

Book Reviews

The Executive Unbound: After the Madisonian Republic by Eric A. Posner and Adrian Vermeule. New York, Oxford University Press, 2011. 256 pp. \$29.95.

In recent years, advocates of broad executive power have made bold claims. George W. Bush administration attorneys asserted that Congress could not limit presidential authority to wage pre-emptive war or authorize torture. Barack Obama administration attorneys concluded that the President could authorize military action in Libya without congressional approval.

Whatever their merits, these were intended to be legal arguments about the scope of presidential power. In their book, Eric Posner and Adrian Vermeule suggest that we can dispense with such niceties because “law does little to constrain the modern executive” (p. 15). Citing Weimar and Nazi jurist Carl Schmitt, they assert that it is quixotic to believe that the modern executive can be constrained by James Madison’s separation-of-powers framework (what the authors call “liberal legalism”). Instead of operating within legal bounds, presidents act unilaterally to do what they think is necessary, especially in responding to crisis. In turn, Congress and the courts have proven incapable of reining in executive power (pp. 33, 42).

For Posner and Vermeule, legally unconstrained executive power is not a source of anxiety, it is something to be embraced. Their goal is to put the notion of an executive operating outside of the rule of law in a better light (p. 16).

None of this means, the authors say, that the executive is completely unchecked—political constraints like elections (p. 12) and the president’s “interest in maintaining his credibility” (p. 133) take the place of legal constraints on the executive.

A number of questions arise: can a bright line be drawn between “legal” and “political” constraints? If the rule of law does not constrain the president, why are arguments over the scope of presidential power, even non-judicial arguments, framed in legal terms? (Consider debate over the use of military force in Libya.) Has anyone told the Supreme Court that it is passé to keep insisting that the separation of powers *does* limit the president? The authors offer some responses, but frequently fail to engage with specific examples. It is ironic for a book that begins by taking liberal legalism to task for being disconnected from reality to base so much of its discussion on abstractions.

There are two especially central problems that the authors cannot overcome. First, the authors' tendency to favor abstractions over specifics leads them to overlook or downplay evidence that executive power has been limited by the rule of law. The Supreme Court blocked the Harry Truman administration from seizing steel factories during the Korean War (the Truman administration made essentially the same argument to the District Court about executive power that the authors endorse); the Court and Congress used legal allegations and conclusions to effectively force Richard Nixon out of office; the Court compelled Bill Clinton to sit for a deposition. The authors do not precisely date the alleged demise of the rule of law, but even more-recent examples of the rule of law's continued relevance exist. In 2004, Department of Justice attorneys forced the George W. Bush administration to modify a secret surveillance program after the attorneys, who believed the program was illegal, threatened to resign.

In addition, the authors fail to identify any specific examples showing how the political checks they tout have actually succeeded in limiting executive power. In one dizzying episode, they conclude that the main political "check" they offer, the president's interest in credibility, will actually operate to increase executive power: "The very point of demonstrating credibility is to encourage voters and legislators to *increase the discretionary authority of the executive*, where all will be made better off by doing so" (p. 141, emphasis added).

This is a revealing statement. The authors seem more interested in making the case for unfettered executive power than in identifying real limits. The authors conclude by dismissing critics of legally unrestrained executive power as "tyrannophobes" (p. 176–205) who overstate the possibility of dictatorship in the United States. It is true that the United States has never had a Hitler or a Stalin, but there are multiple examples of presidential power being used to infringe on individual rights—either when presidents acted alone or with support from the other branches of government. Given American history, it seems a bit Panglossian to dismiss concerns about the dangers of excessive executive power as blithely as the authors do.

CHRIS EDELSON
American University

American Public Opinion and Health Care by Robert J. Blendon, Mollyann Brodie, John M. Benson, and Drew E. Altman. Washington, DC, CQ Press, 2011. 530 pp. \$135.00.

The authors and their able chapter collaborators, Claudia Deane, Tami Buhr, Elizabeth C. Hamel, John M. Connelly, Caroline S. Gutierrez, Tara Sussman Oakman, Gillian K. Steelfisher, Melissa J. Herrmann, Sara Bleich, Kathleen J. Weldon, and Kalahn Taylor-Clark have provided an enormous service to students of public opinion in general and anyone interested in the public's familiarity with, and perceptions and attitudes toward a comprehensive range of health care