (Howell 2003; Moe and Howell 1999a, 1999b). If the public also scrutinizes the ways these policy outcomes are achieved, these attitudes may affect the incentive structures for presidents to take action. As Canes-Wrone (2006, 192) observes, "The relationship between a chief executive and his or her public can significantly affect the ways in which formal institutions operate in practice." To make progress on this question, however, we require a theory of public opinion that considers the means through which political outcomes are realized.

1.6 AN OVERVIEW

In this book, we present a new theoretical perspective and assemble comprehensive original data to study accountability over the use of power. We argue that public support is no blank check on unilateral presidential powers. Rather, legacies of colonial rule and the American founding are reflected in contemporary public opinion about the presidency. We advance three primary claims. First, Americans view executive power with skepticism and prefer national policymaking to be the domain of Congress rather than the presidency. While Americans may desire that presidents channel public opinion by articulating ambitious policy agendas, they prefer that Congress legislate rather than the president to enact those agendas via fiat. Second, Americans' attitudes towards executive power are not mere reflections of party loyalties to a particular president; rather, they reflect their beliefs about the separation of powers and their commitments to the rule of law. The American public meaningfully distinguishes their attitudes towards the presidency from their evaluations of its occupant. Third, the public brings these attitudes to bear when evaluating presidents and their records in office. Americans hold presidents accountable not only for *what* they accomplish but also for *how* they wield power. Our argument implies that responsiveness is driven not just by demand for particular policies but also by the public's fundamental normative expectations about the separation of powers and how policies ought to be achieved. More generally, our argument suggests that public opinion towards presidential power structures the terms of interbranch conflict in contemporary American politics.

Our focus on public opinion and the use of power provides new theoretical and empirical insight into the presidency, the politics of policymaking, and political representation and accountability. First, our

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argument suggests that while scholarship on the presidency has been concerned chiefly with characterizing its influence in a system of separated powers, it has overlooked the political dynamics that accompany its acquisition and use. According to one dominant perspective, presidential power is “the power to persuade” (Neustadt 1990, 11). Presidents wield influence to the extent they are successful in convincing other political actors that what the president wishes them to do is in their own best interests (Neustadt 1990). More recent research shows that persuasion may not be the only means through which presidents can effectively wield the power of the office. Howell (2003) argues that presidents can leverage ambiguities in Article II to advance policy initiatives via direct action that Congress otherwise could not. Yet both of these perspectives take the president’s authority as exogenous; neither of these accounts, or any others, studies how presidents attempt to accumulate and legitimate their power or their success in doing so.

We put front-and-center the politics that animates interbranch conflict and produces accusations of presidential overreach. We focus on how the American public views presidential power and how those views structure the incentives for competing claims to power. We begin in Chapter 2 by presenting a behavioral perspective on the relationship between the mass public and the American presidency. In contrast with a large literature that argues that Americans evaluate presidents and policies solely on the basis of their partisan and ideological views, our account emphasizes Americans’ evaluations of governing procedures. We focus particularly on the skepticism with which Americans have viewed executive power since the nation’s humble beginnings. This skepticism initially manifested in the exclusion of an executive branch from the nation’s original governing document, the Articles of Confederation, and the limited powers granted to governors in early state constitutions. Once the need for an independent executive became clear by the mid-1780s, Alexander Hamilton, among others, devoted substantial ink in *The Federalist* to justifying the need for a presidency and emphasizing the strict limits on its powers. We argue that this skepticism is found in American public opinion today, borne of political socialization that emphasizes veneration for the US Constitution and prescribes a limited policymaking role for the executive. While constitutional questions may not occupy most Americans’ thoughts on a regular basis, we argue that these core values towards executive power structure how Americans view policies achieved through unilateral action and the presidents who exercise that power. They also affect how political elites respond in turn.

The next section of the book presents original survey data to evaluate our argument about public opinion towards executive power. In Chapter 3, we introduce our approach to measuring Americans' attitudes towards institutional powers of the presidency and describe the surveys we conducted to implement it. We then provide new evidence from surveys conducted between 2013 and 2018 that characterizes Americans' aggregate orientations towards executive power. In documenting these attitudes, we note the relative stability of attitudes even as the Obama presidency ended and the Trump presidency began. We also contrast attitudes towards unilateral power with presidential approval and find that the latter is both more variable and more polarized than the former. We also contrast attitudes towards unilateral power with presidential approval and find that presidential approval is both more variable and more polarized than attitudes towards unilateral actions.

Chapter 4 presents evidence about the origins of attitudes towards executive power. We demonstrate that these attitudes reflect evaluations of the current president as well as more fundamental conceptions about the nature of the office, which are rooted in constitutional commitments. We show that support for the rule of law durably predicts support for unilateral presidential powers across a wide array of contexts. Together with the findings in Chapter 3, the results in this chapter suggest that Americans distinguish their views of the current president from more fundamental attitudes about the institution of the presidency.

In Chapter 5, we interrogate individual-level change and continuity in support for unilateral action. Taking advantage of the panel nature of our survey data, we examine within-respondent changes in support for unilateral powers. While we find strong cross-sectional support that presidential approval is related to support for unilateral powers, we find no evidence that within-respondent shifts in presidential approval result in changing views of the institutional power of the office. We also leverage the election and inauguration of Donald Trump to examine how the person holding office affects attitudes towards the institutional authority of the presidency. Even across presidencies, most respondents maintain their views of the bounds of presidential powers. The last section of the chapter connects our work to scholarship on presidential mandates and explores how aggregate public support for the president's policy goals affects individual-level attitudes about the exercise of power.

In Chapter 6, we examine how the attitudes we document affect evaluations of policies pursued via unilateral action. We present results from a

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series of survey experiments we conducted with nationally representative samples of Americans. The experiments varied the policy goals presidents wished to accomplish and the means by which presidents sought to attain them. We find that Americans provide systematically more negative evaluations of both presidents and their policies when they use unilateral actions. In an era of persistent congressional gridlock, we also show that Americans prefer that presidents take *no* action rather than advance their goals via unilateral power, even if this results in no change in policy outcomes. In both cases, moreover, we find that these patterns apply to individuals who both support and oppose the policy in question; that is, the negative effects of unilateral action among individuals who oppose the president's policy position are not offset by positive effects among those who share the president's policy views.

The preceding chapters evaluate perceptions of presidential power in contemporary American politics. In Chapter 7, we present a wider and more historical view of Americans' attitudes towards presidential power. The effects we document in Chapter 6 are not simply artifacts of today's hyperpolarized environment or the contemporary status and salience of American presidents. Instead, we present evidence from dozens of national polls conducted between the presidencies of Franklin Roosevelt and Donald Trump to show that Americans almost always reflexively reject expansions of presidential power, and that these attitudes influence their evaluations of how presidents have historically wielded prerogative powers. We then revisit four historical cases in which presidential power was contested to show how the public's attitudes about executive authority reflected the contemporary debates on the topic.

Concerns about power and accountability in presidential systems are by no means limited to the United States (see, e.g., Crisp, Olivella, and Rosas 2020; Linz 1990). Chapter 8 ventures beyond the United States and evaluates attitudes towards executive power in comparative perspective. We present evidence from surveys conducted in more than fifty countries in Africa and the Americas that the relationships we document in the United States are widely generalizable. Americans are not unique in expressing skepticism towards executive authority, and at the individual level these attitudes are consistently structured by commitments to core governing principles. At the country level, we further show that aggregate attitudes towards executive power are associated with institutional and political contexts. Our findings suggest attitudes towards executive power are structured by a common set of factors around much of the

globe. They also suggest the capacity for domestic audiences to hold their political leaders accountable for how they exercise power.

The concluding chapter returns to the ideas that motivated our study and discusses the implications of our argument and findings for the presidency, representation and accountability, the separation of powers, and democratic theory.

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