

Tulsa Law Review

Volume 52
Number 3 *Book Review*

Volume 52 | Number 3

Spring 2017

Executive Power: The Springs of Authority and Mandate Rhetoric

Kimberley L. Fletcher

Follow this and additional works at: <https://digitalcommons.law.utulsa.edu/tlr>



Part of the [Law Commons](#)

Recommended Citation

Kimberley L. Fletcher, *Executive Power: The Springs of Authority and Mandate Rhetoric*, 52 Tulsa L. Rev. 453 (2017).

Available at: <https://digitalcommons.law.utulsa.edu/tlr/vol52/iss3/11>

This Book Review is brought to you for free and open access by TU Law Digital Commons. It has been accepted for inclusion in Tulsa Law Review by an authorized editor of TU Law Digital Commons. For more information, please contact megan-donald@utulsa.edu.

EXECUTIVE POWER: THE SPRINGS OF AUTHORITY AND MANDATE RHETORIC

Kimberley L. Fletcher*

SAIKRISHNA PRAKASH, *IMPERIAL FROM THE BEGINNING: THE CONSTITUTION OF THE ORIGINAL EXECUTIVE* (YALE UNIVERSITY PRESS 2015). Pp. 464. HARDCOVER \$45.00.

JULIA AZARI, *DELIVERING THE PEOPLE'S MESSAGE: THE CHANGING POLITICS OF THE PRESIDENTIAL MANDATE* (CORNELL UNIVERSITY PRESS 2014). Pp. 224. HARDCOVER \$39.95.

When the modern president is criticized of wielding executive power without first obtaining congressional approval he defends his choice by invoking historical precedent, constitutional powers, legislative authority, or an electoral mandate. Saikrishna Prakash's *Imperial from the Beginning* and Julia Azari's *Delivering the People's Message* offer two complimentary theories that seek to elucidate the springs of authority. Prakash asserts the wealth of power enjoyed by the contemporary executive was inherent during the founding era when the Constitution was ratified and in the years shortly following, paying particular attention to George Washington's presidency. Azari's book, on the other hand, explores rhetorical mandates, particularly in the modern era. Azari offers an insightful illustration of how mandate rhetoric—or the use of “the election result, the promises of the campaign, or the wishes of the electorate to justify policy action”¹—has buttressed the increasing power of the executive over the past century. At the same time, Azari unearths understated shifts in the executive's relationship to party and ideology. Both Prakash and Azari offer compelling historical works that are worthy of thoughtful scholarly consideration and that aid in a better understanding of how we might view the prerogatives claimed by executives. However, both scholars approach their analyses differently: Prakash remains true to an originalist approach whereas Azari draws on the methodology of American political development (APD).

Prakash provides the first comprehensive study of the original American presidency. He skillfully authors a book for those interested in the executive branch and

* Assistant Professor of Political Science, San Diego State University, San Diego, CA.

1. JULIA R. AZARI, *DELIVERING THE PEOPLE'S MESSAGE* 24 (2014).

for legal historians by drawing upon familiar and obscure sources to reconstruct the recognized powers and functions of the office. He provides an impressive overview of historical theories of presidential power and detailed accounts of how these theories informed constitutional debates during the founding period and the years that followed. His book provides a respectable alternative to the contention that the founders deserted any concept of monarchical power. In fact, through a careful and deliberate evaluation of the “common[.]” “familiar and longstanding narrative” Prakash shows that those who claim the framers could not have created a robust executive is thus inherently wrong.² To support this claim, Prakash presents an even-handed analysis as he scrutinizes the structure of the executive branch (paying particular attention to whether the Constitution does in fact create a unitary executive), the president’s authority to execute the law, the president’s role in foreign affairs and as commander in chief, which extends to his authority during emergencies, and the president’s overall interactions with the legislative branch, the courts, and of course, the states. Ultimately, he shows the Office of the President was monarchical from its inception.³

Ultimately, Prakash’s book confirms Arthur Schlesinger’s seminal work, *The Imperial Presidency*.⁴ Schlesinger’s main argument is that while the “constitutional presidency” is rooted in the Framers’ intent, it is the exodus from the founding principles—the power to initiate wars was granted to Congress, the executive’s role as commander-in-chief was to be read narrowly, and broad claims of executive privilege were ultimately foreign to the Constitution—that Schlesinger coins the term the “imperial presidency.”⁵ However, Prakash’s reading of the Framers of the Constitution is fundamentally at odds with Schlesinger’s notion of the “constitutional presidency.”

Prakash’s central premise pivots on the following constitutional clause: “[t]he executive Power shall be vested in a President of the United States of America.”⁶ According to Prakash, these simple words essentially reallocated to the president an array of pseudo-monarchical powers. To understand this reordering and the effect of granting such grand authority to a single individual, Prakash argues that the solution is found in providing a broader understanding of the two words, “executive power.”⁷ He adds that all supplementary texts involving the president and the Office of the President either illuminate or inhibit this orthodox understanding of unenumerated powers.⁸

Additionally, Prakash notes that to further understand the scope of executive power we must include an analysis of both why particular words or phrases from Article II were excluded and the post-adoption practices of our first U.S. president, President Washington. For example, Prakash argues that the framers’ decision not to

2. SAIKRISHNA PRAKASH, *IMPERIAL FROM THE BEGINNING* 12-13 (2015).

3. *Id.* at 21.

4. ARTHUR M. SCHLESINGER, JR., *THE IMPERIAL PRESIDENCY* (1973).

5. *Id.* at viii-ix.

6. U.S. Const., art. II, § 1, cl. 1.

7. PRAKASH, *supra* note 2, at 84.

8. *Id.* at 85-88.

incorporate the words “herein granted” in defining the powers of the president, as they had in Article I when outlining the powers of Congress, suggests that Article II confers to the president “general” unenumerated power that is limited only to specific qualifications. Thus, “Article II drew upon a tradition of conveying a general power and then qualifying it in various ways.”⁹ For some readers this is quite alarming particularly given the traditional reading of the pervasive Federalist guarantees that the powers of the intended national government were limited to only those enumerated in the Constitution.

In tracing the origins of Article II, Prakash details both the legal traditions underpinning each provision and what people of the time understood by those very provisions. Prakash asserts, as others have suggested, the founding fathers were affected by the recent historical climate. As such, the English crown was a very likely source of influence. In fact, Prakash finds that contrary to popular belief individuals of the time spoke well of the English system.¹⁰ While acknowledging the Declaration of Independence and its response to kingly abuses weighed heavy on the minds of the framers, Prakash asserts, it was the ineptitude of the state governors that were of great concern.¹¹ This ineffectiveness, Prakash notes, was due to state governors who faced term limits, “[encountered] structural features [that] ensured executive subservience[,]” and the lack of the veto power.¹² Despite concerns about excessive presidential power or potential abuses, Prakash maintains the framers were in favor of a strong institution—a more robust executive than any that existed in America prior.¹³ The imperial presidency is therefore not only in line with how the role of the presidency was envisaged at the time of the founding, but also that the constitutional presidency would “be more accountable and more capable of taking swift, energetic action than any of the recent state or continental models.”¹⁴

Building on an array of authoritative sources, Prakash illustrates that many Americans at the time of the founding regarded the Constitution as establishing an office similar to that of a monarchy. Even “clear-eyed foreigners”¹⁵ felt the same way. Additionally, Prakash recounts, delegates were confident in the shoo-in candidate, General George Washington, even referring to him as “His Excellency.”¹⁶ In fact, in Washington, Prakash argues, this is the closest the nation has ever come to having a King, and Washington’s practices—from overseeing the drafting of Article II to his role in the Whisky Rebellion—illuminate the earliest understandings of presidential authority and have informed successive office holders.¹⁷ However, Prakash

9. *Id.* at 81.

10. *See generally id.* at 28-35.

11. *Id.* at 31-33.

12. PRAKASH, *supra* note 2, at 32.

13. *Id.* at 35.

14. *Id.*

15. *Id.* at 21.

16. *Id.* at 45.

17. PRAKASH, *supra* note 2, at 45, 96-97.

reminds the reader, Washington himself assisted in limiting presidential power—stepping down after two terms and launching the tradition of term limits.¹⁸

Amassing an impressive defense, Prakash shows that while the ‘presidency’ by today’s standards does not invoke a monarch, a dictionary of the time did in fact define ‘monarch’ synonymously with ‘president.’ To press this point further, Prakash presents the reader with an extensive discussion of the nature of the presidency to demonstrate that the presidency was formally imperial, even monarchical.¹⁹ It is clear from Prakash’s account that the founding generation believed the presidency was to be monarchical, which is clearly at odds with popular wisdom. As a by-product of the analysis, the reader should conclude that what Prakash actually advances is the notion that the presidency is monarchical except where it is not.

Even though Prakash’s argument is strong, there are some concerns. First, it was quite common for the founding generation to use “imperial” and “monarchy” as simply a label without the inference that Prakash attaches to these phrases. While this is raised in many of the sources Prakash utilizes as evidence of the nature of the presidency, he does not lend much weight to this point. In addition, as Prakash notes himself, Washington was emphatically opposed to a monarch.²⁰ The Guarantee Clause appears to definitively abandon Prakash’s claim; it obliges the legislative body with the duty to “guarantee to every State in this Union a Republican Form of Government.”²¹ It therefore seems inconsistent for a document to include such a clause while at the same time instituting a monarchy at the federal level.

Prakash’s primary work-around is to show simply that the designation of “republic” or “republican form of government” was inexact at the time of ratification.²² He further points out that many republics had monarchical components, and in turn, many monarchies adopted features of republicanism. Given these mixed forms of governments of eighteenth century Europe, it is not incongruent for the framers to adopt something similar, Prakash contends. To further defend this assertion, Prakash notes that even in contemporary times, the Supreme Court has ruled the Guarantee Clause raises nonjusticiable political questions since the meaning of a republican form of government is not judicially discernible.²³ While we might find that “there was an intermediate category of mixed monarchies”—republics also employed some of the powers exercised by monarchs—it is not so much the label we attach, but rather what powers are bestowed on the Office of the Presidency and by extension, on the individual.²⁴ To Prakash’s credit, the powers enjoyed by the president are examined in much of the book.

To determine the scope of executive power, Prakash uses the interpretive method of originalism. For many scholars, this is controversial, but this methodological approach endures in constitutional practice. Most, if not all, originalists would

18. *Id.* at 53.

19. *See generally id.* at 36-62.

20. *Id.* at 44.

21. U.S. Const., art. IV, § 4.

22. *See* PRAKASH, *supra* note 2, at 19; *see generally* Luther v. Borden, 48 U.S. 1 (1849).

23. *Luther*, 48 U.S. at 1.

24. PRAKASH, *supra* note 2, at 25.

contend that turning to public commentary to ascertain the meaning of a piece of constitutional text yields the most supportive proof of the original meaning of said text. Unfortunately, public commentary, particularly at the time of the founding, is often limited or entirely absent—critics have long asserted that textual meaning is thin when it concerns questions of executive power. As such, originalists will turn to obscure or less commonly accepted pieces of evidence, including the principles of legal theories or post-adoption practices and explanations. Such reliance leaves these kinds of studies open to critique.

While this raises some concern to the validity of Prakash's examination and the conclusions drawn, Prakash counters these accusations by arguing that the evidence of original intent is much thicker, which then allows him to competently draw conclusions about the true meaning of "executive power." In fact, Prakash contends that the real problem, as he sees it, is that the originalist record is too voluminous.²⁵ Even though Prakash believes that the true meaning of constitutional phrases lay with eighteenth-century practice, he does not limit his search to just distinguishing between historical patterns of practice of these words and phrases prior to their adoption as legal texts, nor to the ratification period conceptions of the presidency. Rather, he utilizes any eighteenth century practice that he thinks inform original notions of executive power—for example, English common law and post-adoption commentary and practices.²⁶ While Prakash endeavors to present an all-inclusive analysis of constitutional text, one that recalls original notions of the constitutional president, a fuller discussion of the court's role over developmental time, I would argue, is necessary. While Prakash discusses a few notable instances of when the courts were involved, it is rather limited in scope.²⁷

The holistic picture that Prakash attempts to convey to the reader misses another key component. The founding generation's understandings of federalism and the pivotal role federalism played in both the drafting and ratification of the U.S. Constitution is virtually non-existent in Prakash's analysis. This theory informs the entire American Constitution, so it is remiss of Prakash when attempting to assemble a persuasive and credible account of the early understanding of national power—in this case, presidential—not to discuss the position of state's powers. As a substitute, Prakash presents the reader with Hamilton's account following the ratification of the Constitution: "[it] would not consist with the rules of sound construction to consider this enumeration of particular authorities as derogating from the more comprehensive grant in the general clause [of Article II]."²⁸ The concern is accounts, such as

25. *Id.* at 7.

26. *See generally id.* at 28-62.

27. *See generally* RONALD KAHN & KEN I. KERSCH, *THE SUPREME COURT & AMERICAN POLITICAL DEVELOPMENT* (2006). (This edited volume speaks to the Court's role in American political development and is thus, worthy of discussion; in the closing pages, Prakash's view of the courts is rather naive). *See also* PRAKASH, *supra* note 2, at 317 ("[t]he federal judiciary stands as the most efficient check on the executive.").

28. PRAKASH, *supra* note 2, at 71 (citing *THE PAPERS OF ALEXANDER HAMILTON*, June 29, 1793, *Pacificus No. I* (Harold C. Syrett ed., (1969)).

these, after the Constitution was adopted, may or may not actually mirror the consensus prior to the text being adopted. For example, Hamilton himself appears to have switched positions. Prior to adoption, Hamilton seems to take a different position on the theory of limited enumerated power. Hamilton's Federalist Paper No. 32 aligns with the promises made before ratification: "[t]he powers delegated by the proposed Constitution to the federal government are few and defined" whereas "[t]hose which are to remain in the State governments are numerous and indefinite."²⁹ Examples such as this, demonstrate that even those who favored a strong federal government maintained that the allocation of powers of the entire national government would be both "few" and "defined."

While the first few chapters discuss the presidency in broad terms, it is the concluding chapters that are the book's strength as they discuss a multitude of specific controversies relating to presidential power. His examination provides the reader with a sense that he carefully analyzed the merits of each case and relied on a variety of sources he deemed worthy of consideration. However, canvassing the number of controversies addressed in these chapters, it is impracticable for Prakash to devote more than a couple of pages on any of them. The conclusions are well drawn, but since they are presented so briefly, one might wonder if a fuller discussion was given would that yield a different conclusion.

Imperial from the Beginning presents a noticeably contrary portrait of the presidency. Most consider the contemporary executive to have far greater powers and independence in foreign and military affairs than in domestic issues, where Congress's powers are considerable. Whereas the original presidency that Prakash reconstructs is an executive with vast powers in domestic affairs, but relatively little autonomy in foreign and military issues. This portrait challenges the work of John Yoo, who maintains that the Founding Fathers intentionally left the Constitution vague on the limits of executive authority. Turning to the presidency of Washington, for example, Yoo demonstrates the advantages to the nation of a strong executive.³⁰

The original understanding, according to Prakash, is that the commander-in-chief was a widely used title at the time the Constitution was adopted. It referred to nothing more than the commander of a military unit.³¹ For Prakash, this designation simply positioned the individual in the chain of command; it granted no power to allow for any substantive decisions. The legislative body, on the other hand, was granted sweeping powers: the power to declare war; to formulate rules for the government; and to regulate the military, which also included the authority to dictate strategy. This view is in line with many scholars who have argued from this position, and thus, contradicts the use by today's president who frequently relies on the commander-in-chief clause to justify extensive unilateral military power.³²

29. *Id.*; THE FEDERALIST PAPER No. 45, at 292 (James Madison).

30. JOHN YOO, CRISIS AND COMMAND: A HISTORY OF EXECUTIVE POWER FROM GEORGE WASHINGTON TO GEORGE W. BUSH (2009).

31. PRAKASH, *supra* note 2, at 142-43.

32. See Louis Fisher, "The Law: Presidential Inherent Power: The 'Sole Organ' Doctrine," 37 PRES. STUD. Q. (2007); DAVID GRAY ADLER & LARRY N. GEORGE, THE CONSTITUTION AND THE CONDUCT OF AMERICAN FOREIGN POLICY (1996).

Prakash insists that those powers granted to the president prevent him from deploying the military that would in any way intrude upon legislative authority. This includes deploying troops since it would represent a declaration of war. Of course, as Prakash notes, there are some exceptions where the deployment of troops would not constitute a declaration of war and would therefore grant to the executive the authority to act without first obtaining legislative permission. The exceptions include repelling sudden attacks, the rescuing of American citizens, and using offensive military troops against pirates since action taken against criminals does not constitute a declaration of war. These are all instances that the Court has supported (i.e. *Belmont* (1937) and *Prize Cases* (1963))³³ and pro-congressionals would likely agree with such exceptions.³⁴

While there are many scholars who have asserted similar claims, there are many that will find Prakash's commander-in-chief power contentious. Many of these scholars, who are originalists, assert that the executive has largely unfettered authority when commanding the use of offensive military action. This group may even insist that Prakash's brief overview cannot be taken as definitive or even persuasive, but given the detailed account by other scholars in conjunction with Prakash's account, it is certainly persuasive and conclusive.³⁵ However, taking Prakash's commentary in this particular area one step further we might ask the following: does the power to repel invasions also include the authority to strike preemptively, as many have asserted? Moreover, does the executive have the constitutional authority, without prior congressional approval, to strike groups such as ISIL, if we label them as criminal organizations instead of conceptualizing them as states or even combatants? Prakash does not address these kinds of questions so the reader is left to consider them without much direction from the author. What the author does note, however, is that even "[t]hough executive power brings to mind a set of connected concepts—secrecy, energy, vigilance [. . .] it is not a grant of absolute authority, allowing the president to do whatever he thinks is best for the nation."³⁶

There is much to admire about *Imperial from the Beginning*. It is very well written and provides a notable account of the framers' understanding of the powers bestowed to the executive branch. Prakash insists that while the Constitution created a quasi-monarchical presidency, these powers were constrained by both the legislative and judicial branches. While a discussion of the powers of the original executive has obvious implications for current conflicts over presidential power, Prakash does not consider them. Rather his focus is entirely on the presidency in the founding period. However, using his analysis the astute reader can reconstruct contemporary debates about the executive's constitutional powers and determine for themselves just how far that power should be extended.

33. *U.S. v. Belmont*, 301 U.S. 324 (1937); *The Prize Cases*, 67 U.S. (2 Black) 635 (1863).

34. Fisher, *supra* note 32; ADLER & GEORGE, *supra* note 32.

35. *Id.*

36. PRAKASH, *supra* note 2, at 82.

Azari, on the other hand, illustrates how executives define the terms of their elections through mandate rhetoric, which coexists alongside other partisan and ideological narratives. Relying exclusively on presidential rhetoric Azari argues presidents exploit mandate rhetoric to defend their decision-making to allies and critics alike, while at the same time establishing unrealistic expectations about the electoral pledges they will be able to accomplish. This book leaves the reader enthusiastically wondering where future executives will take their rhetorical leadership in an ever more splintered and polarized system.

One of the strengths of Azari's work is the methodological approach. Combining quantitative data with case studies allows Azari to analyze a broad array of trends while at the same time substantiating them in the details of certain presidencies. So as not to confuse the reader, Azari arranges the book systematically in order to address both parts of the examination. Azari's methodology utilizes comparative case studies, paying particular attention to key points in time in each presidency under examination. *Delivering the People's Message* examines the presidencies of Herbert Hoover, (1928), Franklin D. Roosevelt (after 1932 and 1936), Dwight D. Eisenhower (after 1952 and 1956), Lyndon B. Johnson after 1964, Richard M. Nixon (after 1968 and 1972), Ronald W. Reagan after 1980, George W. Bush after 2004, and finally Barack H. Obama after 2008. When read alongside previous studies by scholars, such as Patricia Conley, what we find is that presidential mandates are simply social constructions.³⁷ Azari's book presents the reader with a fuller appreciation of both the practice and misuse of presidential mandates in U.S. politics.

In *Delivering the People's Message*, Azari points out that executives have long appealed to electoral mandates in order to rationalize the use of presidential power. Drawing on an original dataset of more than 1,500 presidential communications, in addition to primary documents collected from six presidential libraries, Azari methodically scrutinizes the decisions made by presidents dating back to Hoover's rhetoric in 1928—utilizing “specific provisions in the platform that [was believed to have] been important”³⁸ versus later presidents that “approached the subject with varying degrees of abstraction.”³⁹ Azari contends that Reagan's election in 1980 exhibits a clear shift from the modern presidency fashioned by FDR to what she distinguishes as a more partisan period for the executive branch. This partisan model, according to Azari, is a type of governance where the executive seems to have need of a popular mandate in order to control recalcitrant and extremely divergent elements within his own party as well as being able to prosper when facing steadfast opposition from the opposing party.

Conventional wisdom asserts that wide electoral margins yield presidential mandates. Azari shelves this convention and examines the assorted ways in which executives have exploited the very language of mandates to promote their policy agenda.

37. PATRICIA H. CONLEY, *PRESIDENTIAL MANDATES: HOW ELECTIONS SHAPE THE NATIONAL AGENDA* (2001).

38. AZARI, *supra* note 1, at 42.

39. *Id.*

Azari asserts that the political and policy dimensions of the presidency are inextricably related. Said another way, Azari discovers that when the presidency enjoys high public esteem and party polarization is low, mandate rhetoric is less frequent and employs broad themes. By contrast, presidents turn to mandate rhetoric when the office loses legitimacy, as in the wake of Watergate, Vietnam, and during periods of intense polarization. In more recent times, Azari contends, while these two features are more visible they have also converged. In fact, Azari finds, by the time Obama was elected, these elements combined, which resulted in an increase in the use of mandate language and the unworkable hopes that frequently comes with exalted promises.⁴⁰

Azari adheres to APD, but rather than accept the standard APD claim that executives search for affirmation for their governance in terms of them backing or resisting the current ideological regime, she contends that presidents assert rhetorical mandates in order to validate their dubious or opposed uses of power. As Azari elucidates, much of our past reveals that the role of the presidency has far surpassed any of our expectations about how far reaching executive authority may legitimately extend, which has at times led to wide-ranging disagreements “with other branches of government and accusations of ‘tyrannical’ behavior.”⁴¹ This explains, according to Azari, why Andrew Jackson defended his bank veto in the name of the people.

Delivering the People’s Message is an original and proficient take on Stephen Skowronek’s claims that executive power dwells not only in the process of achievement, but also, and perhaps more importantly, in successfully managing the very definition of those triumphs. Azari, on the other hand, presses the reader to ponder how a president’s mandate rhetoric delineates his role in the political process. For example, Azari notes that the employment of campaign pledges, as a noteworthy rhetorical figure of speech in the late modern era, was not only a bid to attain deliberate political ends, but it also linked the executive’s standing as a representative by involuntarily typesetting the executive as a delegate instead of as a trustee.⁴²

Azari suggests that mandates are the result of rhetorical choice: when executives appeal to a mandate, they rhetorically leverage their (re)election for calculated ends. This kind of argument is well-known to those acquainted with the seminal works in presidential leadership, such as Jeffrey Tulis’ *The Rhetorical Presidency*,⁴³ Samuel Kernell’s *Going Public*,⁴⁴ Richard Neustadt’s *Presidential Power*,⁴⁵ and of course, Skowronek’s the *Politics Presidents Make*.⁴⁶ In fact, Azari artfully weaves her analysis into this prevailing scholarship, as her book concerns vicissitudes to executive leadership and power, and cuts across both chronological and political time. But, in her own words,

40. See generally *id.* at 135-65.

41. *Id.* at 9 (emphasis added).

42. *Id.* at 119-20.

43. JEFFREY K. TULIS, *THE RHETORICAL PRESIDENCY* (1987).

44. SAMUEL KERNELL, *GOING PUBLIC: NEW STRATEGIES OF PRESIDENTIAL LEADERSHIP* (1986).

45. RICHARD E. NEUSTADT, *PRESIDENTIAL POWER AND THE MODERN PRESIDENTS: THE POLITICS OF LEADERSHIP FROM ROOSEVELT TO REAGAN* (1990).

46. STEPHEN SKOWRONEK, *THE POLITICS PRESIDENTS MAKE: LEADERSHIP FROM JOHN ADAMS TO GEORGE BUSH* (1993).

an executive's understanding of mandates is shaped both by political context and by how an executive comprehends the structure of the office and the role of the presidency in the political system.⁴⁷

Azari previews her argument in chapter one, and supplies a broad glimpse of mandate rhetoric from the presidencies of Hoover through to Obama. She uses descriptive statistics to show that mandate claims were not a prominent feature of presidential rhetoric, but that since the Nixon presidency, "mandate rhetoric has become a regular fixture of presidential discourse."⁴⁸ Azari argues that this pattern cannot be understood by studying the popular vote or the vote margin with the Electoral College in any election, and the president's approval ratings cannot provide us with answers either.⁴⁹ Instead we must turn to the extent of party polarization in the legislative branch.⁵⁰ Consequently, Azari's data exposes four mandate epochs each with a well-defined set of rhetorical characteristics. The four eras are 1929-1938, 1939-1968, 1969-1980, and finally 1980-present. Azari finds that mandate rhetoric declined in number between the Progressive and modern periods before increasing in the late modern and what she classifies as the partisan era. This latest development of mandate rhetoric, Azari asserts, is ascribed to the dwindling status of the executive branch and also the polarization of the party system following the Watergate scandal.⁵¹

Chapters two through five are each reserved to one of the four periods (as noted above). Azari develops her theory and insight in each chapter by examining a series of case studies. Each of the case studies under review carefully evaluates party politics, the policies (those that were instituted and the ones that were not), and the personalities of the office holder to demonstrate the stability of mandate rhetoric in that particular period. This systematic analysis illustrates how mandate rhetoric over time has been transformed. For example, we see how the scope of rhetoric changed from policy specific to generality, how representation style shifted between delegate and trustee, and how rhetoric is tailored to target a specific audience (a congressional message looks quite different to a national speech or even a private audience). Azari's carefully crafted examination of these elements advances a robust study of wide-ranging executive rhetoric.

To further advance her theory, Azari also relies on archival documents and press responses to establish the prevalent response to both the election returns and to the way in which executive's employ mandate rhetoric. Azari explicitly notes that while these assertions "can only infer strategy and motivation,"⁵² she still offers them as support for broader declarations. This is where her analysis is on thin ground. Scholars of rhetoric must be vigilant when contextualizing and proclaiming the importance of its intent or impact. For example, while Azari shows that internal memos

47. AZARI, *supra* note 1, at 8.

48. AZARI, *supra* note 1, at 24-25.

49. *See generally id.* Table 1.2 and accompanying text at 25.

50. *Id.* at 25.

51. *Id.* at 28, 113.

52. *Id.* at 58.

reveal Eisenhower's communications advisors were attentive to "whether to emphasize party or nation,"⁵³ Azari goes on to suggest that these same memos illustrate Eisenhower's "philosophy [and that] of the office."⁵⁴ These kinds of communications aid in the construction of Eisenhower's rhetoric, but it is more difficult to convince the astute reader that they also echo his point of view, particularly when we know that Eisenhower did not always take his own advice.

In chapter two, Azari depicts FDR as a transitional figure, which should not come as any real surprise for the reader. For Azari, FDR is transitional, because "[he] neither embraced Wilson's vision of the party mandate, nor did he use mandate logic frequently when promoting New deal policies."⁵⁵ However, after 1936, FDR "parallel[ed] . . . Andrew Jackson and the Second Bank" because, as Azari notes, FDR "defended his legitimacy by claiming a mandate"—attributable to the election landslide—"for his actions, drawing on his connection to the people and his fulfillment of campaign promises" to justify his "court-packing" assault on the Supreme Court.⁵⁶ It might initially appear that Azari is contradicting herself because, on the one hand, Azari asserts FDR is transitional because he abandons Wilson's vision, but is also transitional because FDR appears to parallel Jackson's use of mandates: "the mandate was not simply about policy positions but also about elections as the basis of presidential authority."⁵⁷ However, the reader should bear in mind Azari's claim in this chapter: "[p]residential strength in the modern era, it seemed, emanated from an ability to both fulfill and temper the demands of the office."⁵⁸

In chapter three, Azari focuses on the "modern period" of both Eisenhower and Johnson. Azari claims that "the modern period is most readily defined by what was absent: party polarization and distrust of government[,]" which allowed these kinds of presidents to make broad appeals to the electorate.⁵⁹ Eisenhower and Johnson belong in this typology, Azari notes, since they avoided any claim of presidential mandates even though they both had clear electoral wins: "[n]either Eisenhower nor Johnson appear to have seen mandate rhetoric as a useful tool in dealing with high expectations. . . both remain[ed] above party politics."⁶⁰

In Azari's retelling, Johnson rhetorically forsook partisan politics, insisting that his victory "had been due to a 'strong and broad consensus' and that he interpreted the election as a 'mandate . . . for responsible, constructive, and progressive programs to meet the problems of American's agenda.'"⁶¹ Azari notes that Johnson's rhetorical choice resulted in policies that, once instituted, "changed the political conversation and invited a conservative backlash about race, culture, and the role of government

53. *Id.* at 91.

54. *Id.* at 92.

55. AZARI, *supra* note 1, at 70.

56. *Id.* at 76-77.

57. *Id.* at 77.

58. *Id.* at 82.

59. *Id.* at 87.

60. AZARI, *supra* note 1, at 84.

61. *Id.* at 103.

that still shapes politics nearly fifty years later.”⁶² One concern for the reader throughout the book is whether the author inflates the significance of rhetoric. In this particular case, Azari shows that “Johnson and his political team saw the election result as a source of political leverage that could help them achieve their goals”⁶³—rhetoric was thus regarded in instrumental terms and “not the provenance of the goals themselves.”⁶⁴ So, while Azari wonders whether another mandate story could have affected the outcome, it appears that either of the mandate narratives would have had the same result since Johnson was ultimately appealing to unity.

The kind of national unity and consensus-building that Johnson appeared to enjoy did not manifest in the presidencies of Nixon or Jimmy Carter. As Azari illustrates in chapter four, both Nixon and Carter “experienced the frustrations of a powerful but increasingly distrusted office and leaned on mandate rhetoric as a means of conveying legitimacy to the public as well as within the executive branch.”⁶⁵ Nixon broke new ground by manipulating his mandate rhetoric and “remaking the presidency as representative of a party constituency first and as a national leader second.”⁶⁶ Carter, on the other hand, attempted to create distance between the presidency and partisan politics in an effort to appeal to the electorate.⁶⁷

Chapter five and the concluding chapter both focus on the partisan divide that for so many reasons agitates national politics. In chapter five, Azari first identifies and then explores what was distinctive behavior for Nixon’s presidency in actuality became the norm for the presidencies of Bush II and Obama.⁶⁸ The age of mandates is mostly credited to divided-government and polarized partisanship, which often presents a crisis of legitimacy for these executives and their respective governing strategy.⁶⁹ As Azari explains: “[d]eepening divisions between the two parties have inspired presidents to direct their mandate rhetoric at their supporters, claiming mandates for party agenda items.”⁷⁰

Among the normative themes surveyed in the concluding chapter, it includes how presidential leadership has changed “from a trusteeship model toward a delegate-style approach to representation,”⁷¹ to whether or not the president is a nonpartisan representative of the national interest—an ideal that FDR, Eisenhower, and Johnson attempted to accomplish—and if the executive is a partisan advocate of narrow mandates—instituted by Nixon which has only escalated over time. In addition, while Azari addresses, albeit briefly, transparency, accountability, and even oversight when we think in terms of the unilateral president, she provides no real prescriptions

62. *Id.* at 104.

63. *Id.* at 109.

64. *Id.*

65. *Id.* at 112.

66. AZARI, *supra* note 1, at 134.

67. *Id.*

68. *Id.* at 164.

69. *Id.* at 136-39.

70. *Id.* at 164.

71. AZARI, *supra* note 1, at 166.

for reigning in presidential prerogatives. She simply notes, “[t]he use of mandate rhetoric has not alleviated these problems; it may even have exacerbated them.”⁷² While Azari provides no solutions, this book should be required reading for students of political thought, politics and history devotees, Congress and of course, presidency scholars.

Imperial from the Beginning and *Delivering the People’s Message* presents a catalog of controversies regarding presidential power. Both Prakash and Azari collect a remarkable array of sources, and both impressively utilize their data to advance two nuanced theories that add to the current literature. For these reasons, both of these studies should be an important resource for anyone interested in presidential powers. Anyone looking for resolution to contemporary controversies involving assertions of presidential power, however, must go beyond both Prakash and Azari’s studies; they will not necessarily find answers simply by turning to the founding presidency nor in how presidential mandates have changed over time.

72. *Id.* at 173.