

Mayer, Kenneth R. *With the Stroke of a Pen: Executive Orders and Presidential Power*. Princeton, NJ: Princeton University Press, 2001. Pp. xii, 293, \$39.95 hardcover, \$19.95 paperback.

This is one of the most important books on the presidency that has come out in the last ten years. Its specific focus is on presidential unilateral action. Unlike many books on the presidency, it focuses on the institutional rather than personal sources of presidential power. Mayer argues that the legal foundation of the presidency—the Constitution, delegated statutory authority, and inherent powers—is the source of this important presidential power and our focus on the personal president has led us to overlook it.

Mayer's point of departure is Richard Neustadt's *Presidential Power* (1960). Neustadt famously argued that modern presidents are weak and their ability to persuade or bargain is the key to understanding presidential power, not an understanding of the president's formal powers. Mayer's most potent theoretical argument is that executive orders are an instance of presidential power that occurs independent of the need to persuade or bargain.

Mayer's book does a lot more than take on Neustadt. It is a general treatise on presidential unilateral action, its importance, and the contours of its use. Mayer's book explains the legal foundation of presidential unilateral action, analyzes patterns of use, and provides detailed historical analyses of presidential attempts to use executive orders to change their institutional environment.

This book has many strengths. It does an excellent job of explaining the importance of unilateral presidential action and the advantages presidents have in this arena. He begins the book by laying out a neat case for the significance of unilateral presidential action. He has done his homework, knows his cases, and can provide numerous examples for each point he wants to make.

His discussion of the legal basis and background for presidential orders is the best I have seen. He describes how presidents rely on constitutional authority and delegated statutory authority to justify their unilateral actions. He also does a nice job explaining how presidents use the ambiguity of both constitutional and statutory provisions to their advantage.

This is where Mayer's theoretical angle comes into play. He does an excellent job of taking the theoretical insights of rational choice presidency scholars like Terry Moe and applies them in a concrete, data rich case. He shows how the institutional design of the American separation of powers system gives presidents institutional power deriving from their ability to act first, take advantage of collective action problems in Congress, and use statutory and constitutional ambiguity to their advantage. It is a great example of clear, theory-driven presidential research.

Mayer bolsters his argument with case study chapters on how presidents have used executive orders to augment their institutional resources, influence foreign policy, and respond to pressures for wider civil rights. They demonstrate in concrete detail the theoretical arguments Mayer makes. All three case chapters show how the president's ability to act first and force Congress to respond gives presidents substantial power. The chapter on the institutional presidency illustrates how presidents can change their institutional environment with executive orders. Unlike Neustadt, Mayer does not take

the bargaining environment as static. Rather, he shows how presidents can use unilateral action to enhance their strategic position by building institutions that accentuate existing presidential advantages like their informational asymmetries or status as chief executive. The chapter on foreign affairs shows how presidents have increased latitude to use unilateral action in this arena. The chapter on civil rights shows the unique position presidents have in our system as an outlet for democratic pressures. Presidents were able to act when Congress could not.

What I would have liked to have seen from Mayer is a lengthier discussion of *when* presidents will use unilateral action. While Mayer does a good job describing the advantages unilateral action provides, he does not go into great detail explaining why presidents use unilateral action in some circumstances and not in others. For example, he mentions instances when presidents have issued executive orders to bypass an opposition majority in divided government but also notes that the numbers of executive orders goes down during these periods. Why? There is no systematic explanation for when presidents will use an executive order strategy. Of course, modern presidents want to make policy through legislation *and* administrative action. I would have liked him to tease out in more detail the relationship between legislating and the patterns of unilateral action.

I would also have liked to have seen Mayer tackle more directly the possibility that presidential unilateral action simply reflects the will of Congress. For example, are all of the war and emergency agencies created by executive action different from what Congress would have created through legislation? Perhaps, but there may be a range of administrative structures acceptable to Congress for the prosecution of the war. To say that the president created these structures tells us very little about presidential power. Presidential power is only really being exercised if presidential action occurs in opposition to congressional preferences or differs from what Congress would do if they did it on their own. In his defense, Mayer does a very good job in case discussion of showing how presidents responded on their own apart from Congress and how their responses were different than those Congress would authorize. It would have been helpful in a general way, however, if Mayer had clarified when presidential unilateral action is a true exercise of power and when the issuance of executive orders is a vehicle for congressional preferences. In absence of such a discussion we may overestimate the importance of executive orders and other presidential directives.

In total, this book is an impressive accomplishment. It stands as the best book to date on this important source of presidential power. I recommend this book to a wide audience. It is a must read for presidency scholars. It is also ideal for the classroom since it discusses an important topic, has a clear theoretical argument, and is accessible with rich historical case examples. I recommend it highly.

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