

The Diversity of Unilateral Presidential Orders

Calling the Shots: The President, Executive Orders, and Public Policy. By Daniel P. Gitterman. Washington, DC: Brookings Institution Press, 2017. 293 pp.

The Dual Executive: Unilateral Orders in a Separated and Shared Power System. By Michelle Belco and Brandon Rottinghaus. Stanford, CA: Stanford University Press, 2017. 239 pp.

Awareness of the power of unilateral presidential directives such as executive orders has been growing for a couple of decades among academics and the general public. Two recent volumes bring the total number of book-length treatments of unilateral directives to double digits and add important nuances to our understanding of executive orders by focusing on types of directives that are often underappreciated.

In *Calling the Shots*, Daniel Gitterman portrays the president as the chief executive officer (CEO) of the vast federal bureaucracy and contends that the president is essentially the purchaser in chief, employer in chief, and payer in chief. In these capacities, the president has enormous power, via executive orders and memoranda, to control people and policies that reach beyond the government to society at large; with these roles and unilateral directives, “the president calls the shots” (4).

As Gitterman points out, “[T]he federal government is the world’s largest buyer of goods and services” (10). Policies that govern federal procurement can therefore have a broad impact, and many of these policies are enacted via executive orders. Such directives have addressed issues such as labor–management relations, the role of small businesses, civil rights, transparency, the minimum wage, and immigration enforcement. These orders are increasingly important, as Gitterman argues that “each president has used the power of the purchaser more aggressively than his predecessor” (37).

Executive orders also empower the president as employer in chief, as federal employees constitute nearly three percent of the entire U.S. workforce (13). Presidents have used orders for these employees (and for the millions of their family members who receive benefits) to influence workers elsewhere. Presidential directives on employment (including model personnel practices and ethical guidelines) have addressed civil service qualifications; unions; employee health and safety; drug testing; family leave; opportunities for veterans and people with disabilities; and discrimination on the basis of race, sex, and sexual orientation.

The third role that Gitterman explores is the president as payer in chief: “as the CEO of the largest payer for health care services in the United States, presidents exercise political control over federal health program rules to influence the coverage, cost, and quality of health care” (16). Federal health programs account for nearly a third of all U.S. health care expenditures, so policies that affect them have a large impact. In this context, presidents have used executive orders to dictate the terms and conditions of health care arrangements and also to influence policies about abortion, lesbian/gay/bisexual/transgender/queer interests, patient rights, and veterans’ care.

Gitterman’s analysis demonstrates how presidents have used unilateral directives to leverage their control of the government to influence broader policies. It also explicitly affirms and develops several existing scholarly views: the capacity for unilateral action gives the president an advantage vis-à-vis Congress in policy battles, presidents use executive orders and memoranda strategically for both political and policy purposes, and presidents use executive action to control administrative agencies. The book is clear, persuasive, and well documented. By drawing attention to the respects in which the president is in charge of much of the federal government’s routine activities, it enhances scholarly appreciation of the power that executive orders afford presidents.

In *The Dual Executive*, Michelle Belco and Brandon Rottinghaus seek to remind readers who are aware of the power of unilateral orders that Congress still matters. Specifically, they point out that Congress often enables and even encourages unilateral presidential directives, and most unilateral orders are issued to facilitate congressional purposes, not to thwart them. The authors’ analysis proceeds from two basic observations. First, the president can be both a leader and clerk, both combative and cooperative, per the dual nature of the executive. Second, just as the executive is inherently complex, so are its unilateral actions. Indeed, “all unilateral orders are not alike” (32); many actually indicate that the president is going along, not going it alone.

By way of systematically examining the diversity of unilateral orders, Belco and Rottinghaus explore their use in three stages of the policy-making process, which they call direct action, the legislative process, and executing law. In each of these stages, the authors contend that unilateral orders enable presidents to act either as assertive independents who command the government or as administrative clerks who facilitate routine governance. Thus, unilateral orders that are issued before Congress acts may carry out everyday functions or reorder Congress’ agenda, orders issued during the legislative process may support or preempt a bill, and orders issued after a law is passed may faithfully implement it or adapt it. In each of these respects, the authors find that unilateral orders are usually not the bold imposition of a contrarian executive.

The Dual Executive focuses on executive orders and proclamations, with some attention also devoted to signing statements and statements of administrative policy. It utilizes quantitative analysis (there are dozens of tables and figures) but also discusses prominent examples, and its analysis runs from Franklin Roosevelt to the Obama presidency, with an emphasis on Gerald Ford to George W. Bush. One of the more interesting scholarly contributions of the book is its attention to the ostensible justifications that presidents use in issuing unilateral orders. As the authors demonstrate, circumstances

influence whether presidents cite statutory authority or their own constitutional authority (or both) in issuing directives.

The main thrust of the book is that many previous studies have overemphasized the autocratic and oppositional nature of unilateral presidential directives; “when studies aggregate all unilateral orders, they may undercount the degree to which a president works with Congress, making the act of issuing an order a shared, rather than individual action” (81). Therefore, the robust use of unilateral directives is itself no reason for “apocryphal warnings about the danger of centralized presidential power” (175). Instead, the authors’ analysis of the diverse purposes for which presidents use unilateral orders indicates that “the balance of power remains intact” (179). Overall, the book is a valuable corrective to accounts that overestimate the dangers of unilateral executive action.

Thus, these two books, through Gitterman’s exploration of the president as a CEO and Belco and Rottinghaus’s evidence of a president as a frequent collaborator with Congress, encourage scholars to be attentive to the diversity of unilateral orders, as the politics and purposes of unilateral presidential orders vary greatly.

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