

“At Its Maximum” or “Lowest Ebb”?

Legal Foundations and Public Support for Executive Action

Aaron Childree
Douglas Kriner
Hyein Yang

Department of Government
Cornell University

Abstract:

Scholars question the extent to which the contemporary executive is legally constrained, but some posit that public opinion is an indirect mechanism through which law checks unilateral power. Through six survey experiments, we examine whether the legal foundations of executive action – whether it is taken pursuant to delegated statutory authority or conflicts with the will of Congress – affects public support for unilateralism. We find modest evidence that legal frames influence public attitudes, particularly in hypothetical vignettes, but they had no influence in cases involving Biden or Trump. Individuals’ attachment to the rule of law modestly moderates the legal treatment effects, but partisan divides were consistently large. Our results have implications for debates over the forces underlying public evaluations of executive action, the conditions under which public opinion might serve as a check on presidential overreach, and the role of law in shaping debates about presidential power in the public sphere.

Presidents do more than simply “take care that the laws be faithfully executed.” Rather, presidents routinely effect significant changes in policy unilaterally. For almost a century, courts have held that executive orders, proclamations and the like, when issued pursuant to proper legal authority, have the full force of law. This power “to make law on his own,” Moe and Howell (Moe and Howell 1999a, 132) have argued, “virtually defines what is distinctively modern about the modern presidency.” But how and to what extent is the exercise of this unilateral executive power constrained by law?

Many legal scholars agree that the formal judicial check on presidential overreach is limited (Shane 2009), and while courts have sanctioned presidential overreach in prominent cases, such as *Youngstown v. Sawyer* (1952), direct reversals are empirically rare (Howell 2003). Posner and Vermeule (2010, 4) go so far as to argue that the “legally constrained executive is now a historical curiosity.” While institutional barriers may all but ensure that courts can only occasionally serve as a direct check on expansive executive action (though see Epstein and Posner 2017), recent research suggests another mechanism through which law might nonetheless constrain unilateralism: by shaping public opinion and the political costs presidents stand to pay from going it alone (Christenson and Kriner 2020; Reeves and Rogowski 2022). Bradley and Morrison (2013, 1140) argue that the centrality of law in public contestation over presidential power may itself serve as a powerful constraint: “the pervasive existence of public ‘law talk’ may itself be evidence of, and a mechanism promoting, law’s constraining effect.” If presidents take action on shaky legal ground, the ensuing public debate could turn popular opinion against the administration raising the political costs.

But “law talk” could also conceivably bolster presidential power if presidents can rally public opinion to their side with tenuous arguments that their action is legally justified. Virtually

all executives, from autocrats to those with few authoritarian tendencies, at some point find themselves searching for legal pretexts to justify a policy choice. For example, President Obama maintained for years that he lacked legal authority to go beyond DACA and protect more undocumented aliens from deportation. And yet, in 2014 Obama announces the much broader DAPA program, declaring that he had the “legal authority” to take this step and pointing to precedents of immigration actions taken by past presidents.

Even more boldly, President Trump declared a national emergency at the southern border in February 2019 – just weeks after Congress refused his requests for border wall funding, an impasse that shut down the federal government – and began reallocating billions of dollars appropriated for other purposes to wall construction. Many analysts directly compared Trump’s move to an earlier case of presidential overreach: Truman’s seizure of the steel mills during the Korean War. While Truman confronted a genuine emergency, Congress had considered and rejected an amendment to give the president the power to seize private industries in times of crisis when it passed the Taft-Hartley Act over Truman’s veto in 1947. Because Truman acted against the “expressed or implied will of Congress,” in Justice Jackson’s famous concurrence in *Youngstown v. Sawyer*, presidential power was “at its lowest ebb.” The Court struck down Truman’s order. To many, Trump’s executive action also fit into “zone 3” of Jackson’s typology, rendering it legally suspect. Predictably, however, the Trump administration offered a different interpretation and pointed specifically to the statutory power delegated to the president to declare such emergencies in sections 201 and 301 of the National Emergencies Act. Because Trump’s action was pursuant to “an express or implied authorization of Congress,” the administration contended Trump’s authority was “at its maximum” in “zone 1” of Jackson’s typology. If such

arguments resonate, they could insulate presidents from political pushback and significantly expand presidential power to circumvent the will of Congress.

But to what extent does the public care about the legal foundations underlying unilateral action, and how do such arguments affect popular support for executive action? Existing scholarship suggests conflicting possibilities. One strand of recent literature suggests suggest that the public is innately skeptical of unilateralism, and this skepticism is strongest among those most firmly committed to the rule of law (Reeves and Rogowski 2015, 2016, 2018). This logic suggests that support for unilateralism should be higher when presidential power is bolstered by clearly delegated statutory authority from Congress and lower when presidents are acting contra the express will of Congress and therefore on the shakiest legal footing. Legal arguments should also resonate most fully with those most committed to the rule of law (Christenson and Kriner 2020, 119-122). By contrast, other research suggests that legal rationales may have little impact on public attitudes toward unilateral action. Partisan forces and policy preferences, rather than constitutional calculations, will dominate popular assessments of unilateral action (Christenson and Kriner 2017a; Lowande and Rogowski 2021).

Which theoretical framework best captures how the public responds to the legal foundations of unilateral action has significant implications for arguments that public opinion can serve as an important check on executive overreach (Christenson and Kriner 2020; Reeves and Rogowski 2022). If public opinion increasingly turns against presidents when their actions are framed as contra the express will of Congress and therefore on shaky legal footings, then presidents may have strong incentives to defer acting in direct defiance of congressional preferences, even when the threat of a successful legal challenge is low (Howell 2003). By contrast, if presidents can overcome public skepticism and manufacture popular support for

unilateralism by claiming that they are acting pursuant to delegated statutory authority – even if such claims are tenuous – then the informal check of “law talk” may be no stronger than the direct threat of losses in court.

We seek insight into these dynamics through a series of six experiments examining cases of unilateral action where the legal foundation could be credibly manipulated as being in both zone 1 and zone 3 of Jackson’s *Youngstown* typology.¹ The experiments include a mix of hypothetical unilateral actions being considered by a future president and real-world cases of executive action from actual presidents from both parties. We find some evidence that legal justifications modestly affect popular support for unilateral action, but these effects are conditional. Perhaps most importantly, the effects of the legal treatments are stronger in hypothetical scenarios or in real-world cases involving more temporally distant presidents. In the two experiments examining unilateral action taken or considered by Presidents Trump and Biden, they had no effect. We find modest evidence in certain contexts that individuals’ degree of commitment to the rule of law moderates the effects of the legal framing treatments; however, the moderating effect is substantively small. Partisanship was by far the strongest and most consistent predictor of support for unilateral action.

Our results have implications for debates over the forces underlying public evaluations of executive action (Lowande and Gray 2017; Lowande and Rogowski 2021; Reeves et al. 2017), showing that partisanship tends to play a larger and more consistent role than legal considerations. They also speak to the conditions under which public opinion might serve as a check on presidential overreach (Christenson and Kriner 2020; Reeves and Rogowski 2022) and

¹ All hypotheses and analytical tests were pre-registered. See Supporting Information.

the role of law in shaping debates about presidential power in the public sphere more generally (Bradley and Morrison 2013). Legal arguments in isolation are unlikely to activate or reduce a popular check on presidential authority. Rather, political contestation, including over legal foundations, is likely necessary to embolden popular resistance.

Unilateralism, the Public, and the Law

Perhaps precisely because Neustadt's (1990) seminal *Presidential Power* dismissed unilateral action as orthogonal to the exercise of true power in office, presidency scholars for decades paid relatively short shrift to the dynamics underlying executive action. This changed dramatically in the 1990s with an explosion of empirical research uncovering the forces underlying variation in the exercise of unilateral power (Deering and Maltzman 1999; Krause and Cohen 1997, 2000; Mayer 1999) and the emergence of a dominant theoretical paradigm crystallizing the president's inherent institutional advantages in a unilateral politics game (Howell 2003; Moe and Howell 1999b). The pivotal politics logic makes clear how the same institutional factors that exacerbate efforts to pass legislation through Congress (Krehbiel 1998) redound to the president's advantage when acting unilaterally by frustrating congressional efforts to reverse a unilateral policy shift legislatively. Even its proponents readily acknowledge that presidential unilateral power is only as great as other political actors allow it to be. However, if Congress is unable in most circumstances to enact new legislation undoing unilateral actions and courts are usually reticent to do so (Howell 2003; Posner and Vermeule 2010) then the direct checks on unilateralism may be insufficient to prevent presidential aggrandizement.

Subsequent waves of scholarship have examined a series of alternate checks that may guard against presidential overreach. Some scholars emphasize the importance of indirect

legislative checks. While Congress can rarely succeed in directly overturning an executive action, it can make presidential disregard for congressional preferences when acting unilaterally politically costly through a range of non-statutory mechanisms, for example by holding up nominations, refusing to move on administrative priorities, or holding investigative hearings (Bolton 2021; Bolton and Thrower 2022; Chiou and Rothenberg 2017; Kriner and Schickler 2016). Others argue that the bureaucracy itself is both the impetus for much “unilateral” action (Rudalevige 2021) and an important check on presidential overreach (Ingber 2018; Katyal 2006; Kennedy 2015; Rudalevige 2009).

An emerging body of scholarship has also raised the prospect that public opinion might constrain presidential unilateralism (Ansolabehere and Rogowski 2020; Christenson and Kriner 2019; Reeves and Rogowski 2022). Presidents’ reservoir of public support is an important source of political capital. Popular presidents are better positioned to achieve priorities on their legislative agenda than are unpopular presidents (Beckmann 2010; Canes-Wrone and de Marchi 2002). And in today’s increasingly nationalized elections (Hopkins 2018), public opinion toward the president is a key factor shaping both presidential and congressional elections, with massive implications for presidents’ legislative and unilateral policy legacies. As such, presidents have strong incentives to anticipate the public’s likely reaction when contemplating unilateral action and to weigh these political costs against the policy benefits of going it alone. But what these costs are likely to be depends critically on how the public assesses executive action.

A significant body of research argues that most Americans are innately skeptical of presidential unilateralism. Panel surveys show that support for many forms of executive action is both low and remarkably stable over time (Reeves and Rogowski 2016). Most Americans are significantly more supportive of presidential policies when pursued legislatively rather than

unilaterally (Reeves and Rogowski 2018), and public antipathy toward unilateralism is greatest among those most strongly committed to the rule of law (Reeves and Rogowski 2022).

By contrast, other studies argue that public opposition to unilateral action is far from automatic. Rather than instinctively opposing unilateralism for violating widely held constitutional mores, most Americans evaluate it through a decidedly political lens, supporting executive action when it is taken by a co-partisan president or moves policy in their preferred direction, and opposing it when the opposite is true (Christenson and Kriner 2017a; Lowande and Rogowski 2021). Elite opposition, including constitutional criticisms, may activate underlying concerns and erode popular support for unilateral action (Christenson and Kriner 2020), but in its absence legal concerns alone are unlikely to produce widespread popular resistance and heightened political costs.

Much of this debate – both theoretical and empirical – has focused on whether the public cares only about the policy ends of presidential actions versus the means through which they are achieved (e.g. Christenson and Kriner 2017a, 343-346; Reeves and Rogowski 2018, 429-431) and on the role that attitudes toward the rule of law play in explaining variation in support for executive action. Of course, for almost a century the Supreme Court has held that a range of executive actions, including executive orders and proclamations, have the full force of law when issued pursuant to proper legal authority (Howell 2003, 19-21). Nevertheless, despite the theoretical emphasis on constitutional powers and legal considerations, this literature has not directly examined whether the legal foundations of an executive action affect public support. Doing so could shed important insight into differences in the proposed theoretical logics and the conditions under which law might afford an informal check on presidential aggrandizement through public opinion.

Finally, exploring the influence of legal justifications for executive action on opinion formation addresses broader literatures examining the nexus between public opinion and judicial politics. Legal scholars have studied the underpinnings of court legitimacy and whether it is tied to the perceived fairness of judicial procedure (Caldeira and Gibson 1992; Gibson 1989; Tyler 2000; Tyler and Rasinski 1991). Other scholars have examined the ability of the Court to capitalize on this legitimacy to move public opinion on major policy questions through its decisions (Christenson and Glick 2015; Gibson, Caldeira, and Spence 2005; Linos and Twist 2016; Mondak 1992). Some studies have even sought to disentangle the relative influence of the message and the messenger (Bartels and Mutz 2009). However, few studies have directly examined how the specific legal rationale offered for a political action affect the public's willingness to support it.

Legal Foundations, Partisanship, and Public Support for Unilateralism

If many Americans oppose executive unilateralism because of concerns that it conflicts with constitutional procedures and widely held views of how the American separation of powers system should function, then the legal foundation undergirding an executive action should affect not only an action's likelihood of surviving judicial scrutiny but also its ability to attract broad public support. Using Jackson's *Youngstown* typology as a framework, this literature suggests a series of three hypotheses. The first posits a linkage between how the legal basis for an executive action is framed according to Jackson's typology and support for unilateralism.

H1: A zone 1 frame – emphasizing that the executive is acting pursuant to statutory authority delegated by Congress – will increase support for unilateralism. A zone 3 frame

- emphasizing that an executive action is against the express or implied will of Congress
- will decrease support for unilateralism.

Previous research shows that Americans' level of commitment to the rule of law is a significant predictor of their willingness to support unilateral action (Reeves and Rogowski 2016, 2018). The posited logic underlying this finding suggests that attachments to the rule of law should moderate the effects of legal frames on support for unilateralism as they will resonate most with individuals already predisposed to evaluate unilateralism through a legalistic lens.

H2: The positive effect of a zone 1 frame and the negative effect of a zone 3 frame on support for unilateralism should be stronger among individuals who are most committed to the rule of law.

Finally, an important methodological difference across many prior studies of the micro-foundations of public attitudes toward unilateral action concerns whether survey subjects are asked to evaluate hypothetical or real-world cases. Both approaches have strengths and limitations. However, by examining both kinds of experimental vignettes in a single study, we can gain further insight into the conditions under which legalistic frames and concerns most influence public opinion toward unilateral action. If legal concerns are paramount and broadly impactful, it would suggest a final hypothesis:

H3: Zone 1 and zone 3 frames will significantly affect support for unilateral action in both hypothetical and real-world cases.

If legalistic concerns are of secondary importance and other factors, including partisanship, affect toward the president, and policy preferences dominate attitude formation toward unilateral power, then the effects of legalistic frames on public support may be more contingent. This generates an additional set of alternate hypotheses. The first two posit

significant differences across real-world vs. hypothetical experiments. Because partisan cues are often consciously downplayed in hypothetical scenarios, the magnitude of the effects of legalistic frames may vary depending on the nature of the vignette itself.

H4: The effects of zone 1 and zone 3 frames will be greater in experiments examining hypothetical executive actions taken by unnamed future presidents than in experiments examining support for actions taken or considered by current and past presidents.

Moreover, the strength of the moderating influence of individuals' commitment to the rule of law on the effects of the legal justification treatments should also vary across real-world vs. hypothetical vignettes.

H5: Attitudes toward the rule of law will more strongly moderate the effects of the zone 1 and zone 3 frames in experiments with hypothetical vignettes than in experiments examining support for real-world cases of unilateral action.

A final pair of hypotheses concern the relative importance of partisanship and legal frames in shaping support, and the prospect that the former may moderate the influence of the latter.

H6: Partisan affinity for or opposition to the president taking action will be a stronger predictor of support for unilateralism than the legal basis presented for the unilateral action. In real-world cases, Democrats will be more supportive than Republicans of unilateral action taken by a Democratic president regardless of the legal frame, and vice versa for executive actions taken by a Republican president.

H7: The effects of zone 1 and zone 3 legal frames will be stronger among independents, who lack strong partisan priors, than among partisans.

Research Design

To test these seven hypotheses derived from competing theories of the factors driving support for unilateral action, we designed and carried out six original survey experiments. These six experiments were embedded within two separate surveys, both with survey samples of roughly 1,000 US adults ($n = 1,068$ and $n = 1,076$) recruited via the Lucid platform and fielded in November-December 2021. Lucid employs quota sampling to produce samples matched to the U.S. population on age, gender, ethnicity, and geographic region. Experimental effects observed in Lucid samples largely track those observed in national benchmark surveys (Coppock and McClellan 2019). For demographic comparisons to benchmarks, see Supporting Information.

After providing informed consent, in each survey respondents were asked to evaluate three cases of unilateral action: one involving an unnamed future president, one involving a Democratic president, and one involving a Republican president. To avoid priming respondents to think about a specific president in the vignette involving an unnamed president, this question always appeared first. The order of the subsequent Democratic and Republican vignettes was randomized across subjects. Each experimental module began with a short vignette describing a unilateral action taken by either a past/present or hypothetical future president. Subjects were assigned to one of three experimental conditions: a “zone 1” treatment in which subjects were informed of the statutory basis for the executive action; a “zone 3” treatment in which subjects were informed that the executive action was against the express will of Congress; or a control group that received no information about the legal foundation underlying the executive action. All subjects were then asked whether they supported or opposed the executive action.

Substantively, we examined four executive actions, three taken by past presidents and one that has engendered broad speculation: creating a system of military tribunals to try terrorism suspects; declaring a national emergency to build a wall along the Mexican border; authorizing a

\$20 billion loan to Mexico; and minting a trillion-dollar platinum coin to avoid a debt ceiling-induced default. The latter two scenarios appeared on both surveys. In two cases the actions were described as having been taken or considered by a past/current president (i.e. Clinton authorizing a loan to Mexico; Biden considering minting a platinum coin). In the other cases they were presented as hypothetical actions being considered by a future president. Full wording for each module is presented in Table 1.

In each experiment, the dependent variable queried respondents' support for or opposition to the president's action on a four-point scale. Because whether someone supports or opposes a policy is likely to be the most politically relevant distinction for policymakers in most circumstances, we collapse these four options into a binary measure of whether a respondent supported the unilateral action either strongly or somewhat. Additional analyses using the full four-point measure of support as the dependent variable yield similar results and are reported in the Supporting Information.

Because subjects were randomly assigned to one of each experiment's three conditions, to assess the effects of each treatment we first simply compare the percentages supporting executive action across each experimental group and report t-tests to determine which differences are statistically significant. To test additional hypotheses about the relative importance of partisanship and the moderating effect of individuals' attachment to the rule of law, we estimate a series of logistic regressions. The primary independent variables of interest in these models are two dummy variables identifying assignment to the zone 1 and zone 3 treatments, partisan dummies, and the rule of law index. Because party "leaners" generally behave similar to partisans (Keith et al. 1986), our partisan indicators include those who lean toward one party or the other. The rule of law index is created using a five-question battery

Table 1. Survey vignettes and questions

Survey	Vignette	Zone 1 Treatment	Zone 3 Treatment	Question
1	<p>As you may know, the U.S. government must periodically raise the debt limit to pay interest on the national debt and pay for spending it has already authorized. Failing to raise the debt limit could lead the U.S. government to default and hurt the nation’s economy.</p> <p>Suppose a future president is considering minting a trillion-dollar platinum coin to avoid a crisis and allow the nation to pay its debts.</p>	A 1996 law gave the president the authority to authorize the Treasury to mint platinum coins of any value it chooses.	Congress has the authority to raise the debt ceiling by passing legislation. However, there is not enough support in Congress to pass a bill raising the debt ceiling.	Would you support or oppose the president acting unilaterally to mint a trillion-dollar platinum coin to ensure the nation does not default on its debt?
1	In 1995, President Clinton unilaterally authorized a \$20 billion loan to Mexico to stabilize its currency and prevent an economic crisis.	The Gold Reserve Act gives the president the authority to issue loans to stabilize exchange rates between currencies.	However, Congress refused to pass legislation authorizing the loan just weeks earlier.	Do you support or oppose President Clinton’s decision to unilaterally authorize a loan to Mexico?
1	In November 2001, President Bush signed an executive order unilaterally creating a system of military commissions to try suspected international terrorists. In military commissions, defendants have fewer rights than in civilian courts.	The Authorization to Use Military Force of September 2001 authorized the president to use “all necessary and appropriate force” against those involved in the September 11 terrorist attacks.	However, Congress required that suspected terrorists have full access to civilian courts in the USA Patriot Act, passed in October 2001.	Do you support or oppose President Bush’s decision to unilaterally create a system of military commissions to try international terrorism suspects?
2	Suppose a future president is considering unilaterally authorizing a \$20 billion loan to Mexico to stabilize its currency and prevent an economic crisis.	The Gold Reserve Act gives the president the authority to issue loans to stabilize exchange rates between currencies.	However, Congress refused to pass legislation authorizing the loan just weeks earlier.	Would you support or oppose the president’s decision to unilaterally authorize a loan to Mexico?
2	<p>As you may know, the U.S. government must periodically raise the debt limit to pay interest on the national debt and pay for spending it has already authorized. Failing to raise the debt limit could lead the U.S. government to default and hurt the nation’s economy.</p> <p>The Biden administration is considering minting a trillion-dollar platinum coin to avoid a crisis and allow the nation to pay its debts.</p>	A 1996 law gave the president the authority to authorize the Treasury to mint platinum coins of any value it chooses.	Congress has the authority to raise the debt ceiling by passing legislation. However, there is not enough support in Congress to pass a bill raising the debt ceiling.	Would you support or oppose President Biden acting unilaterally to mint a trillion-dollar platinum coin to ensure the nation does not default on its debt?
2	In 2019, President Trump signed a proclamation declaring a national emergency and unilaterally redirecting funds to build a wall on the US-Mexico border.	The National Emergencies Act gives the president the authority to declare national emergencies.	However, Congress refused to provide funding for the border wall in an appropriations bill passed just weeks before the President’s emergency declaration.	Do you support or oppose President Trump’s decision to unilaterally declare a national emergency and redirect funds to build a wall on the US-Mexico border?

engaging trade-offs between the rule of law and other values such as fairness or expediency (see Supporting Information). This scale is a common measure of commitment to the rule of law, developed by Gibson (2007) and employed by Reeves and Rogowski (2016, 2022) in the context of support for unilateral action. To test H2 and H5, models include the interaction of each treatment indicator with the rule of law index. Finally, to improve the precision of our estimates, all models controlled for four relevant demographic factors: gender, race, education, and age.

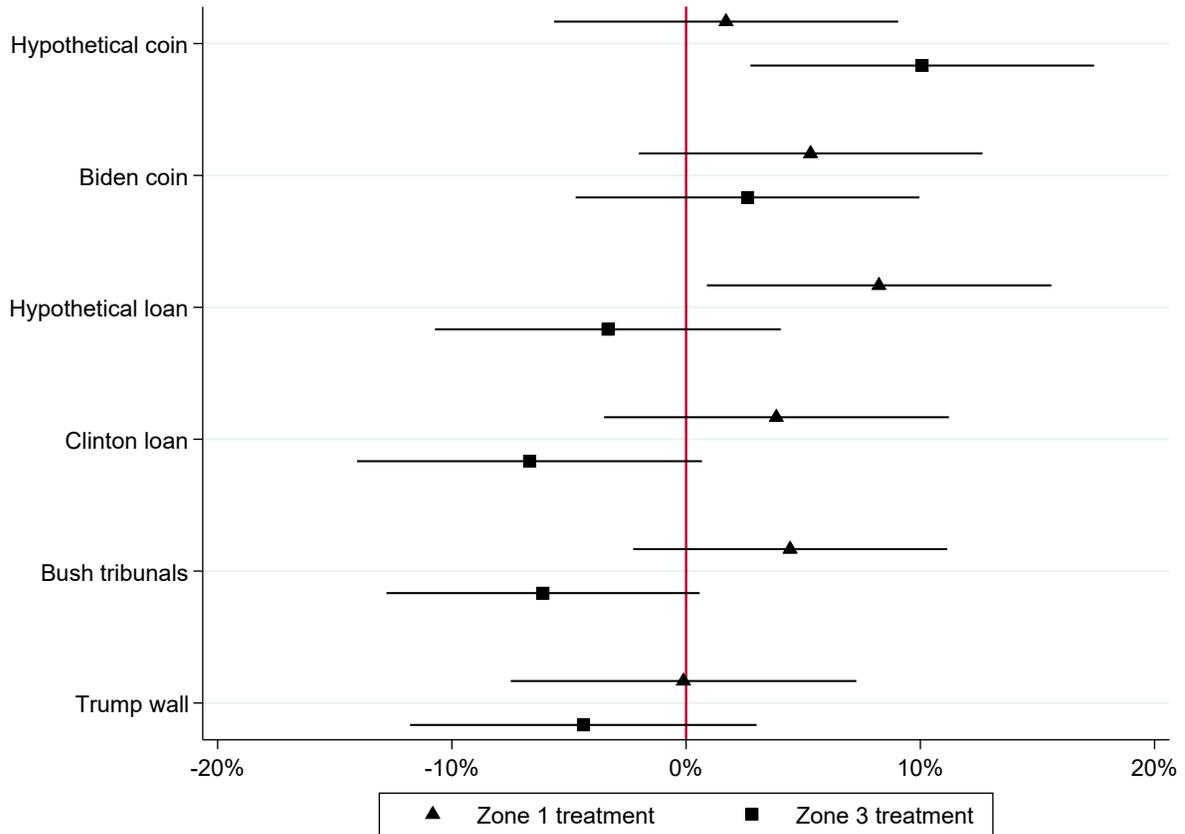
Results

Figure 1 presents the differences in the percentage supporting executive action between each treatment group and the control across all six experiments.² In only one case did the zone 1 treatment (informing subjects of a statutory delegation of authority to the executive branch related to the action in question) produce a significantly higher level of public support than in the control group baseline. In the hypothetical Mexico loan experiment, informing subjects that the Gold Reserve Act gives the president the authority to issue loans to stabilize currency exchange rates significantly increased support for unilateral action versus that observed in the control. In none of the six experiments did the zone 3 treatment informing subjects that the president was acting against the express will of Congress significantly decrease support for executive action versus the control. Finally, in only three of the six experiments was the level of support for executive action significantly higher ($p < .05$, two-tailed Wald test) in the zone 1 treatment (when presidential legal authority is “at its maximum”) than in the zone 3 treatment (when

² For the percentages supporting executive action across conditions and experiments (rather than the difference between each treatment and the control), see SI Table 2.

presidential power is at its “lowest ebb”). Taken together, the results offer only modest support for H1 that the legal foundations of unilateral action will significantly influence public support for unilateralism.

Figure 1: Treatment Effects across All Six Experiments



Note: Differences in mean support for executive action across each treatment group and control group. Horizontal bars present 95% confidence intervals.

Heterogeneity in the effects of the legal treatments also speaks directly to H3 and H4. Support for executive action was higher in the zone 1 treatment than in the zone 3 treatment in three of six experiments: the hypothetical loan experiment; the Clinton loan experiment; and the Bush military tribunals experiment. One of these involved a hypothetical future president, and the other two involved presidents who left office more than a decade ago. By contrast, in the two experiments involving unilateral action taken by President Trump (i.e. the wall emergency

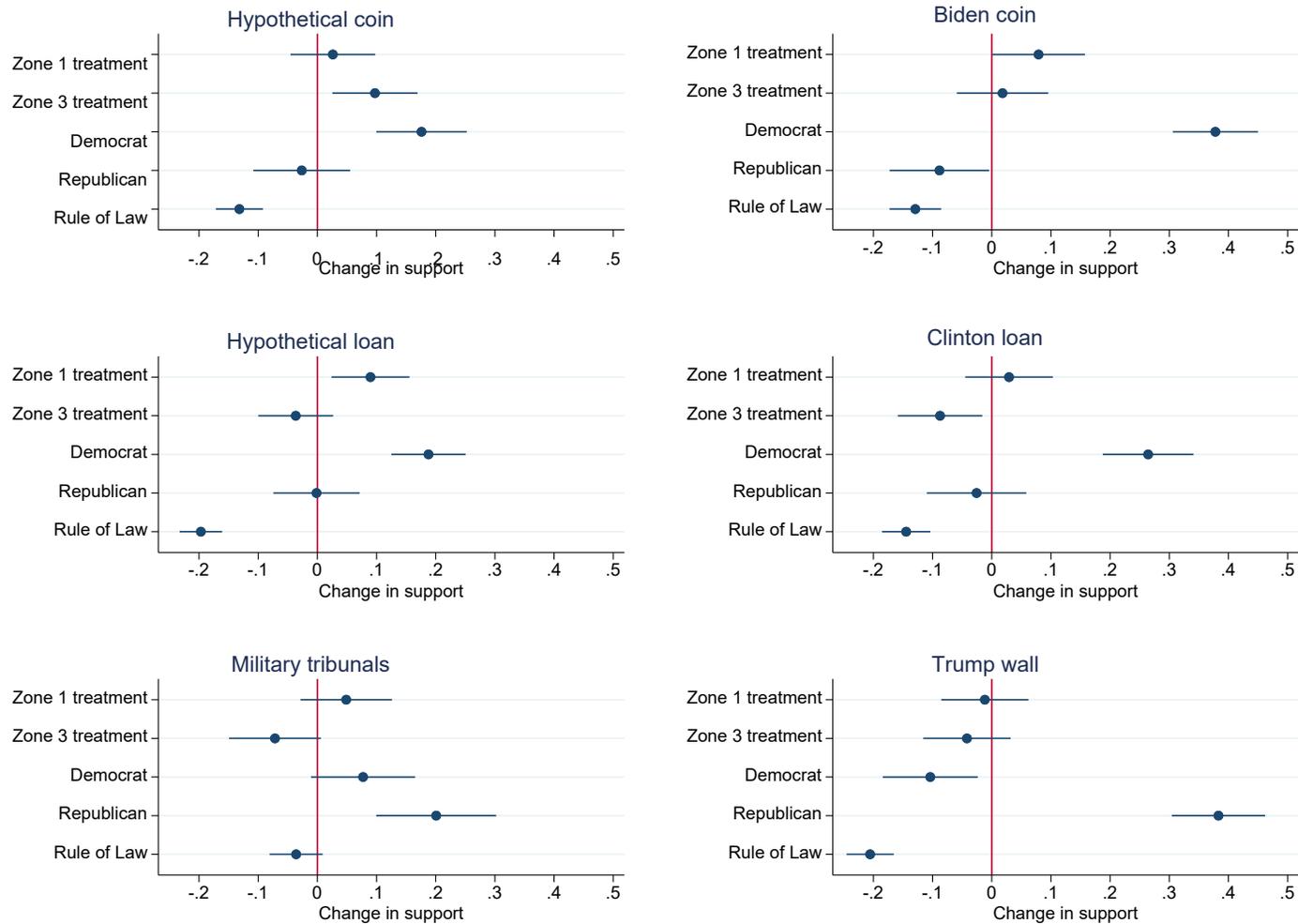
declaration) and contemplated by President Biden (i.e. the platinum coin to avoid default), the differences in support across the zone 1 and zone 3 treatments were substantively small and statistically insignificant.

In the final experiment – the hypothetical platinum coin experiment – support was higher in the zone 3 treatment than in either the zone 1 treatment or in the control. This result is perhaps superficially surprising. However, it corresponds with several prior studies in which informing subjects of congressional gridlock actually increased support for executive action (Christenson and Kriner 2017a, 340; Reeves and Rogowski 2016, 146). The comparison between this experiment and the parallel experiment in which all information and treatments were identical except that President Biden was considering the action is informative. In the Biden experiment, the levels of support for minting the platinum coin are statistically indistinguishable across all three experimental conditions. Taken together these results are strongly inconsistent with H3 and largely consistent with H4. The most important deviation from H4 is that the legal treatment effects were also larger in the two experiments involving actions taken by Clinton and Bush, more temporally remote presidents, than actions involving President Biden and his immediate predecessor.

The Relative Influence of Partisanship

Figure 2 graphically presents the relationships between the experimental treatments, partisanship, and individuals' commitment to the rule of law and support for executive action across all six experiments. The figure presents the change in the predicted probability of supporting an executive action produced by a 0 to 1 shift in each dummy variable and a one unit (i.e. 1.3 standard deviation) increase in the rule of law index while holding all other factors constant at their means or medians.

Figure 2: Treatment Effects, Partisanship, and the Rule of Law



Note: Change in predicted probability of supporting executive action produced by a one unit increase in each factor. Horizontal bars present 95% confidence intervals.

The results are mostly consistent with H6: in three of the four experiments involving actual presidents, the role of partisanship dwarfed the effects of the legal framing treatments on support for executive action. This is particularly true in the Biden and Trump experiments, where the partisan gap approached or even exceeded 50%. In the Clinton loan experiment, the effects of the zone 1 and zone 3 treatments were significantly different from one another ($p < .05$, two-tailed Wald test); however, the partisan gap, while smaller than in the latter cases involving more recent presidents, more than doubled that between the legal framing treatments. The only exception to this pattern involved the post-9/11 case of President Bush's Military Order of November 2001 creating a system of military tribunals to try suspected terrorists. In this experiment, the effects of the zone 1 and zone 3 treatments were significantly different from one another ($p < .05$, two-tailed Wald test), and the resulting gap was only slightly smaller than that between Democrats and Republicans (though substantially smaller than that between Republicans and independents). Public attitudes toward this post-9/11 action were the least polarized along partisan lines across all six experiments, including the two hypotheticals in which Democrats were consistently more likely to support the action than Republicans. This greater Democratic support in the hypotheticals could be either because Democrats were more likely to agree with the policies on offer – a loan to Mexico to prevent an economic collapse and a platinum coin to avoid a debt ceiling-induced default – or because at least some respondents read these hypothetical scenarios through a contemporary lens in which Biden was president.

Comparing the parallel hypothetical and named president experiments examining the same executive action is also instructive. In the hypothetical platinum coin experiment, there is a significant partisan gap with Democrats being more supportive than Republicans. However, this gap more than doubles in the experiment explicitly identifying President Biden as the one

contemplating such a move. The shift is not quite as extreme in the Mexico loan experiments, but the partisan gap grows by roughly 50% from the hypothetical case to the experiment identifying Clinton as the president taking the action.

Finally, consistent with past research (Reeves and Rogowski 2016), the relationship between individuals' commitment to the rule of law and support for executive action is consistently negative, and in all but one experiment the coefficient is statistically significant.

H6 also posited that fellow partisans would be more supportive than the opposition of an executive action taken by a co-partisan president, regardless of the legal foundation underlying the action. To test this directly, Figure 3 plots the percentage of Democrats and Republicans supporting executive action across zone 1 and zone 3 treatment groups in the four experiments involving actual presidents. The results from three of the four experiments are strongly consistent with H6. The only outlier is the post-9/11 Bush military tribunals experiment. Here support was highest among Republicans in the zone 1 treatment (82%) and lowest among Democrats in the zone 3 treatment (66%). However, the percentage of Democrats supporting the action in the zone 1 treatment (73%) was almost identical to the percentage of Republicans supporting the action in the zone 3 treatment (72%).

The Moderating Influence of Individual Attachments to the Rule of Law

To test H2 and H5 concerning the extent to which individuals' commitment to the rule of law moderates the effects of the legal framing treatments, we estimated a series of logistic regressions interacting each treatment indicator variable with the rule of law index. Full results are reported in the Supporting Information. To visualize the results, Figures 4 and 5 illustrate the marginal effects of the zone 1 and zone 3 treatments across the full range of the rule of law index for each experiment.

Figure 3: Support for Non-Hypothetical Executive Actions among Democrats and Republicans by Treatment

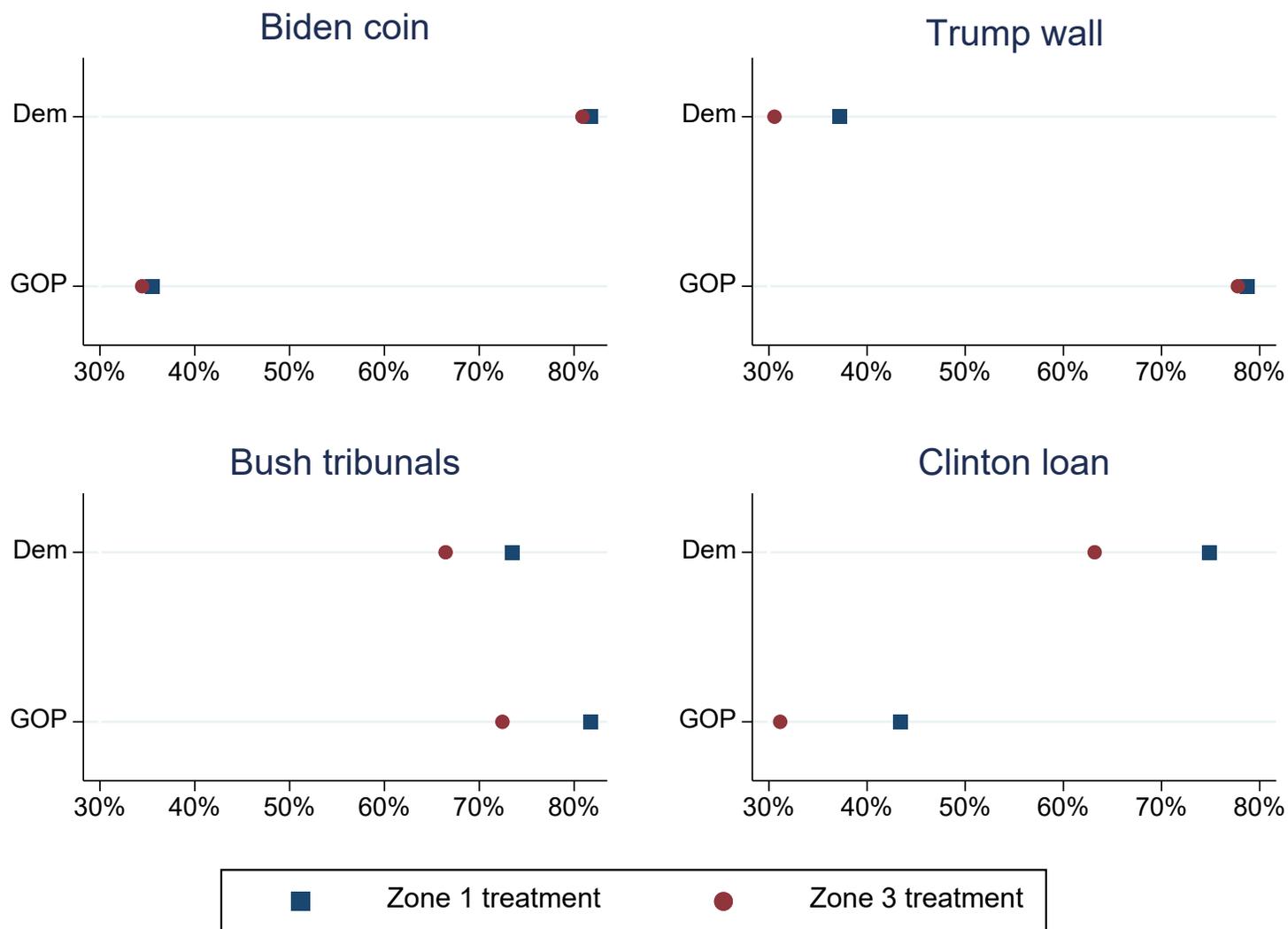
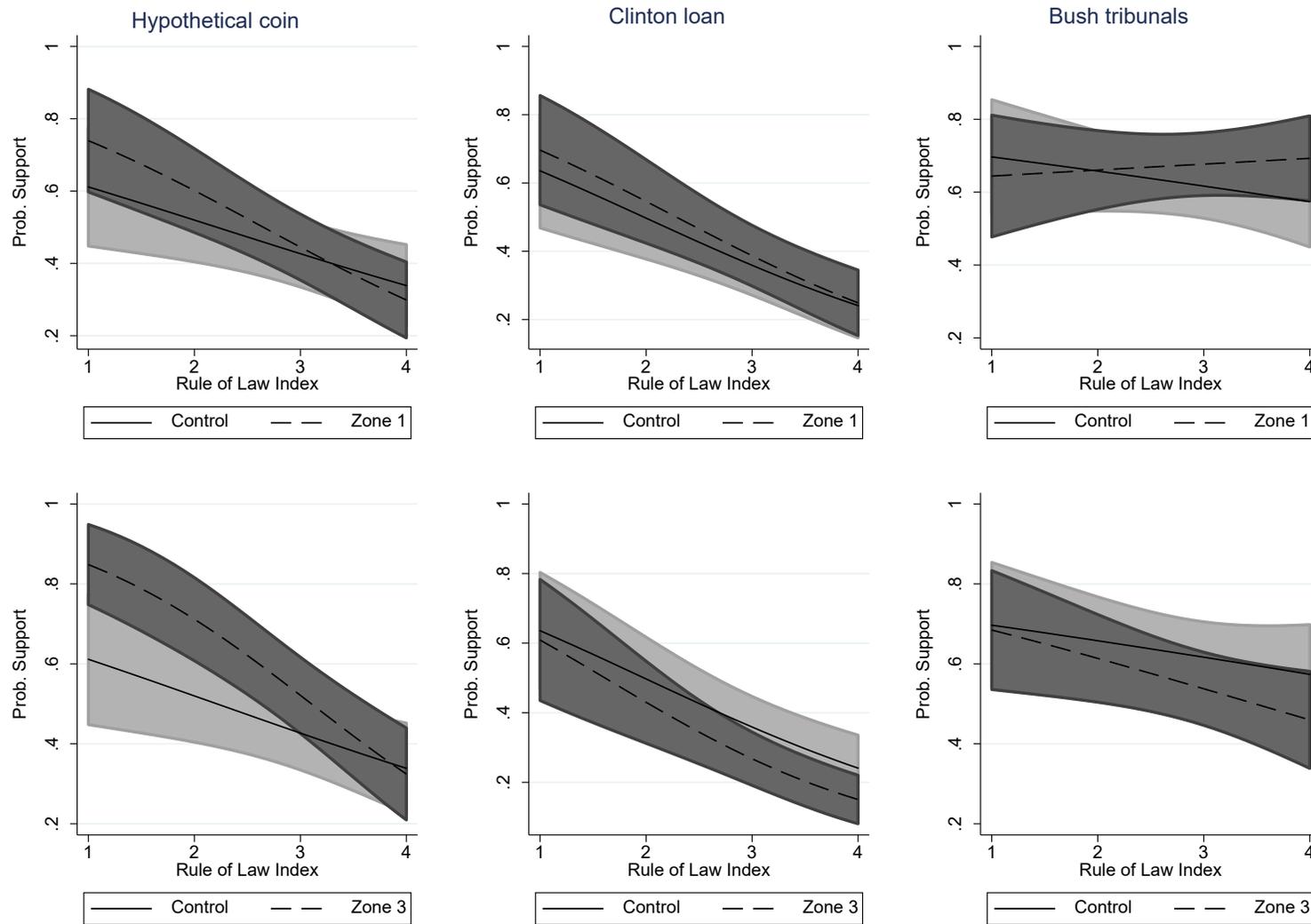
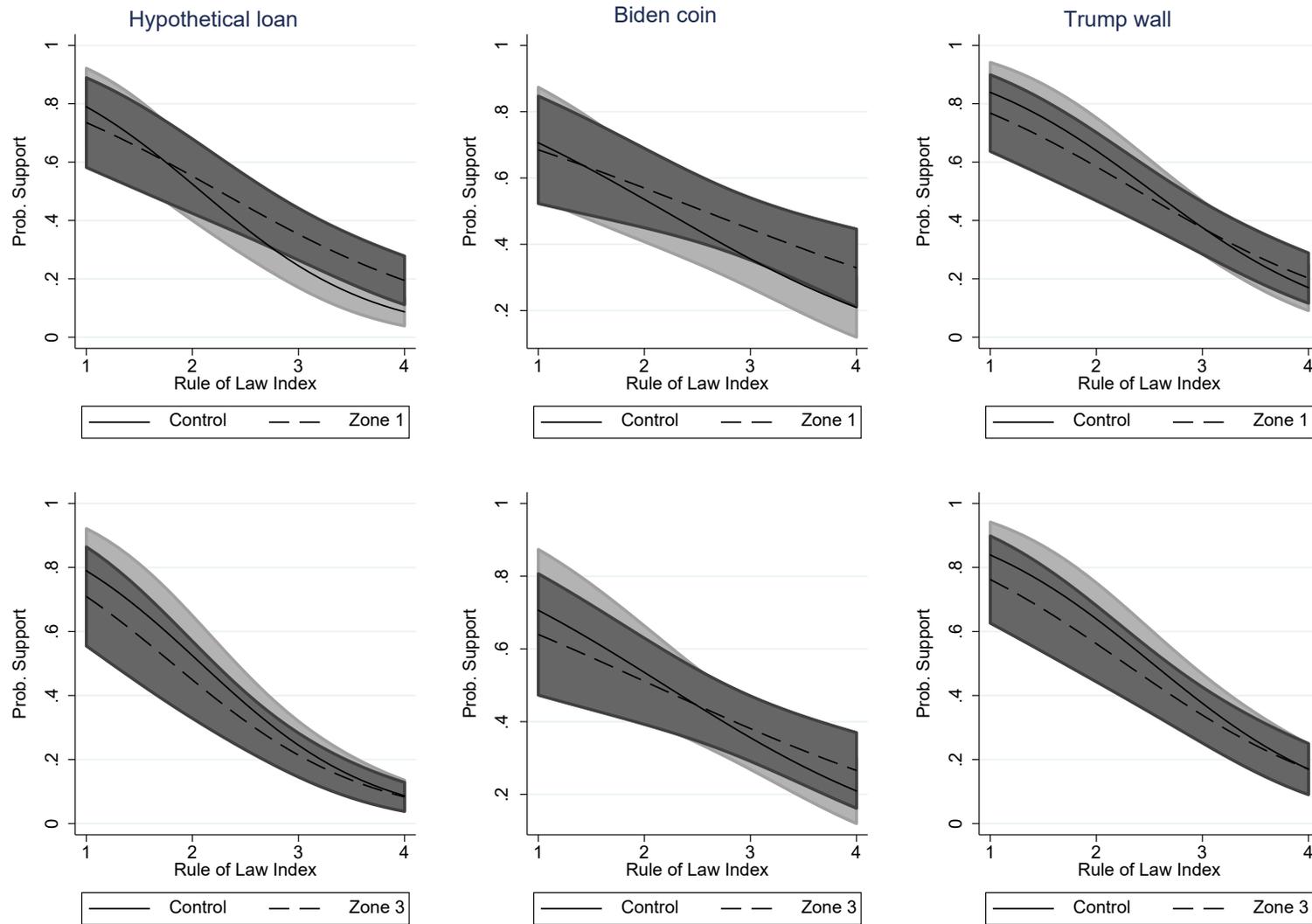


Figure 4: Rule of Law Moderation: Survey 1



Note: Predicted probability of supporting executive action across experimental groups. Shaded bands present 95% confidence intervals.

Figure 5: Rule of Law Moderation: Survey 2



Note: Predicted probability of supporting executive action across experimental groups. Shaded bands present 95% confidence intervals.

We find relatively modest evidence for the moderating influence of individuals' attachments to the rule of law. Only one of the coefficients on the relevant interaction variables (for the zone 3 x rule of law interaction in the hypothetical platinum coin experiment) was statistically significant, $p = .05$, two-tailed test). However, as shown in Figures 4 and 5, we do observe significant differences in predicted support for executive action between a treatment group versus the control at various levels of support for the rule of law in 4 out of a possible 12 cases (i.e. 2 per experiment). Specifically, in the Clinton Mexico loan experiment, the zone 3 treatment produced significantly lower levels of support for executive action versus the control, but only among those with high levels of commitment to the rule of law. In both the hypothetical loan and Biden platinum coin experiments, the zone 1 treatment significantly increased support for executive action versus the control, but only among those with a strong commitment to the rule of law. Finally, we previously noted that in the hypothetical platinum coin experiment that the zone 3 treatment (informing subjects that Congress had not acted to raise the debt ceiling) actually increased support for executive action. Figure 4 shows that this is true broadly – except among those most strongly committed to the rule of law.

Taken as a whole, these results are broadly consistent with H5. We found modest evidence that attitudes toward the rule of law moderated the legal framing treatment effects in 2 of 4 instances involving hypothetical cases, and in only 2 of 8 instances involving cases with real presidents. This division coupled with the relatively modest evidence for moderating effects across the range of experiments is inconsistent with H2.

The Moderating Influence of Partisanship

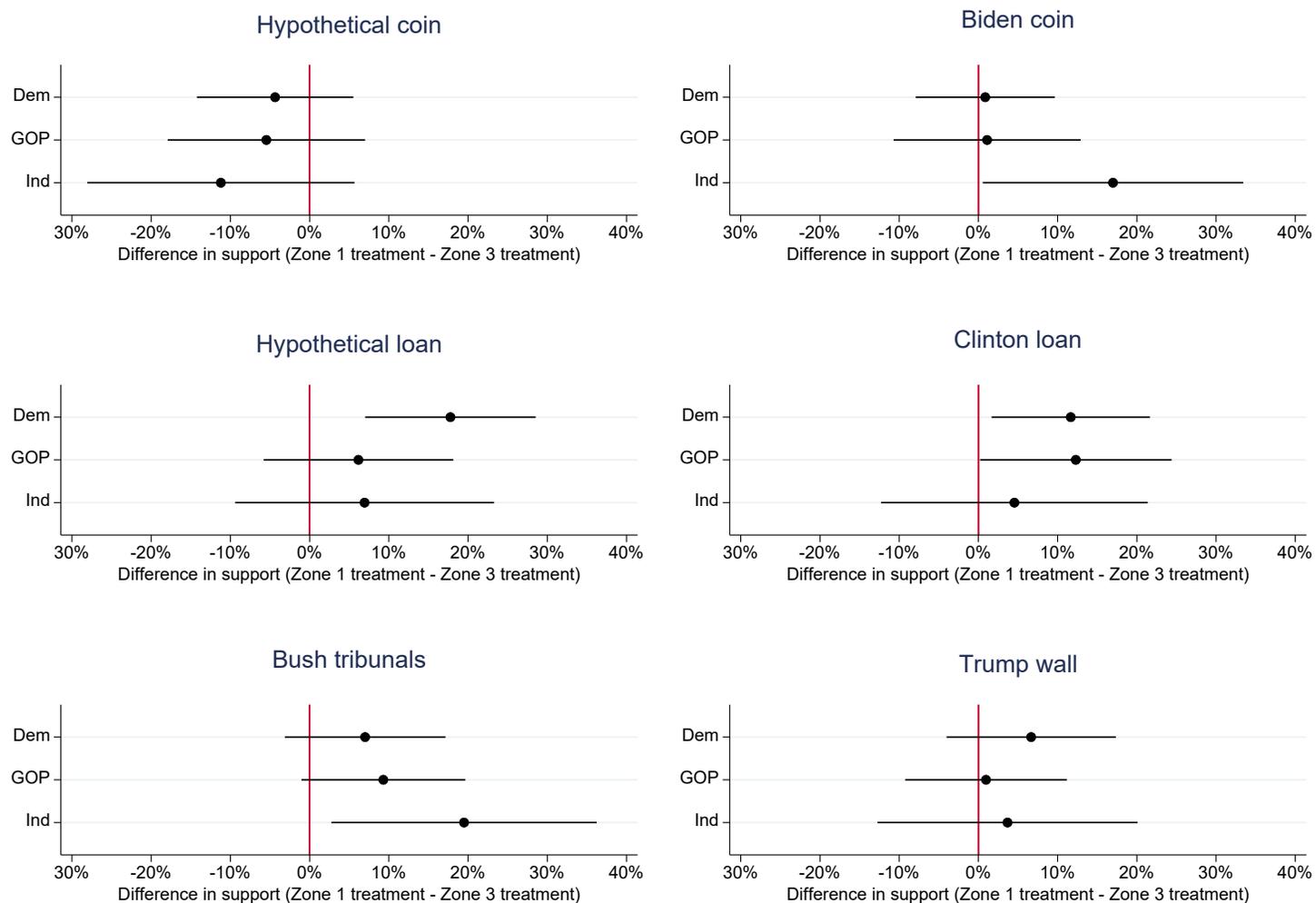
Finally, H7 posited that the effects of the legal framing treatments would be strongest among independents who lack strong partisan priors. To test this hypothesis, we calculated the

differences in means across the zone 1 and zone 3 treatments groups for each experiment by partisan group. Figure 6 presents the results. We find little evidence to support H7. The differences in support for executive action across the zone 1 and zone 3 treatments is statistically significant among independents in only 2 of 6 experiments (i.e. Biden platinum coin and Bush tribunals). However, in two experiments the differences in support across zone 1 and zone 3 treatments were only significant for partisans. In the hypothetical loan experiment, this gap in support was only statistically significant for Democrats. And in the Clinton loan experiment, the gap was statistically significant for both Democrats and Republicans, but not for independents. Taken together, we find little evidence that partisan attachments or lack thereof consistently moderated the effects of the legal framing treatments.

Table 2 summarizes our results. Generally, we find a high level of support for our hypotheses that posit partisanship as a significant driver of support for unilateral action. Individuals choose to either support or oppose unilateral action based in large part on whether the president who took the action lines up with their party identification. Significant partisan gaps even emerged in hypothetical vignettes, perhaps either because respondents viewed through vignette through the lens of contemporary politics or because of policy divides on the issues that fall along partisan lines. The only partisan hypothesis that failed to find support concerned independents. We expected independents to be more swayed by the legal justification treatments than partisans, but that was not the case.

In contrast, evidence for the influence of the legal justification given for the action is much more tenuous or, in some cases, nonexistent. The effects of the legal framing treatments were inconsistent and often small, with null effects observed in both hypothetical and real-world

Figure 6: Differences in Support Across Legal Frame Treatments by Party



Note: Differences in mean support for executive action across zone 1 and zone 3 treatment groups. Horizontal bars present 95% confidence intervals.

vignettes. Moreover, individuals’ attitudes toward the rule of law only weakly and inconsistently moderated the influence of the legal frames on support.

Table 2. Summary of Results

Hypothesis	Description of Test	Associated Theory	Level of Support
H1	Legal treatment effects	Legal/Constitutional	Modest
H2	Legal treatment effect moderated by rule of law index	Legal/Constitutional	Modest
H3	Legal treatment effects across hypothetical and real-world vignettes (constant)	Legal/Constitutional	Weak
H4	Legal treatment effects, across hypothetical and real-world vignettes (stronger in former)	Partisan	Strong
H5	Legal treatment effects moderated by rule of law index (stronger in hypothetical vignettes)	Partisan	Strong
H6	Predictive power of partisanship vs. legal justification (former stronger)	Partisan	Very Strong
H7	Legal treatment effects (strongest among independents)	Partisan	Weak

Discussion

Public opinion is a potential mechanism through which law may constrain executive policymaking independently of formal challenges in court (Bradley and Morrison 2013; Christenson and Kriner 2017b). Our experiments examine the influence of factual information about the legal foundations of an executive action on public support for unilateralism. Across a series of experiments involving both real-world and hypothetical scenarios and a range of policy issues we find conditional evidence that the legal foundations of unilateralism may modestly affect public support for executive action. At least in certain cases, the public was more supportive of executive actions taken pursuant to delegated statutory authority – zone 1 of

Jackson's *Youngstown* typology in which presidential power should be at its zenith – than when an action was framed as being taken against the express will of Congress, placing it in zone 3 where presidential power is at its nadir. These legal effects were strongest when subjects assessed hypothetical cases of executive action by a future president or actions taken by temporally remote presidents. By contrast, in experiments examining unilateral action attributed to Presidents Biden and Trump, legal frames had no influence on public opinion.

The sheer volume of accumulated law and the breadth of legislative authority delegated to the executive over time (Kagan 2001) gives presidents plausible statutory pretexts for a wide range of executive actions. We find little evidence that presidents, particularly in the highly polarized contemporary polity, can exploit this to manufacture public support for their unilateral gambits by pointing to some statutory delegation. However, the converse is also true. We find little evidence that informing subjects that presidents are acting in direct defiance of Congress – the most constitutionally troubling category of executive actions – significantly reduced public support for executive action.

Partisanship was consistently a major predictor of support for executive action, and its explanatory power only increased as vignettes moved from hypothetical to real-world cases and from evaluations of more temporally distant to contemporary presidents. Individuals with the strongest commitment to the rule of law were consistently less supportive of executive action, all else equal (Reeves and Rogowski 2016). However, the strength of this commitment only modestly moderated the influence of the legal framing treatments.

This raises interesting questions about what exactly the rule of law battery is capturing. Individuals who score highly on this battery are clearly less supportive of unilateral executive action, even after controlling for partisanship and other political factors. However, this

opposition is not mollified by information showing the firm legal foundation underlying an executive action, nor is it exacerbated by information that the action rests on the shakiest legal footing. Future research is needed to better understand the mechanisms underlying this strong association.

That the legal foundations of an executive action have only a limited direct influence on public support for unilateralism does not mean they do not have a significant indirect impact. For example, questions of legality provide valuable and high-profile fodder for would-be institutional critics. Debates over the legality or constitutionality of executive actions are inherently newsworthy (Bennett 1990) and fit nicely into standard media frames (Boydston et al. 2013). Moreover, legal arguments can also allow some would-be institutional critics to challenge unilateral actions that they might prefer not to criticize solely on policy grounds. This institutional criticism and media coverage of it, in turn, may significantly erode support for executive action (Christenson and Kriner 2020). However, absent this political contestation, our results suggest that the public is unlikely to sanction presidents for acting unilaterally on shaky legal foundations or to rally behind actions that rest on a strong legal basis. Law and institutional resistance may interact to influence public opinion and the political costs presidents risk by acting unilaterally. But a legally fueled popular check is unlikely to arise spontaneously.

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