

Executing the Constitution: Putting the President Back into the Constitution. Edited by Christopher S. Kelley. Albany: State University of New York Press, 2006. 256p. \$75.00 cloth, \$24.95 paper.

Presidents in Culture: The Meaning of Presidential Communication. By David Michael Ryfe. New York: Peter Lang, 2005. 249p. \$29.95.

Executive Orders and the Modern Presidency: Legislating From the Oval Office. By Adam L. Warber. Boulder, CO: Lynne Rienner, 2006. 175p. \$49.95.
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— Kenneth Mayer, *University of Wisconsin*

These three books on the presidency appear at first glance to form an odd trio. Two (Adam Warber and Christopher Kelley) deal with the formal legitimacy of presidential action and claims of explicit authority. The third (David Michael Ryfe) is about the rhetoric of presidential communication. The research approaches differ as well: One is mostly quantitative (Warber), one uses a public law approach (Kelley), and one is from a different discipline altogether, communications (Ryfe). Taken together, though, the books offer a lesson in the importance of methodological pluralism and demonstrate a range of approaches. If there is one theme that ties them together, it is the recognition that presidents use the language of formal authority to justify their actions and mobilize public support.

Even though the emerging literature on formal presidential power challenges the dominance of Richard E. Neustadt's public presidency, it does not repudiate Neustadt's insights. Presidents may, it turns out, be able to do more with their formal legal authority than we had recognized. But that does not negate the importance of public legitimacy. Neustadt continues to exert a considerable hold on the subfield; all of these books tip their hats in his direction.

Warber analyzes executive orders as a policy tool, and strives to place their use squarely within an explicit theory of unilateral presidential power. There is a growing literature on unilateral presidential powers, whether executive orders, proclamations, signing statements, or executive agreements. In the last decade, political scientists have shown a renewed interest in the constitutional aspects of presidential power.

What sets Warber's book apart from the literature is the scope of the analysis. To make his case, Warber has carried out a content analysis of every published executive order issued between 1936 and 2001. This represents an astonishing amount of work. It is the first complete study of the entire series of executive orders.

Warber distinguishes between several types of executive orders, separating them by function: policy orders, which create or implement a substantive program or policy; symbolic orders, which are largely ceremonial; and

routine orders, which address specific and relatively unimportant administrative tasks. He is most interested in policy orders because as he defines them, they are axiomatically important.

Many of the findings are important: Warber identifies a significant pattern of partisan revision, in which presidents are more likely to change or revoke policy orders when they were issued by presidents from the other party (pp. 58–59); he finds no evidence that presidents fall back on executive orders when they face a scandal (pp. 69–70); and he concludes that presidents issue fewer policy-oriented orders during election years (pp. 73–75). He finds, consistent with earlier work, that Congress is mostly passive in the face of unilateral powers (p. 130).

The major challenge to the literature is his conclusion that presidents have not become more dependent on executive orders over time: “[T]he overall finding of the book suggests that presidents have not expanded their power with this unilateral tool across the modern presidency” (p. 128).

If there is a weakness in the book, it is that Warber pushes too far in his criticism of the existing literature on executive orders. He claims, for example, that the literature has failed to provide strong empirical support for the use of executive orders, and that there is no coherent theory that explains why presidents use them (p. 25). He also asserts that “the literature has not analyzed whether the Supreme Court has been active or passive in challenging presidential authority” to issue executive orders (p. 47). These criticisms overstate the case considerably. Previous work has carefully laid out a theoretical foundation for order issuance, and Glendon Schubert noted the fact of Supreme Court deference to executive action 40 years ago. Warber is justified in arguing that we do not fully understand the dynamics of executive order issuance—the logic of order issuance cannot account for the fact the presidents tend to issue fewer orders under divided government—and that there is more to the story than just the number of orders issued in any particular year (p. 128).

In any case, the empirical findings stand on their own. Warber's book is an innovative approach that improves our understanding of executive orders. It is a significant addition to the literature.

Kelley's edited volume brings together 11 chapters on a range of constitutional issues: the possibilities and problems of the public law approach to presidential power (Richard Pious); the role of presidential initiatives in expanding executive power (Ryan Barrilleaux); executive orders (Graham Dodds); signing statements (Kelley); executive privilege (Mark Rozell); the protective return pocket veto (Robert Spitzer); the relationship between presidential rhetoric and constitutional power (Kevan Yenerall); the Rehnquist Court and federalism (George Thomas); relations with the judicial branch (Kevin McMahon); war

powers (Michael Cairo); and Bill Clinton's policy toward Cuba and the Helms-Burton law (Patrick J. Haney, Maureen P. Haney, and Walt Vanderbush).

The chapters cover a broad range. Pious examines the possibilities in melding the traditional elements of presidency studies in political science with the public law approach. He advocates an interdisciplinary combination with public law, from behavioral techniques and rational choice to historical analysis. "Indeed," he concludes, "all important issues in U.S. public life, particularly issues of war and peace, diplomacy and international economic relations, and internal security, have questions of constitutional law and executive prerogative at their core" (p. 27). Barrilleaux coins the term "venture constitutionalism" to describe the pressure on presidents to push the boundaries of their power. Presidents have an incentive to push—the demands of the job require it—but the strategy is risky, since failure can reduce future powers. Kelley critiques the practice of signing statements—where presidents sign a law, but add to the record a statement about how the executive branch will interpret the law. The purposes are to add to the legislative record and influence judicial interpretation of what the statutory language means, and to shape executive branch implementation. Some recent scholarship by Eric Posner and Curtis Black find no danger in signing statements, but Kelley disagrees. The signing statement "enables the president to win battles that he may not be able to win in the normal course of the legislative process" (p. 86). Cairo notes that both Clinton and Bush cited international treaty obligations to justify using military force without congressional authorization, and views congressional and public passivity as a "triumph of the imperial presidency" (p. 215). The theme of presidential dominance runs through every chapter.

Yenerall's chapter on the rhetorical presidency is a useful segue to the third book in this set. He analyzes presidential communications strategies from two perspectives: Clinton's Civil Rights initiatives in the 1990s and George W. Bush's efforts after 9/11. Yenerall argues that rhetorical strategies are rooted in the president's constitutional responsibilities. Key examples of speechmaking, from Franklin Roosevelt's fireside chats to Ronald Reagan's overt 1981 budget appeal, "stand as vivid examples of rhetoric directly informed by institutional responsibilities" (p. 135). Yenerall critiques the view that all rhetoric is "political driven gobbledygook far removed from the framers' intent" (p. 148), and sees communications strategies as crucial to presidents' ability to carry out their duties.

Ryfe's book investigates this phenomenon in more detail, and argues that most presidential scholars and students of rhetoric misunderstand presidential communication. Political scientists, particularly those operating from the Neustadtian paradigm, see presidential communication as a bargaining tool used to influence other actors. Rhetoricians tend to analyze particular speeches, with the goal of

understanding whether the speech helped a president achieve his short-term goals. To Ryfe, both groups miss the point. Acknowledging the growing political science literature that finds no effect of presidential speechmaking or public appeals, he suggests that presidents speak not because they want to but because they *have* to. Going public is a "constitutive rule" that defines the expectations of office (p. 14). It is, put more emphatically, just what presidents do, and there is no need for specific motivation or goal-seeking behavior.

Ryfe's approach is necessarily general, with connections to multiple literatures (he refers throughout the book to the work of Jürgen Habermas and Clifford Geertz). The risk of analyzing presidential communication as a cultural phenomenon is that it is all too easy to write as a literary critic. Again, to a rhetorician this is not a flaw, as the choice of language and style is itself the key variable.

The key empirical question Ryfe poses is the seeming contradiction between the effects of presidential public appeals (none, he concludes) and the amount of time and effort presidents devote to the task (huge). How can this be reconciled, assuming that presidents and their staffs are intelligent and rational? His solution—going public is a constitutive rule that defines the expectations of office—is plausible enough. He explains presidential communications as a function of the broad social and cultural contexts in which presidents operate. Theodore Roosevelt and Woodrow Wilson were bound by the parameters of the Progressive era; FDR's fireside chats were a manifestation of the new functions of the mass media; John F. Kennedy and Reagan were informed by the modern need for "experts" in politics.

Ryfe makes several empirical claims about presidential communications strategies, although some of his methodological choices reflect the disciplinary gap between the study of rhetoric and empirical social science. To assess the impact of FDR's fireside chats, for example, he analyzes letters that the public wrote to the president after each of the first eight chats (between 27 and 61 letters for each speech, 380 in total). He recognizes these letters as self-selected and likely unrepresentative of broader public opinion, but justifies his analysis because "the letters offer the only evidence of its kind of the ordinary person's sensibilities toward the chats." For a rhetorician, this is a defensible strategy, because it is the language itself that is the issue, not the representativeness of the sample.

For political scientists, however, the issue is whether this sample tells us anything about the population, rather than just the letter writers. Ryfe does not make clear how he selected these letters—he refers to them as a "sample," suggesting that they were drawn from a much larger population—and there is, of course, almost no information available about the people who wrote them. Still, he draws strong conclusions, identifying in the letters

specific lessons about how individuals saw themselves in relation to the electorate; how the letters reflected trends in the mass media; how people reacted to the style of the chats rather than the substance.

These methodological issues aside, Ryfe has written a provocative and interesting analysis of presidential communication strategies. It is original in its approach, and many political scientists will find it a refreshing change. The major criticism is that the empirical sections do not always meet the expectations of contemporary political science methodology. To a rhetorician this is not a flaw—indeed, it might be a virtue.

Together, these three books paint a complex portrait of presidential power and behavior. They suggest a continued vibrancy in the subfield, which remains open to a broad range of approaches.

Charitable Choice at Work: Evaluating Faith-Based Job Programs in the States. By Sheila Seuss Kennedy and Wolfgang Bielefeld. Washington, DC: Georgetown University Press, 2006. 248p. \$44.95 cloth, \$26.95 paper.

Faith, Hope, and Jobs: Welfare-to-Work in Los Angeles. By Stephen V. Monsma and J. Christopher Soper. Washington, DC: Georgetown University Press, 2006. 240p. \$44.95 cloth, \$26.95 paper.
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— Jo Renee Formicola, *Seton Hall University*

In 1996, the Republican-controlled Congress passed the Personal Responsibility and Work Opportunity Act, a law designed to reform the prevailing welfare system. Although Section 104, known as the Charitable Choice Provision, allowed religious and faith-based organizations to compete for federal funding for social services, little was done to create the specific means by which this could be implemented. No surprise, then, that one of the first actions of the new President, George W. Bush, was to sign two Executive Orders in 2001 that established such a mechanism: the Faith-Based Initiative.

The president's directives instituted the White House Office of Faith-Based and Community Initiatives and similar centers at the Departments of Justice, Housing and Urban Development, Labor, Education, and Health and Human Services. The Faith-Based Initiative, then, represented a major policy shift: a way for the president to carry out "compassionate conservatism." It was intended to level the playing field for religious organizations that would now be encouraged to apply for government contracts to pay for the charitable social services that they could provide.

The Congress attempted to institutionalize the Faith-Based Initiative for the next two years through the introduction of the Community Solutions Act in the House and the CARE Act in the Senate, but both bills died on the floors of their respective chambers. Undeterred, the

president continued to establish faith-based centers by separate Executive Orders in the Department of Agriculture, the Agency for International Development, and the Federal Emergency Management Agency. In 2002, he established the USA Freedom Corps, a White House agency that brought together the Corporation for National and Community Service, AmeriCorps, the Senior Corps, the Peace Corps, and the White House Office of Faith-Based and Community Initiatives. Thus, as the Faith-Based Initiative expanded into an increasing number of government agencies, state offices were created as well to find the means to qualify for funds and to experiment with ways to implement the policy. Thus, a major bureaucracy emerged and billions of federal dollars were expended for the initiative without explicit congressional support and constitutional concerns.

The works of Sheila Seuss Kennedy and Wolfgang Bielefeld and of Stephen Monsma and J. Christopher Soper are critical attempts to evaluate the effectiveness of faith-based organizations (FBOs) that have been receiving federal funding over the last six years, and both books make policy recommendations about that support. Kennedy and Bielefeld look at six research questions. Are there differences in implementing the faith-based initiative in different states? What are the distinctive characteristics of FBOs? What organizational characteristics and management capacities correlate with effectiveness? What are the public management challenges of faith-based contracting? Is there a difference in performance efficacy between faith-based and secular services? How accountable are public managers and contractors?

The tasks of the Kennedy and Bielefeld study were formidable. They reported that it was difficult to find reliable data, to merge legal and social science methodologies, and to define a "faith-based organization." Additionally, they recognized the need to focus on limited aspects of the Faith-Based Initiative; thus, their investigation covered only job training and placement agencies. Finally, the authors realized that they could only study these two areas of funding in a sample of states. Therefore, they chose Massachusetts, Indiana and North Carolina on the basis of their diverse political cultures, religions, and demographics.

Their findings are mixed. Kennedy and Bielefeld's data show that implementation approaches for the Faith-Based Initiative differed from state to state due to political culture, state-level politics, and fiscal difficulties. Within that context, the authors were able to conclude that very little has changed on the ground with regard to job training and placement agencies. The expected "armies of compassion," or volunteers who would provide such social services that the president envisioned, never really materialized. What they were able to conclude, however, is that "faith based and secular providers placed clients in jobs at essentially the same rates, and that those jobs paid similar hourly