

False Front

The Failed Promise of Presidential Power in a Polarized Age

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1

Presidential Power in a Polarized Age

When presidents sign orders, they put on a show. They invite cameras to ceremonies and issue press releases. They pose for photos with activists, politicians, and special interests. Today, these “executive actions” are normal in the United States, and most of the rest of the world. Import taxes, the legal status of nearly one million immigrants, the public funding of abortion, carbon emissions, bailouts for farmers, border wall construction, and other life-altering policies all seem to be at the whims of the president. That fact is missing from what we teach kids about democracy. You will not find the appropriate scope of executive actions in the text of the Constitution, and remarkably little about how they happen enumerated by any law. So what explains these actions, and what do they tell us about the American presidency, or American democracy, in general?

This book is my answer. Start with two facts. First, despite relentless fighting among the major political parties in the US, executive action is increasingly embraced by both. Democrats or Republicans—politicians, pundits, or voters—all tend to think presidents should act alone if Congress is in the way, or not doing its job (whatever that means). For people who want to be president, this is the literal promise of their oath of office: to change policy to the extent of their ability—not to the extent of their power.¹

It is no surprise, then, scholars are interested in this “unilateral” presidential power. They have counted it, said it is more important than ever, and jumped to explain it. Next to the rise of political polarization and the decrease in Congress’ productivity, their explanations confirm a folk wisdom. Congress is broken, so the president steps in to get things done. This is the first fact. It is well-known: executive action is on the rise, and it is more important than ever.

The second fact is less known. After some of these actions, *almost nothing happens*. No policies change. No status quo is challenged. Commissions are

¹The presidential oath of office demands presidents swear to “preserve, protect, and defend the Constitution” to the best of their ability. Abraham Lincoln interpreted this as enabling “all indispensable means” of policymaking.

formed, non-binding and inconsequential reports issued. Bureaucrats make minor changes to what they had planned to do, but even those might be superficial or symbolic. In stunning contrast to the flurry of news coverage and the Oval Office photo op, the government (and everyone else) goes on doing what they were doing before the order—with whatever problem the order was supposed to solve unaddressed.

Our politics hides this fact, but it is obvious once you start looking. President Obama, for example, signed an order to fund gun violence research. Almost no research was funded.² He also signed orders to close the prison at Guantanamo Bay. Before the ink was dry, most of the prisoners held there had already been transferred or released. Over a decade later, it is still open. President Trump signed an order to release military equipment to police departments around the country. Almost none of it was given out. President George H.W. Bush signed an order protecting Giant Sequoias. Logging continued. Examples are everywhere. I brought these up because presidents are supposed to have authority over grants, terrorism, military hardware, and public land. They are exactly the kind of cases that fit the stories we tell about presidents and their power to act alone. They should have been wins—and they were, but of a different kind. The moment they were signed, they were *political* wins, even if the *policy* win they proposed never materialized.

What made them *policy* losses, then? If you asked people who study this, they would tell you a few stories. Perhaps these actions failed because they required Congress to fund them. Maybe a judge stepped in to overturn them. Most overlooked is that presidents have to get bureaucrats to cooperate, a massive task that vexes the best managers. All of this can stop real change in its tracks. Each of these obstructions is the conventional wisdom saying failure is an error or an exception—not the rule.

This book argues something different, based on a basic, often overlooked idea. Often, no change happens because the action itself had symbolic, political value. It was packaged and enacted to be symbolically effective, not substantive. The President did not order anyone to do anything. They asked for advice, set out broad goals, created unfunded suggestions, or implied that they would like something done, without the real authority to do it. Or they guaranteed their order would be challenged, watered down, or moderated. But, beyond any failure to change the way government operated, there was a different kind of success. The president made their position clear. They showed some special interest or voting bloc they cared. Or, in their own minds, they made history—the president who went first, who set the stage, who laid the groundwork for a sea change yet unknown.

Presidents go it alone more than ever and their action is apparently indispensable. Despite that, many of their actions fail, are totally empty, or are oth-

²It eventually was in 2020, after several acts of Congress. A report on the Consolidated Appropriations Act of 2018 (P.L. 115-141) had to clarify funds could be used for gun violence research, then Congress had to appropriate funds for that purpose (P.L. 116-94). This is a theme: most concrete and effectual policy change requires changes to statutes.

erwise ineffectual. This book is about how both those things can be true. I show evidence executive action is both prominent in contemporary politics, and that it often has little substance behind it. More importantly, I show it is no accident. Presidents' incentives and strategies led us here. Presidents are not fakes or hucksters who set out to fool the American public for fun. They are politicians who respond to incentives. These have led to a new era of presidential politics, one in which the Office is increasingly designed to help its occupant *appear* to govern. Executive action is the critical work product.

Presidents take action—even when it does nothing to affect policy—because our political system is not designed to let presidents solve major policy problems. But it lays these problems at their doorstep. There is no elected official on Earth better equipped to attract attention by appearing to govern. For the purposes of their relationship with a public focused elsewhere, and with interest groups concerned with their continued survival, appearances are often enough.

Unilateral action helps presidents take credit. It gives the impression of action, but carries little risk of blame if the results are less than advertised. That is because the public does not hold them responsible for those results. The public does not pay attention to most policy change, or retain information about who changed it. This is not their fault. Both news organizations and even the opposition party give presidents credit for actions—even those that do nothing. Finding out whether an action was impactful is hard. It is difficult for everyone, even experts, to know whether a symbolic win is a real, policy win. I do not know most of the time, and I am writing a book about it.

This is why presidential power is a *false front*. The power to credit claim, to get attention by “acting alone” is the best way to understand what the office of the presidency gives the politician who holds it. Presidents are still policymakers who push the boundaries of their power and build institutions that help them do it. But, sometimes, they create what amounts to a facade, one that suits their political goals. Those goals are served by appearing to do something, by placating favored interests, and generally, by playing into contemporary Americans' expectations that a President can and should solve huge problems in American life.

If you care about having a well-functioning democracy, it is important to know presidents spend a lot of time creating the impression of policy impact. If you share a few basic values—like “politicians should spend time on substance, not showmanship” and “it is better to live in a democracy than an autocracy”—false front actions are damaging. Presidents have limited time and resources. Because of their incentives, they spend their energy on things that may have little impact. And the trade-off is often zero-sum. Their effort is wasted because potential accomplishments are left on the table. In other words, they miss out on net improvements in areas where they do have the authority and opportunity to act. Most often, these are tasks that are complicated, boring, and difficult to turn into a public relations win.

But there are worse nightmares than underperformance. Presidents' actions have a longer term, corrosive effect on democracy. By over-promising and fail-

ing to deliver, presidents serve short term goals while further undermining public trust in government, and reinforcing norms of governing common in present-day China, Russia, or Venezuela. Playing a dictator for short term political gain has consequences.

Watchers of American politics have always worried about what presidents do alone. The anti-federalists, today's opposition party politicians, states-righters, and some political conservatives lamented the rise of executive power generally, and see the concentration of power in the President as problematic. The argument in this book implies else: we should also be concerned about what presidents have not done, how they have failed on their own lofty terms, and what this might enable their predecessors to do in the future.

Claims like these should not be taken seriously unless accompanied by logical arguments and credible evidence. Most of this book is dedicated to that: laying out an argument, then documenting presidents' political environment and how they behave. Though the argument itself is agnostic about whether this is a good way for presidents to spend their time, it is impossible to ignore its normative implications. I take them up at the end of the book.

Not everyone will buy this argument. But if nothing else, it will draw attention to something in American politics that is hiding in plain sight. Presidents are both symbolic and substantive policymakers. Their symbolic behavior is largely ignored or thought of as unimportant. But the symbolic demands our attention, because it is key to understanding presidential power, and the democracy it is supposed to serve.

1.1 Easy as Shouting

Ju Hong had an idea of what he was going to do when the President came out. Shortly after college at Berkeley, the twenty-four year old immigrant from South Korea started attending protests. He had already been arrested twice—once for sitting in an intersection near San Bernardino Valley College, the other time earlier that year for jumping a barrier to stop Janet Napolitano from becoming head of the University of California. Today, from his place on stage, he can see Napolitano in the audience. She is now two months into a term that would last almost seven years.

They were each there for similar reasons. Hong was part of an emerging community of young immigrants in California opposed to federal immigration policy. The White House invited him to hear President Obama speak, and when one of the event organizers offered him a spot on the rafters behind the President himself, he took it.

While Hong was new to politics, Napolitano was reaching her peak. Once the Attorney General and then Governor of Arizona, politicians talked about her as a potential candidate for president. But after the Obama administration sought out her border-state expertise and nominated her to head the Department of Homeland Security, the prospect dimmed. Managing the huge,