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‘I Alone Can Fix It’ Donald Trump, the Administrative Presidency, and Hazards of Executive-Centered Partisanship

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Abstract: Eight months into his presidency, most depict the Trump administration as being mired in chaos and frenzy. Such a perspective, however, overlooks the aggressive pursuit of Trump’s campaign agenda through unilateral administrative action. Far from “deconstructing the administrative state” as promised, Trump has embraced the levers of presidential discretion and power inherent within the modern executive office. Although Trump cannot lay claim to any major legislative achievement early in his presidency, we argue that there is plenty he can take credit – or blame – for in fulfilling his campaign promises. Moreover, far from using administrative power to simply roll back his predecessor’s programmatic goals, the new president has sought to redeploy state resources in ways that will further entrench traditional commitments of the Republican Party, while simultaneously redefining them to mirror the president’s personal policy objectives. This is not a new development. Rather it is the culmination of a decades-long reorientation within both major parties: the rise of an executive centered party-system. As such, Trump – despite his seeming idiosyncrasies – might further reinforce the centrality of executive actions as a way to overcome both parties’ institutional weakness and ideological polarization.

The Personal, Partisan, and Administrative Presidency

Accepting the Republican nomination in July 2016, Donald J. Trump depicted a once proud nation in a spiral of decline, bereft of leadership capable of guiding the country back to its former greatness. Standing before a rapturous assembly of delegates in Cleveland – many of them first time attendees to a national convention – Trump described America as a place plagued by “poverty and violence at home, war and destruction abroad.” A former Democrat who left the Republican

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Party as recently as 2011, there Trump stood, pledging to the American people that, “I am your voice.” The then-sitting President, Barack Obama, told the nation that the complexity of problems facing America required an experienced and steady hand. Proclaiming that he did not think “there’s ever been someone so qualified to hold this office,” Obama pleaded with Americans to place their faith in the former First Lady, Senator from New York, and Secretary of State, Hillary Clinton.¹ He argued that the country should dismiss the grandiose promises and despondent narratives from a man who had never held elected office. Trump’s retort was that only an outsider who had long jostled with the “establishment” could truly reform a “rigged system.” “Nobody knows the system better than me,” Trump claimed, “which is why I alone can fix it.”²

Eight months into Trump’s presidency, such braggadocio had become the stuff of ridicule by scholars, pundits, and detractors on both sides of the partisan divide. Trump has failed to translate any of his promises into legislation: Obamacare is still the law of the land; there is no “big, beautiful” wall on the border with Mexico; a unified Republican Congress has yet to pass tax reform; and as we write, Trump has the lowest public approval ratings for a president’s first year in modern history.³ At first glance, it seems that never has there been such dramatic validation of Theodore Lowi’s refrain that the modern presidency is trapped in an intractable dynamic of “Power Invested” and “Promise Unfulfilled.” Like a billionaire real estate mogul with money to burn, the American people just keep looking to the Executive Office for resolution; and despite “huge” assertions, little is built beyond a house full of smoke and mirrors.

Yet often overlooked among the disappointments and recriminations of Trumps’ frenzied beginning is his administration’s aggressive and deliberate assault on the Liberal state. True, much of the new administration is built atop substantive imagery and the creative repurposing of his catch-all slogan, “Make America Great Again.” Nevertheless, since day one, Trump has forcefully – and sometimes successfully – taken aim at the programmatic achievements of his

1 Annie Karni. 2016. “President Obama Endorses Hillary Clinton.” *Politico*, June 9. <http://www.politico.com/story/2016/06/president-obama-endorses-hillary-clinton-224130>.

2 Donald Trump’s full remarks available in: “Full Text: Donald Trump 2016 RNC Draft Speech Transcript,” *Politico*. 21 Jul. 2016, <http://www.politico.com/story/2016/07/full-transcript-donald-trump-nomination-acceptance-speech-at-rnc-225974>.

3 According to the average of several polls calibrated by Real Clear Politics, 39.9% of those surveyed approved of Trump’s performance, while 55% disapproved. Using data from Gallup, we calculate that no president’s first eight months in office has, on average, been viewed so unfavorably, https://www.realclearpolitics.com/epolls/other/president_trump_job_approval-6179.html; <http://www.gallup.com/poll/116677/presidential-approval-ratings-gallup-historical-statistics-trends.aspx>.

predecessor. In an effort to, as one of Trump's supporters put it, "erase Obama's legacy," the president has issued a blizzard of executive initiatives that have refashioned, or seriously disrupted government commitments in critical policy arenas such as immigration, climate change, foreign trade, criminal justice, civil rights, and, health care policy.

There are many features of Trump's shocking rise to the White House and the tumultuous beginning of his presidency that represent novel features of American politics. However, the administrative aggrandizement that so far has dominated his time in office marks the continuation of a far-reaching development in American politics: the rise of an executive centered partisanship, which relies on presidential candidates and presidents to pronounce party doctrine, raise campaign funds, campaign on behalf of their partisan brethren, mobilize grass roots support, and advance party programs (Milkis and Rhodes 2007; Milkis, Rhodes, and Charnock 2012). Unilateral presidential action became an indispensable feature of executive-centered partisanship during the George W. Bush and Obama years, fueled in no small part by their having to face a Congress when at least one of its chambers was controlled by the other party over substantial periods of their presidencies. So far did Obama push the administrative envelope that after Republicans assumed command of the House in the 2010 elections, GOP strategists eagerly anticipated that the next president their party elected would seize the loaded administrative weapon Obama had left in the Oval Office (Klaidman and Romano 2012). One might think an aggressive administrative strategy would not have been so pivotal after the GOP won control of the Senate in 2014 and began this current Republican administration under unified government in 2017. Nevertheless, Trump resorted to administrative aggrandizement right from the start, often in the service of highly controversial measures that strained his relations with congressional Republicans who remained split in the areas of free trade and immigration. Although executive orders are not the only type of administrative action that presidents can take, it is revealing that, in his first year in office, President Obama issued 39 executive orders, while in two-thirds that time, President Trump has issued 45.

Trump's presidency thus confirms that partisan administration is a hallmark of contemporary presidential politics. To be sure, state and Federal Courts, state and local governments, and the Congress still exercise important authority to thwart unilateral administrative action, and they will no doubt limit the extent to which Trump makes good on some of his most divisive plans. Nevertheless, Trump's executive actions pose hard challenges to collective responsibility and the rule of law that undergirds it. His bold and, as many would charge, reckless administrative tactics have not yet appeared to jeopardize the direct, strong relationship he formed with the Republicans' conservative base. He thus tapped

into an important change in the party system that has its origins in the fractious politics of the 1960s – the emergence of a paradoxical relationship between the decline of party organizations and angry partisanship. This unfiltered partisanship without parties, if you will, has given rise to a presidency-centered and rancorous contest between Liberals and Conservatives, which further diminishes the integrity of Congress and the States, weakens the system of checks and balances, and erodes citizens' trust in the competence and fairness of the national government.

Battling for the Services of the Administrative State

The rise of executive-centered partisanship defies the conventional wisdom that the two major parties engage in a partisan battle to expand or roll back the state. We argue to the contrary that the equation of conservative Republicanism and the retrenchment of the administrative state elides a critical change in the relationship between party politics and administrative power. With the development of executive-centered partisanship, political contestation in the United States is no longer a struggle over the size of the State; rather it is a struggle between liberals and conservatives, to seize and deploy the State and its resources.⁴ Liberals emphasize the instruments of social welfare policy, while Conservatives seek to use analogous instruments of State power to shore up national and homeland security priorities. Trump's election and his governing tactics are of potential importance not only because he has promised to dismantle many liberal institutions and programs (or to “deconstruct the administrative state” in Stephen Bannon's phrase), but because he plans to reshuffle those fiscal, administrative, and human resources to augment his own vision of a strong American state.

In addition to a vein of economic nationalism, the Trump administration proposes to extend a conservative formula – initiated by Ronald Reagan and continued by George W. Bush – of using national administrative power aggressively to change the trajectory of policy in areas such as national and homeland security, immigration, climate change, criminal justice, and civil rights. Although a president's January budget is purely symbolic until Congress begins appropriating money, Trump's first budget request perfectly encapsulates the dynamics of conservative redeployment. Far from demolishing the State, the amount of money

⁴ Scholars have begun to take notice of this development (for example, see Callen 2017), but it has yet to be considered in a broad historical and institutional context.

to be spent would slightly increase. However, increases to the departments of Veteran's Affairs (\$4.4 billion), Homeland Security (\$2.8 billion), and Defense (\$52 billion), would be offset by cuts in other departments; the EPA, State Department and the Agriculture Department would see the largest cuts as a percent of their FY2018 budget.⁵ Additional ambitions to deploy state power for conservative objectives abounded during Trump's First One Hundred Days: he reinstated federal approval of the Keystone and North Dakota pipelines, rejected by his predecessor; expanded the power of the Department of Homeland Security to deport undocumented immigrants; issued an executive order, which was blocked in the courts, imposing a moratorium on migration from seven countries deemed to harbor "radical Islamic terrorists"; and appointed a Supreme Court justice – Neil Gorsuch – who will shift the balance on the court towards greater acceptance of public action that advances conservative policies in national security, protection of the homeland, policing, and civil rights (Greenhouse 2017).

Of course, the aggressive use of executive power to pursue policy objectives is not of recent vintage. The "administrative presidency" has been an important feature of policymaking since the New Deal (Nathan 1983; Milkis 1993). Modern presidents, building on theoretical and practical developments that had their origin in the Progressive Era, have attempted to strengthen their capacity to achieve policy objectives by wielding administrative powers through the bureaucracy rather than navigating a complex system of separated powers. However, Progressive reformers sought to replace Congress-centered partisan politics – seen as beholden to "special interests" – with nonpartisan administrative politics that presumed to serve the "whole people." Although partisan politics hardly disappeared, the Progressive tradition informed the presidencies of the Roosevelts, Woodrow Wilson and Lyndon Johnson. Conceiving the executive as the "steward of the public welfare," to use Theodore Roosevelt's elusive and exalted phrase, they presumed nonpartisan leadership of public opinion and management of the bureaucracy as the essential means for enhancing economic and social reform.

The commitment to an executive-centered administrative state was solidified by the programmatic commitments of New Deal liberalism. As FDR argued in his iconic State of the Union message of 1941, traditional freedoms like speech and religion needed to be supplemented by two new rights: "freedom from want" and "freedom from fear." These new freedoms, representing for all intents and purposes the charter of the modern American state, were given institutional form by the welfare and national security states. The "Four Freedoms" speech ushered in a new understanding of rights, under which domestic programs like Social

5 "Budget of the U.S. Government: A New Foundation for American Greatness, Fiscal Year 2018." *White House: Office of Management and Budget*. U.S. Government Printing Office.

Security and international causes like the Cold War called not for partisanship, but for “enlightened administration” (as Roosevelt had described his New Deal aspiration in the 1932 Commonwealth Club address). Politics was now a search for pragmatic solutions to the challenging responsibilities that America had to assume, at home and abroad, in the wake of the Great Depression and World War II (Roosevelt 1932, 1941).⁶ From the end of the Second World War to the late 1960s, party politics was subordinated to a policy making state, where partisan conflict and resolution were largely displaced by a new understanding of rights and the delivery of services associated with those rights (Milkis 1993, 143; Orren and Skowronek 2017).

Recent institutional developments and changes in the dynamics of partisanship, however, encouraged the White House to deploy executive power in the service of partisan objectives. Beginning with the presidency of Richard Nixon, party conflict has roiled the administrative state forged during the Progressive and New Deal eras. Most accounts of our present discontents have emphasized polarization in Congress, but the modern executive has also become more partisan. In fact, the fractious politics in Congress, which have not only sharply divided Democrats and Republicans but also created internal disputes within the legislative caucuses, has made parties even more dependent on presidents to advance their objectives. Republican presidents, especially Ronald Reagan and George W. Bush, pioneered the art of mobilizing partisan opinion and exploiting administrative power for their partisan objectives (Galvin 2010, 2014). During his campaign, Obama presented himself as a transcendent leader who could imbue the policy state with new causes and moral fervor. Yet, by the time he reached office, it no longer seemed possible for presidents to stand apart from partisan combat; more to the point, partisan polarization had come to so divide Congress and advocacy groups in Washington that the Obama Administration had strong incentives to take “refuge” and pursue progressive policies in the administrative presidency (Jacobs and King 2009; Coglianesi 2010; Skocpol and Jacobs 2012).

Obama’s executive actions were a critical prelude to Trump’s administrative partisanship. Indeed, it is impossible to understand the momentum and force of Trump’s nascent presidency without taking account of Obama’s sustained reliance on executive administration. Scholars and pundits have usually depicted Obama as a prisoner of partisan rancor in Congress, which was especially fierce and obstructive on the Republican side of the aisle during his two terms in office. To the contrary, he actively – if sometimes reluctantly – embraced the role of party leader, even in the management of the bureaucracy, the arena in

⁶ On the relationship between Roosevelt’s idea of new rights and the American State, see Milkis (2014).

which the modern presidency's claim to transcend partisanship was nurtured (Milkis, Rhodes, and Charnock 2012; Lowande and Milkis 2014). During the final six years of this presidency, Obama surpassed the institutional strategies of the Bush administration in combining programmatic achievement and partisan calculation. Most of his executive actions were directed to strengthening a widely scattered but potentially powerful coalition that had been forming since the Great Society: minorities, youth, the LGBTQ community, and educated white voters, especially single women. Many of Obama's administrative actions in the service of environmental protection, women's rights and criminal justice reform appealed to those constituencies. Similarly, the administration's direction to the Justice Department in February 2011 to stop defending the Defense of Marriage Act (DOMA), which barred federal recognition of same sex marriage, against constitutional challenges sealed the White House's partnership with the LGBTQ movement. Perhaps the most significant and polarizing action the Obama administration took to strengthen support of this coalition was in the controversial matter of immigration. Failing to reach an agreement with the Republican Congress on comprehensive immigration reform, Obama took dramatic administrative action that provided deportation relief and work authorizations to more than five million undocumented immigrants. It is not coincidental, therefore, that his immigration initiatives defined the lines of partisan conflict in Congress, the courts, and the 2016 election campaign.

Trump then might not be, as some scholars imply, a Republican aberration. He frequently cites the alliance he has formed with right-leaning advocacy groups – his populist “movement” – that previous Republican presidents and congressional leaders have courted. Moreover, his plebiscitary politics marks a harsher, more unfiltered version of the personal presidency that Obama brought to the fore. Although the political philosophies and policy objectives of Obama and Trump could not be more antithetical, the style of politics they practice reflects two key areas of common ground: a detachment from party organization and a vision of the White House as the vanguard of a movement.

Obama envisaged his administration as a progressive crusade that marked a new stage in the fusion of executive power and partisan politics. He coupled his ambitious administrative strategy alongside an innovative political organization that was dedicated to linking him directly with potential supporters. Born during the 2008 campaign as “Obama for America,” this mass mobilization effort was incorporated into the Democratic National Committee as “Organizing for America” during Obama's first term in the White House; after 2012, the group was spun off as a non-profit social welfare agency called “Organizing for Action” (OFA). This information age, grass-roots organization was critical not only to his two presidential campaigns, but also to the enactment of major legislative reform

including the 2010 Affordable Care Act. When Obama removed his organization from the Democratic National Committee under the guise that it would strengthen its potential as a grass roots movement, he further solidified an executive-centered Democratic Party. Candidate-centered organizations had been a staple of American politics since the Kennedy administration, but Obama was the first president to keep his electoral machine intact as the vanguard of a movement that would free him from the constraints of the Democratic “establishment” and connect him directly to the new progressive coalition he envisioned. Significantly, just as Obama’s attention shifted to executive action in 2011, OFA redeployed its staff and volunteers to defend the president’s administrative initiatives, touting with special urgency the unilateralism which would advance climate change policy, LGBTQ rights and immigration reform (Milkis and York 2017).

Trump’s remarkable and odds-defying ascendance to the presidency in 2016 appeared to complete the fusion of centralized administration and partisanship. Trump lacks an independent grass-roots machine as organized or as institutionally sophisticated as Obama’s. However, his reliance on variegated media platforms (social and traditional) galvanized his supporters with the same fervor and passion as liberal advocates under OFA. Like Obama, too, Trump did not disband his movement at the end of the campaign; rather, the president-elect took off on a “thank you tour” during the transition period, showing how he intended to continue to hold mass rallies after he occupied the White House. Just weeks after his inauguration, Trump returned to the campaign stump, appearing in Melbourne, Florida on February 18th. Proclaiming that the people in the room were a part of “a great movement, a movement like has never been seen before in our country or probably anywhere else,” Trump explained why he felt compelled to leave and travel to see them in person: “I...want to speak to you without the filter of the fake news.” Invoking comparisons to his White House predecessors, the new president continued, “Thomas Jefferson, Andrew Jackson, and Abraham Lincoln and many of our greatest presidents fought with the media and called them out often times on their lies. When the media lies to people, I will never, ever let them get away with it.”⁷ In seven campaign-style rallies since then – averaging one a month – the media have suffered some of the president’s harshest blows, energizing his supporters, and renewing their faith that the president speaks for them, and them alone.

Sensitive to the fact that the substance of Obama and Trump’s messages are radically divergent, their method of communication has nevertheless further ritualized the independent and plebiscitary nature of presidential-politicking. Just as

7 Donald Trump’s full remarks available at: “Read: Full transcript of Trump’s rally speech in Florida,” *Palm Beach Post*. 18 Feb. 2017, <http://www.palmbeachpost.com/news/national/read-full-transcript-trump-rally-speech-florida/DeDCpoNEKLQmWcIKndWB0M/>.

Obama relied on OFA and direct mass appeals to mobilize support for his candidacy and programs, so Trump stood apart from most of the GOP “establishment,” basing his campaign on cable television, social media (especially his notorious Twitter account), and mass rallies. Indeed, Trump’s inaugural address was a rallying cry to his antinomian followers:

You came by the tens of millions to become part of a historic movement, the likes of which the world has never seen before. At the center of this movement is a crucial conviction, that a nation exists to serve its citizens. Americans want great schools for their children, safe neighborhoods for their families, and good jobs for themselves. These are just and reasonable demands of righteous people and a righteous public.⁸

Of course, a number of conservative media outlets, most of the conservative intelligentsia, and many conservative politicians are still lukewarm if not avowedly hostile to the Republican White House. Trump’s campaign, championed by Stephen Bannon’s “alt right” *Breitbart News*, displaced the traditional conservative emphasis on rugged individualism and redefined it under the administration’s ubiquitous, yet amorphous, “Make America Great Again” slogan. The first sentence of the 2016 Republican platform echoed what had become a conservative rallying cry: “We believe in American exceptionalism.” However, the conservative ideal, heralded by Reagan and George W. Bush, once included an activist foreign policy that encouraged the promotion of democratic ideals abroad through a combination of a forceful military presence and the pursuit of free trade policy. Denouncing conservative internationalism as a catastrophe, Trump touted a regressive America First program that seeks to distance America from its traditional allies, while engaging in a strange mating dance with Russian President Vladimir Putin’s authoritarian ambitions. Obama positioned himself as the leader of a new progressive “coalition of the ascendant;” Trump and his strategists view the new president as the steward of a “coalition of restoration” comprised of blue-collar, religiously devout, and non-urban whites who are frightened about demographic and social change ending their white privilege – and forging an American state to which they no longer feel an allegiance (Brownstein 2015).

Some Republicans lament this reinterpretation of conservative principles and wonder how the Party can be so oblivious to country’s massive demographic shifts. The Republican Party’s own “autopsy report” following Romney’s 2012 loss suggested as much. Yet, while the report noted that Republican outreach to minority voters – especially Hispanic voters who have contributed significantly to the transformation of the country’s population – was of paramount importance, the report also stressed economics and a deepening perception in the

8 “The Inaugural Address.” 20 Jan. 2016. *The White House: Office of the Press Secretary*.

minds of the American voter that the GOP had forsaken the American working class, regardless of color. In fact, this was the first issue the party identified in the report: “We have to blow the whistle at corporate malfeasance and attack corporate welfare ... We should speak out when CEOs receive tens of millions of dollars in retirement packages but middle-class workers have not had a meaningful raise in years.” Donald Trump’s attack on a corporate elite and a global economy that seems rigged against low-skill workers thus seems to comport in important ways with the GOP’s 2016 playbook.⁹

Furthermore, even as many self-appointed Reagan heirs lament how the rhetorical tone that once animated the Conservative state has become distressingly harsh, nostalgia for a more principled Conservatism overlooks how the Republican Party built a militant conservative base during the Reagan and George W. Bush administrations. These new foot soldiers, including most notably the sectarian Christian Right and the anti-Obama Tea Party rallied around their belief that liberalism had so corrupted the country that the national government – a conservative state – had responsibility to support “family values” (a view that permeates proposals to restrict abortion and same-sex marriage; to require work for welfare; to impose standards on secondary and elementary schools; and to militarize law enforcement).

In the wake of the September 11 attacks and the Great Recession of 2007–2009, the main targets of conservative statism became radical Islamic terrorism and illegal immigration. Foreign-born individuals now make up about 14 percent of the US population, historically the same levels as the late nineteenth and early twentieth century, which, as Nolan McCarty has pointed out, is the other period in American history roiled by ritualized partisan combat (McCarty 2016). To a point, Trump’s candidacy has been fueled by the economic despair of a declining working class, suggesting that he has blurred the partisan line between Freedom from Fear and Freedom from Want. Yet the major factor in his shocking elevation to the White House was an appeal to fear, to the feeling of a large number of Americans that immigrants are responsible, not only for the country’s economic problems, but also for the terrible threat that “radical Islamic terrorism” poses to the security of the homeland.

Trump’s unilateralism, therefore, dovetailed with his promise to advance a conservative offensive at war with the Republican establishment. Following Obama’s precedent, the White House formed their own personal advocacy group shortly after inauguration. Dubbed the Great America Alliance, Rudy Giuliani and Newt Gingrich – two of the president’s most important, and public,

⁹ See page 5 in the *Growth and Opportunity Project*, 2013. Republican National Committee. Report available at: http://goproject.gop.com/rnc_growth_opportunity_book_2013.pdf.

supporters – agreed to co-chair this presidential advocacy group. Echoing language that Obama had used in forming Organizing For Action, former Speaker of the House Gingrich noted, “The election of Donald Trump represents a watershed moment for the American people. I am excited to continue my strong support of the president, and I will do all I can in the critical months ahead to support his efforts to grow jobs, fix immigration, shrink government and return power to the American people.”¹⁰

Nonetheless, Trump’s advocacy group, despite producing some media blitzes during key battles, such as the president’s Supreme Court nomination, was neither as active nor as visible as was OFA. Rather than invest heavily in an information age, grass roots organization that would mediate between the White House and the Republican base, Trump preferred to communicate directly with his followers through social media and mass rallies. He and his strategists thus sought a fusion of the presidency and the conservative movement that relied almost totally on his personal appeal and action. His promise that he “alone” could fix the mess left by America’s first African-American president thus foreshadowed the blitzkrieg of executive action that dominated the first rancorous months of his presidency.

Remaking the American State

Executive-centered partisanship is more fungible and less conciliatory than the two-party system it preempts. Many have struggled to make sense of what overarching vision Trump proposes for the American state. There is no “New Frontier,” or “Great Society,” or “New Foundation,” or even a “compassionate conservatism.” Indeed, his “vision” and program is highly personified, dependent on the managerial skills and charismatic leadership of its chief executive. But is there any coherence to Trump’s administration? The atomistic portrayal of the day-to-day machinations inside the White House (or Mar a Lago) leaves an impression that either not much is taking place, or that every action is just one more step to address a particularized constituency, especially the president’s unwavering base. The administrative actions that define Trump’s approach to governance, however, fit within the long historical battle for the services of the American state, specifically in his attempt to intensify homeland security, transform the federal workforce, and champion the causes on conservative interests in welfare and social policy.

¹⁰ “Newt Gingrich Joins Great America Alliance As Co-Chair To Advance President Trump’s National Agenda.” *Great America Alliance*. 30 Jan. 2017. <http://www.p2016.org/chmtran/greatam-0117pr.html>.

Securing the State

Although he echoed a theme that Republican presidents had stressed since Richard Nixon's 1968 presidential campaign, Trump's repeated pronouncement that he was the "law and order candidate" amplified to new levels the long-standing conservative commitment. He promised to crack down on crime, pursue a draconian immigration policy, and forcefully squelch terrorist threats at home and abroad.

Since Trump's descent down the golden escalator with his claim that immigrants crossing the Southern border were "bringing drugs" and "bringing crime" ("they're rapists"), no single issue figured more prominently in the 2016 Presidential Election than immigration policy. The boisterous chants of "build that wall" at Trump's campaign rallies substituted for a policy white paper, and tougher border security became a panacea for the myriad problems that Trump addressed: bad trade deals, wage loss, terrorism, and even political correctness.

It is not surprising, therefore, that Trump's executive actions on immigration policy have dominated his partisan administration. This emphasis was abetted by precedents over the past 15 years that have allowed the presidency to amass a considerable amount of unilateral power in setting national immigration policy. The 2002 authorizing legislation that established the Department of Homeland Security (DHS), for example, expressly gives the executive branch authority to autonomously "establish national immigration services policies and priorities."¹¹ And in 2012, the Supreme Court ruled in a 5-3 decision overturning a number of Arizona statutes that not only does federal law on immigration reign supreme, but that the president and immigration officials enjoy "broad discretion" in enforcing inherently underspecified and ambiguous immigration statutes.¹² When Trump entered the Oval Office, he found waiting for him a set of tools carefully refined by his predecessors, which he has sought to use to disrupt drastically the country's immigration procedures.

Five days after taking office, the White House released its third executive order on January 25th with the goal of "enhancing public safety in the interior of the United States."¹³ The order set new priority guidelines for federal immigration officials, but most significantly, threatened legal and fiscal consequences for any sub-national jurisdictions that refused to volunteer information or persons to federal immigration officials. Claiming that the new order will "ensure that

¹¹ Public Law 107-296 – 25 Nov. 2002.

¹² *Arizona, et al., v. United States*. 567 US_(2012) (Docket No. 11-182).

¹³ "Enhancing Public Safety in the Interior of the United States," Executive Order 13768. 25 Jan. 2017. Federal Register, 82, no. 18, 8799–803.

jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law,” the policy angered many Democrats and even some Republicans, conflicted by their professed belief in federalism and their desire to curb illegal immigration. The legality of Trump’s crackdown on “sanctuary cities” is still unknown, and the White House has yet to deprive uncooperative localities of any funding. In an attempt to publically shame some of these municipalities, the administration constructed lists of local police agencies that refused to comply with any DHS extended detention requests; three weeks later, however, citing numerous errors in the list, DHS suspended publication.¹⁴

The administration’s awkward intervention into state and local policing only begins with immigration policy. Since January, Trump has issued two executive orders that also were meant to encourage state and local police officers “to do their job.” On March 31, the Department of Justice announced that it would drastically scale back its use of consent decrees, which had become a major instrument under the Obama administration for investigating civil rights complaints levied against local police departments.¹⁵ And, in late August, Trump announced an executive order that revoked a January 2015 order prohibiting the sale of military-grade munitions and equipment to local and state police forces.¹⁶ In a further maneuver meant to reverse his predecessor’s effort to reform criminal justice, the administration also overturned an Obama-era order that would have slowly ended the federal government’s reliance on for-profit prisons.¹⁷

Trump’s interventions in state and local governance are a part of a broader effort to ramp up federal efforts that comport with his vision of the American state. Immediately following the administration’s crack-down on sanctuary cities, Trump issued his fourth executive order, this time requiring DHS to begin to “Identify and, to the extent permitted by law, allocate all sources of Federal funds for the planning, designing, and constructing of a physical wall along the

¹⁴ Maria Sacchetti. 2017. “Trump Administration: These Police Agencies Didn’t Help Feds with Deportations.” *The Washington Post*, March 20. https://www.washingtonpost.com/local/social-issues/trump-administration-these-police-agencies-didnt-help-feds-with-deportations/2017/03/20/67b3767a-0d76-11e7-9b0d-d27c98455440_story.html&utm_term=.c3c731c6b99a; Stephen Dinan. 11 Apr. 2017. “Sanctuary City List on Hold after 3 Weeks as Homeland Security Acknowledges Errors in Data.” *The Washington Times*, <http://www.washingtontimes.com/news/2017/apr/11/dhs-suspends-sanctuary-city-list-after-3-weeks/>.

¹⁵ “Supporting Federal, State, Local, and Tribal Law Enforcement.” 31 Mar. 2017. Memorandum for Heads of Department Components and United States Attorneys, From the Attorney General, <https://www.documentcloud.org/documents/3535148-Consentdecreebaltimore.html>.

¹⁶ “Restoring State, Tribal, and Local Law Enforcement’s Access to Life-Saving Equipment and Resources,” Executive Order 13809. 28 Aug. 2017. Federal Registrar, 82, no. 168, 41499–500.

¹⁷ “Rescission of Memorandum on Use of Private Prisons,” Memorandum for the Acting Director Federal Bureau of Prisons. *Office of the Attorney General*. 21 Feb. 2017.

southern border.”¹⁸ Congress has yet to appropriate any funds for Trump’s border wall – and it has become a key point of negotiation in the president’s recent efforts to strike deals with Republican and, more controversially, Democratic leaders to break the legislative log jam that has plagued his first year in office. Yet this order was directed at his base: to claim that, protestations of the Washington establishment aside, work on the barricade had begun, that no additional legislative authority was needed to complete it, and that, as a result, illegal immigration was already down due to these nascent efforts.¹⁹

Two days after reconfiguring DHS priorities on immigration enforcement, the White House directed border and customs agents to further restrict travel into the United States. Executive Order 13769 *immediately* suspended the US Refugee Admissions Program (USRAP) for 120 days, suspended the entry of Syrian refugees indefinitely, and suspended entry, for at least 90 days, travelers from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.²⁰ More than 700 travelers were detained, having had their visas revoked in route to their destination, and up to 60,000 visas were “provisionally revoked,” as individuals – including many students and family members of American residents – remained at their points of departure. Two days later, after widespread protests at the nation’s airports, the administration denied that they had ordered a “Muslim ban” citing the fact that it did not block entry from the other 33 Muslim-majority countries in the world.²¹ Nevertheless, less than a week after implementation, Federal Judge James Robart, a George W. Bush appointee, stopped its enforcement.

Not to be deterred, one month later, the White House re-issued the order, modifying what it deemed the most legally precarious positions.²² Many legal

18 “Border Security and Immigration Enforcement Improvements,” Executive Order 13767. 25 Jan. 2017. Federal Registrar, 82, no. 18, 8793–7.

19 These claims were most recently made in the aftermath of a supposed legislative deal Trump made with Democrats. See, for example, the President’s quoted tweets: eds. O’Keefe and David Nakamura. 2017. “Trump, Top Democrats Agree to Work on Deal to Save ‘Dreamers’ from Deportation.” *The Washington Post*, September 14. https://www.washingtonpost.com/news/powerpost/wp/2017/09/13/trump-top-democrats-agree-to-work-on-deal-to-save-daca/&hpid=hp_rhp-top-table-main_daca1013pm%3Ahomepage%2Fstory&utm_term=.16fe3d9f42b9.

20 “Protecting the Nation from Foreign Terrorist Entry Into the United States,” Executive Order 13769. 27 Jan. 2017. Federal Registrar, 82, no. 20, 8977–82.

21 “President Donald J. Trump Statement Regarding Recent Executive Order Concerning Extreme Vetting.” 29 Jan. 2017. *The White House: Office of the Press Secretary*.

22 The new executive order modified several provisions of the original: those with already-issued visas were excluded; Iraq was taken off the list of banned countries; religious minorities were also included on the new list; a more straightforward waiver process was established. “Protecting the Nation from Foreign Terrorist Entry into the United States,” Executive Order 13780. 6 Mar. 2017. Federal Registrar, 82, no. 56, 13209–19.

scholars dismissed the administration's claim that it had wide-ranging authority over refugee policy and that it was just following the example of 6 of the preceding 7 presidential administrations.²³ However, the Supreme Court, without dissent, largely agreed with such a rationale – at least in staying an injunction on the new order – when it intervened to allow the temporary 6-month ban to take effect. Although the Court will issue a more comprehensive ruling on the White House's action later this year, given the broad discretion allowed presidents in the immigration policy arena and the addition of Justice Gorsuch to the tribunal, it is unlikely that the Trump administration's actions will be overturned.²⁴

As we are writing, the Trump administration has undertaken another highly contentious action to remake immigration policy: the suspension of one of Obama's most significant unilateral actions: Deferred Action for Childhood Arrivals (DACA). Just as Obama crafted this policy as a bold strategy of administrative partisanship, so Trump unilaterally suspended it. The fate of close to 800,000 undocumented immigrants – the "Dreamers" who came to the United States as children and are in the country illegally through no fault of their own – thus became a volatile and highly scrutinized example of the mischiefs of executive-centered partisanship.

Hoping that a firm policy on border control might encourage a bipartisan agreement on comprehensive immigration reform, Obama pursued an aggressive deportation strategy during much of his first term; immigration rights groups nicknamed him the "Deporter-in-Chief." But failing to reach an agreement with the Republican Congress, Obama took dramatic administrative action towards the end of 2011 to protect "Dreamers" from deportation. Although the inter-departmental memorandum issued by Secretary of Homeland Security, Janet Napolitano, specified that the directive "conferred no substantive right, immigration status or pathway to citizenship," it did establish a process to allow qualifying individuals to gain protection from deportation for two years, and specified that those Dreamers granted deferred action could apply for work authorization (Lowande and Milkis 2014). Three years later, after the 2014 election, which saw the Republicans win control of the Senate, Obama extended deportation relief to the parents of permanent residents and citizens (DAPA). These programs, rooted in the president's power of "prosecutorial discretion," became the source of passionate partisan conflict that Trump exploited in the Republican primaries and general election. Immigration rights groups, despairing of legislative reform after Republicans took

²³ "In Case You Missed It: McClatchy on Historical Precedent for President's National Security Executive Order." 7 Feb. 2017. *The White House: Office of the Press Secretary*.

²⁴ Adam Liptak. 2017. "Justices Allow Refugee Ban White Case Proceeds," September 12. <https://www.nytimes.com/2017/09/12/us/supreme-court-refugee-ban.html&mcubz=0>.

control of the both congressional chambers in 2014, strongly advocated for such bold administrative action; however, this solution for partisan “gridlock,” which had become a leading feature of executive-centered partisanship, left immigration rights exposed to the retaliatory unilateral action of President Trump and the aggressive Conservative statist who occupied the White House in 2017.

Trump’s decision to suspend the program, which followed his rescission of the more expansive DAPA initiative, was not merely an attempt to placate his conservative base. While the decision to suspend DACA clearly resonates with his pledge to strengthen the country’s immigration laws, ramp up border security, and cut down on both legal and illegal immigration, this action poses serious political risks for the administration, which they had actively sought to evade throughout their first few months in power. Although many of Trump’s first executive actions were related to his hardline campaign promises on immigration, when pressed specifically on DACA, the president and his administration demurred.²⁵ Given Trump’s vitriolic oratory on the campaign trail, it is easy to dismiss his pledge to “show great heart” to the “dreamers” after taking office as empty rhetoric. Yet, his delay in rescinding the DACA program immediately after entering the White House was enough to encourage ten states’ attorneys generals to threaten to sue the federal government over its continued support.²⁶ Faced with a September deadline, then Secretary of Homeland Security John Kelly repeatedly traveled to Capitol Hill throughout the summer to warn of the program’s impending termination.²⁷ The warnings were not without cause or precedent. When Obama attempted to expand DACA by adding parents of US

25 Dana Nakamura. 2017. “Trump’s Hardline Immigration Rhetoric Runs Into Obstacles – Including Trump,” *The Washington Post*, February 17. https://www.washingtonpost.com/politics/trumps-hardline-immigration-rhetoric-runs-into-obstacles--including-trump/2017/02/17/37ba2218-f537-11e6-b9c9-e83fce42fb61_story.html?utm_term=.ab4eed93f457; Joel Achenbach. 23 Apr. 2017. “Trump Aides Struggle to Clarify Policy on ‘Dreamers’ and Deportation.” *The Washington Post*, https://www.washingtonpost.com/news/post-politics/wp/2017/04/23/trump-aides-struggle-to-clarify-policy-on-dreamers-and-deportation/&utm_term=.a6db04872396.

26 “Letter to the Attorney General of the United States: Texas, et al. v. United States, et al., No. 1:14-cv-00254 (S.D. Tex.).” 29. Jun. 2017. *Office of the Attorney General of Texas*. The attorneys general of Alabama, Arkansas, Idaho, Kansas, Louisiana, Nebraska, South Carolina, Tennessee, and West Virginia joined Texas Attorney General Ken Paxton.

27 Maria Sacchetti. 2017. “DHS’s Kelly: Program Shielding 800,000 Illegal Immigrants May be in Jeopardy.” *The Washington Post*, July 12. https://www.washingtonpost.com/local/social-issues/dhss-kelly-tells-hispanic-caucus-daca-might-not-survive-court-challenge/2017/07/12/b1f19686-672b-11e7-9928-22d00a47778f_story.html&utm_term=.98ffaa1d639a; Editorial Board. 21 Jul. 2017. “Secretary Kelly, When Will You Speak Up for ‘Dreamers’?” *The Washington Post*, https://www.washingtonpost.com/opinions/secretary-kelly-when-will-you-speak-up-for-dreamers/2017/07/21/40647476-6d74-11e7-96ab-5f38140b38cc_story.html&utm_term=.e95bb968c2ad.

citizens and legal residents to the program, legal challenges almost immediately led to a court injunction on the administrative action. Consequently, the Trump administration was stuck between the proverbial rock and hard place: end the popular DACA program in order to appease his most loyal supporters; or, uphold the policy, renege on one of his most high-profile campaign promises, and suffer a legal threat that might terminate the program immediately. Instead, in a calculated political maneuver, Trump sought to appear *simultaneously* hard on immigration, in support of constitutional limitations on the executive, and in favor of any number of legislative proposals likely to pass the Congress over the fate of affected individuals. By delaying DACA's termination, he has forced the Republican majority to enact legislation or share the blame with the White House for rescinding the initiative. Still, DACA was born of administrative unilateralism and was promptly terminated with similar instrumental gusto; therefore, far from decreasing the likelihood of future policymaking through such means, it will likely encourage further reliance on administrative overreach.

Indeed, when considered in the context of his other anti-immigration actions, the DACA maneuver merely threw salt in the wounds of Trump's opposition. The rescission of DACA came less than 2 weeks after the President pardoned Joe Arpaio, the former Arizona sheriff who drew intense criticism for his aggressive pursuit of unauthorized immigrants, which earned him a criminal contempt conviction. Moreover, in defending the rescission order, Trump and Attorney General Jeff Sessions – a persistent and harsh critic of undocumented immigration – both used the trope of anti-immigrant activists, arguing that those in the country illegally are lawbreakers who hurt native-born Americans by usurping their jobs and pushing down wages. There was no prospect, then, that the effort to appease both sides in the rescission of DACA would lead to a cease fire in the political war zone that Trump occupied.

Servicing the State

Homeland security might be the first priority of Trump's executive partisanship, but his onslaught on the federal workforce – the life blood of the administrative state – is a close second priority. Every president since F.D.R. has understood that they could pursue their policy goals, in part, by reorganizing the executive branch and by modifying the workplace rules of the federal civil service (Light 1998). Yet, for President Trump, restructuring the federal civil service is an end in its own right. As with his claims of building a Mexican-funded border wall, it is easy to dismiss as bombastic another rapturous chant heard during the campaign: "Drain the Swamp!" But, since January, Trump has aggressively pursued a number of sig-

nificant reforms that will more closely align civil service workers, and civil service procedures, to his other programmatic goals. Moreover, and perhaps most significantly, Trump has used his authority over the civil service to create an image of an effective businessman-turned-politician, even if the policy consequences are usually more muddled than the White House otherwise suggests.

Even before taking office, the administration sought to clarify its tough-outsider position by inserting itself in a high-profile negotiation with Lockheed Martin over the costs of the F-35 Joint Strike Fighter Jet. By Trump's own account, the estimated \$700 million in savings is hardly a drop in the \$3.85 trillion bucket of federal expenditures for FY 2016.²⁸ And yet, the administration continues to tout its managerial interventions in federal contracting negotiations, the decisions of various companies to keep jobs within the United States, and even in making sure the US government is buying as much American-made steel as possible.²⁹

More to the point, within 3 days of taking office, Trump issued his first presidential memorandum instituting an "across the board" hiring freeze for the entire federal government.³⁰ Purposefully, however, the freeze exempted military personnel, and like Ronald Reagan's first-year moratorium, the memorandum carves out broad exemptions for any employee that an agency head or Cabinet Secretary "deems necessary to meet national security or public safety responsibilities." The freeze therefore had a two-fold effect of gradually reducing the size of the federal workforce in some areas, while allowing it to continue in areas that further the Trump administration's policy priorities. Several weeks later, the White House continued its tinkering with the structure of the federal hiring process, this time by ordering the head of each administrative agency and department to submit a plan to reorganize their office. The new plans, which will be incorporated into next year's OMB report, must take account of: whether the function should be devolved to state or local government; whether the private sector would more efficiently source the task; whether there is a redundancy with another agency; whether the costs are justified by the public benefit it provides; and whether it would be best to merge with another agency or program in the executive branch.³¹ Several weeks later, OMB Director Mick Mulvaney

28 Kristina Wong and Rebecca Kheel. 2016. "Trump Strikes Fear Into Defense Contractors." *The Hill*, December 15. <http://thehill.com/policy/defense/310453-trump-strikes-fear-into-defense-contractors>.

29 "Buy American and Hire American," Executive Order 13788. 8 Apr. 2017. Federal Registrar, 93, no. 76, 18837–9.

30 "Hiring Freeze," Memorandum for the Heads of Executive Departments and Agencies. 23 Jan. 2017. Federal Registrar, 82, no. 15, 8493–4.

31 "Comprehensive Plan for Reorganizing the Executive Branch," Executive Order 13781. 13 Mar. 2017. Federal Registrar, 82, no. 50, 13959–60.

ordered that agencies must use the President's budget proposal – despite lacking any legal authority – in submitting their budget requests for fiscal year 2019; in sum, agency heads must plan *as if* Congress were to follow through on the near \$1.4 trillion cuts to the non-defense discretionary budget over ten years.³² Preliminary reports are due out by October 1, 2017, but in the meantime, the OMB has sought to augment its hiring freeze by seeking authority to: lower retirement benefits for federal workers; abolish cost-of-living adjustments for current and future enrollees in the Federal Employees Retirement System; reduce cost-of-living adjustments by 0.5 percent for contributors to the Civil Service Retirement System; and increase individuals' payments to their federal retirement plans, without an offsetting salary increase (effectively a six-percent pay cut).³³

Not only has President Trump sought to restructure the composition of the federal civil service, but through a series of administrative actions, he has exceeded efforts that began during Reagan presidency to alter the conduct of much agency work. In January, the White House issued an executive order mandating that every executive department or agency must identify two regulations it wants to repeal for every new regulation it wants to propose; moreover, the agency must calculate the fiscal effect of these one-in, two-out transactions, and ensure that, for a given year, the agency will not increase the regulatory-financial burden on the American economy.³⁴ While some have suggested that such reform is little more than a gimmick, the White House has continued to follow through on re-structuring the regulatory process to ensure that every agency proposal is first vetted by the White House officials. Less than a month later, Trump ordered every agency to begin developing a Regulatory Reform Task Force, using existing agency resources. At a minimum, each Regulatory Reform Task Force is instructed to identify and report to the OMB regulations that: eliminate jobs, or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.³⁵ In April, again by executive order, the White House strengthened the review process for regulations that intersect with the US tax code, or rely on the IRS for implementation, subjecting each one to review

³² "Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce," Memorandum for Heads of Executive Departments and Agencies. 12 Apr. 2017. Executive Office of the President: Office of Management and Budget. M-17-22.

³³ "Budget of the U.S. Government: A New Foundation for American Greatness, Fiscal Year 2018."

³⁴ "Reducing Regulation and Controlling Regulatory Costs," Executive Order 13771. 30 Jan. 2017. Federal Registrar, 82, no. 22, 9339–41.

³⁵ "Enforcing the Regulatory Reform Agenda," Executive Order 13777. 24 Feb. 2017. Federal Registrar, 82, no. 39, 12285–7.

within the Department of Treasury.³⁶ In pursuance of this order, the OMB has been developing a plan to establish a “regulatory cost allowance” for every part of the executive branch. As such, beginning in 2018, “no regulations exceeding the agency’s total incremental cost allowance [set by the OMB] will be permitted in that fiscal year, unless required by law.”³⁷

The impact of these efforts to “drain the swamp” reverberate beyond the federal service. Since the 1980s, a significant amount of government service is handled by contractors, who are often exempt from certain requirements affecting civil service employees. In 2014, President Obama issued a wide-ranging order that would have required any company competing for a federal grant over \$500,000 to disclose whether it had violated one of 14 federal labor laws, and myriad other state labor laws within the last 3 years. While not creating any new protections on its own, the order, depending on how one interpreted it, would either blacklist any company not found in compliance with the law, or would provide an especially lucrative inducement to get companies to comply.³⁸ As of March 27, those rules no longer exist, and all other contractor-labor relations rules subsequent to the “Fair Play” standards are under formal review.³⁹

Redeploying Liberal Policies

Trump’s administrative actions to secure the state and weaken the civil service were the vanguard of a concerted effort to redeploy national administrative power in the service of a conservative program. But so too are the administration’s attempts to remake and reorient the federal government’s broad array of policy instruments that were designed to serve liberal ends. For example, overlooked amid the botched effort to repeal and replace “Obamacare” – the conservative objective that most united the strategic vision of the White House and congressional Republicans – is the fact that on his first day in office Trump issued an executive order that instructed federal officials to ease regulations associated

36 “Identifying and Reducing Tax Regulatory Burdens,” Executive Order 13789. 21 Apr. 2017. Federal Registrar, 82, no. 79, 19317–8.

37 “FY 2018 Regulatory Cost Allowances,” Memorandum for Regulatory Reform Officers at Executive Departments and Agencies. 7 Sept. 2017. Executive Office of the President: Office of Management and Budget. M-17-31.

38 “Fair Play and Safe Workplaces,” Executive Order 13673. 31 Jul. 2014. Federal Registrar, 79, no. 150, 45309–315.

39 “Revocation of Federal Contracting Executive Orders,” Executive Order 13782. 27 Mar. 2017. Federal Registrar, 82, no. 60, 15607.

with the Affordable Care Act by directing agencies “to waive, defer, grant exemptions from or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden.”⁴⁰ The early efforts of the Trump administration to repeal and replace “Obamacare” – the single greatest legislative achievement of his predecessor – stalled in the Congress largely because Republicans could not reach a consensus about what health care policies should supplant “Affordable Care Act.” Yet, as has been demonstrated since the Reagan presidency, administrative action such as waivers can be used to redirect policy. As the recriminations over health care policy continued, it may be that the White House will achieve unilaterally what several Republican senators, led by Lindsey Graham of South Carolina and Bill Cassidy of Louisiana, hoped to accomplish with legislation: turn funds and policy discretion over to the States.⁴¹ It is highly unlikely, however, that this devolution will succeed without national standards that impose conservative policies on state and local governments. Just as welfare “reform” imposed mandates on states regarding work requirements, so health care “replacement” might put pressure on state and localities to allow insurance companies to offer non-comprehensive policies and restrict Medicaid expansion.

Partisan administration also is likely to agitate further what has become a Manichean battle over education policy. Although Congress enacted No Child Left Behind – a leading priority of the George W. Bush administration – in 2002 with bipartisan support, this consensus soon erupted into a battle over how to administer the controls it imposed on elementary and secondary education. The Obama administration capitalized on the broad acts of discretion given to the Department of Education and through a combination of waivers, bureaucratic regulations, and an innovative grant program – Race to the Top – redefined the federal approach to education policymaking with virtually no consultation with Congress. Congress enacted Every Student Succeed Act in 2015 in order to ameliorate the efforts by both the Bush and Obama administration to force national policies pertaining to student and teacher accountability on the States. Yet even with the Congress’ effort to reassert its authority, a partisan battle continued into the early days of the Trump administration over what objectives these unprecedented federal government interventions in public education should serve.⁴² Trump’s controversial

40 “Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal,” Executive Order 13765. 20 Jan. 2017. Federal Registrar, 82, no. 14, 8351–2.

41 Robert Pear. 2017. “Republicans Demand Another Vote To Repeal Health Care,” *New York Times*, September 18. <https://www.nytimes.com/2017/09/18/us/politics/obamacare-repeal-vote.html&mcubz=0>.

42 Rick Hess. 2017. “Betty DeVos and the Manichean Impulse,” *Education Week Spotlight*, January 17. http://blogs.edweek.org/edweek/rick_hess_straight_up/2017/01/betsy_devos_and_the_manichean_impulse.html.

choice to head the Department of Education, Betty DeVos, had long been an advocate of local discretion; but once ensconced in her new position, she began to pursue an aggressive federal policy that stressed the “privatization” of public schools, most notably by expanding charter schools and vouchers, albeit with regulatory and financial support from the Department of Education.⁴³ DeVos’s approach to civil rights investigations and its stated desire to revise Obama-era guidance on how colleges enforce provisions of Title IX related to sexual harassment and sexual assault, threaten further to undermine the initiatives built up by Obama’s executive ambitions.

The Trump administration’s interventions in health, education, and welfare – as important as they have been – pale in comparison to its assault on Obama-era environmental protections. Faced with divided government for the majority of his presidency, Obama routinely relied on executive orders and presidential memoranda to strengthen federal protections of the environment and to counter the effects of man-made climate change. Trump has used those same instruments to reverse many of those orders. The rolling back of environmental protections does not imply the absence of state authority in this polarized policy arena; rather, Trump has reoriented national administration to encourage natural resource extraction and limit what states and localities can do to stifle economic development in the name of mitigating climate change.

Perhaps no issue galvanized environmentalists and their political enemies more forcefully than the long-standing debate over the Keystone XL pipeline, a policy battle that has been further polarized by the more recent struggle over the Dakota access pipeline. While President Obama equivocated throughout his tenure in determining the fate of various pipelines, the legal structure for these decisions was clear: they required executive approval or disapproval. Amid his painful vacillation, in fact, Obama made a vain plea for a return to the Progressive principle of “neutral competence”: “for years, the Keystone pipeline has occupied what I, frankly, consider an overinflated role in our political discourse. It became a symbol too often used as a campaign cudgel by both parties rather than a serious policy matter. And all of this obscured the fact that this pipeline would neither be the silver bullet for the economy, as was promised by some, nor the express lane to climate disaster proclaimed by others.”⁴⁴ Not surprisingly, when President Obama finally rejected the application for the final phase of the project,

⁴³ Erica L. Green. 2017. “DeVos’s Hard Line on Education Law Surprises States,” *New York Times*, July 7. <https://www.nytimes.com/2017/07/07/us/politics/devos-federal-education-law-states.html&mcubz=0>.

⁴⁴ “Statement by the President on the Keystone XL Pipeline.” November 6, 2015. *The White House: Office of the Press Secretary*.

it only aroused further fury from conservatives, including one who was mulling his own run for the White House, Donald Trump. Executive action thus begat executive action: four days after taking office, in a widely-publicized ceremony inside the Oval Office, Trump reversed the Keystone XL order, approved another divisive pipeline – Dakota Access – and further stated in a memorandum that they would have to be made with American steel.⁴⁵

Administrative partisanship over environmental issues was greatly intensified by the White House's announcement – in line with a salient campaign promise – to pull the United States out of the 2015 Paris Climate Accord – a decision that jeopardizes the \$3 billion dollars that the United States had pledged to climate change efforts in industrializing countries. The Trump administration's program to redeploy environmental policy was joined to less publicized, but just as important executive action to disrupt the Obama-era regulatory framework. These include an order that overturned rules requiring that recipients of federal funds seeking to build in flood zones consider the risk of flooding and design accordingly; the order, ironically, was signed two days before Hurricane Harvey formed in the Gulf of Mexico – eventually decimating parts of the greater Houston area with torrential rain.⁴⁶ The overarching purpose of this action, however, was not to roll back federal involvement, but, instead, to ensure that “the Federal environmental review and permitting process for infrastructure projects is coordinated, predictable, and transparent” – to redirect policy, that is, from environmental protection to the rapid expansion of the national government's role in the development of the nation's infrastructure.

Trump and Republican Partisanship

Despite his promise of retrenchment, therefore, Trump's presidency has followed the script of Reagan and Bush to recast the modern presidency as two-edged sword that, ideologically, cuts in a conservative as well as a liberal direction. Part of this strategy included using the broad discretion presidents enjoy in managing the federal service and writing federal regulations; yet such actions are tied to the

⁴⁵ “Construction of the Keystone XL Pipeline,” Memorandum for the Secretary of State, the Secretary of the Army, and the Secretary of the Interior. 24 Jan. 2017. Federal Registrar, 82, no. 18, 8663–5; “Construction of the Dakota Access Pipeline,” Memorandum for the Secretary of the Army. 24 Jan. 2017. Federal Registrar, 82, no. 18, 8661–2; “Construction of American Pipelines,” Memorandum for the Secretary of Commerce. 24 Jan. 2017. Federal Registrar, 82, no. 18, 8659.

⁴⁶ “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,” Executive Order 13807. 15 Aug. 2017. Federal Registrar, 82, no. 163, 40463–9.

mobilization of partisan support that has been a core feature of executive-centered partisanship. Indeed, as the president's poll numbers dropped to historically low numbers during the first year of his presidency and the administration became embroiled in a scandal that risked exposing collusion between his campaign and the Russian government, Trump maintained, indeed sought to further strengthen, the alliance with leaders of the conservative movement whom he had cultivated during the general election. Despite his weak public support after 6 months in office, the president's approval rating among conservative Republicans, according to a Gallup poll, was 89% – almost exactly what it was on inauguration day. This is not surprising, given that Trump unilaterally pushed issues that had become the template of movement conservatives over the past four decades: “traditional” family values, law and order, enhanced border security, opposition to affirmative civil rights policy, and the war against “radical Islamic terrorism.”⁴⁷

At the same time, Trump's America First rendition of conservatism threatened to alienate important Republican constituents. Although satisfying the demands of traditional GOP stalwarts in some areas, Trump's cultivation of a “coalition of restoration” has also alienated pragmatic business interests, which comprised an important part of the Republican coalition advanced by Reagan and George W. Bush. His controversial comments in the wake of violent demonstrations that erupted in Charlottesville, Virginia – appearing to condemn in equal measure the actions of neo-Nazi's and those who confronted them in the streets – forced the administration to shut down two presidential advisory councils after corporate leaders repudiated the president's comments. JP Morgan Chase chief executive Jamie Dixon, a member of the White House's Strategy and Policy Forum, echoing the sentiments of many corporate leaders, stated in a note to employees: “Constructive economic and regulatory policies are not enough and will not matter if we do not address the divisions in our country. It's a leader's role, in business or government, to bring people together, not tear them apart.”⁴⁸

It is clear then to whom Trump feels most beholden and where the new administration is seeking to take the Republican Party. Trump's incendiary remarks – aggravated by his insistence that some of the people who marched beside White supremacists and neo-Nazis in Charlottesville were good people – did not alienate most of the leaders of the conservative movement. These activists saw the president as the victim of the establishment press, the handmaiden of the liberals

⁴⁷ Jeremy Peters. 2017. “Trump Keeps His Conservative Movement Allies Closest,” August 2. <https://www.nytimes.com/2017/08/02/us/politics/trump-conservative-republicans.html&emc=eta1>.

⁴⁸ Damian Paletta and Jena McGregor. 2017. “Two White House Corporate Advisory Groups Disband Amid Charlottesville Fallout,” *The Washington Post*, August 16. https://www.washingtonpost.com/business/economy/2017/08/16/bbe888a6-82c5-11e7-ab27-1a21a8e006ab_story.html&utm_term=.8c53d52d9ed6.

and corporate fat cats who tarred him and his followers unfairly as racists and xenophobes. Trump, they argued, was the legitimate heir of a movement whose followers, including the ostensibly anti-government Tea Party activists, expected the president to uphold law and order and defend “traditional” values.

Seeking to defy claims that he was denigrating the legacy of Ronald Reagan, Trump took special precautions to maintain his alliance with the Christian Right, which the iconic Republican president had recruited into the Republican Party. Showing his gratitude to White evangelicals – who voted overwhelmingly for him (81%) and remained supportive through the first tumultuous 8 months of his presidency – Trump tweeted an order in July of 2017 that transgender people would be barred from the military – an action that the evangelical activist Tony Perkins of the Family Research Council had been urging for months. This initiative raised the perplexing question of whether a presidential tweet had legal standing; but the White House sanctified the policy on August 25th – the same day that Trump pardoned former Sheriff Arpaio – by releasing a memorandum directing the Department of Defense to implement Trump’s transgender ban on military personnel.⁴⁹

Although the campaign to ban transgender individuals from the armed forces received great national attention, more central to the heart of Trump’s social agenda was an executive order that took aim at Obama-era regulations intended to protect gay people from discrimination and ensure that women have access to birth control. Appearing in the Rose Garden flanked by Vice President Pence, who has strong ties in the Christian Right, and Paula White, a Christian televangelist, who has been his spiritual advisor, Trump issued an order that directed Attorney General Sessions to provide guidelines for reinterpreting religious liberty protection in law. The order also instructed federal agencies to vigorously protect religious liberties and consider issuing new rules to address conscience-based objections to health care mandates regarding birth control.⁵⁰ Given current lawsuits involving the Justice Department’s birth-control regulations, the president’s order had no immediate effect on policy. But, as the *New York Times* reported, “it did start a flurry of activity across the government – the administrative state that the Trump administration typically views with skepticism – prompting agencies to draft new policies that chipped away at the Obama-era mandates.”⁵¹

49 “Military Service by Transgender Individuals,” Memorandum for the Secretary of Defense and the Secretary of Homeland Security. 25 Aug. 2017. Federal Registrar, 82, no. 167, 41319–20.

50 “Promoting Free Speech and Religious Liberty,” Executive Order 13798. 4 May 2017. Federal Registrar, 82, no. 88, 21675–6.

51 Protes, Ben, Danielle Ivory, and Steve Eder. 2017. “Where Trump’s Hands-Off Approach to Governing Does Not Apply.” *The New York Times*, September 10. <https://www.nytimes.com/2017/09/10/business/trump-regulations-religious-conservatives.html&mcubz=3/>.

The effect of such executive action on policy is still up in the air; yet the appeal to the conservative base has resonated. Echoing the sentiment of many social conservatives, Richard Land president of the Christian Southern Evangelical Seminary in North Carolina, who has worked with Republican administrations since Reagan, marveled that he “never has felt his advice and input were more welcome in the White House since Trump became president.” He described regular, ongoing and continuing dialogue in emails, phone calls and meetings. “I’ve been coming here for three decades,” related another conservative activist at a White House dinner on the eve of a National Day of Prayer. “I no longer feel like the redheaded stepchild at the family reunion or the company picnic. I feel like a respected colleague and guest.”⁵²

The Hazards of Executive Partisanship

It remains to be seen how Donald Trump’s celebration of acting alone will affect the Republican Party and the executive office. In the immediate term, however, it seems to have fostered a destructive working arrangement in the White House Office, the hollowing out of regular departments and agencies, and limited his support to conservative Republicans who represent roughly 40 percent of the electorate. Even as the White House let loose a fuselage of executive orders, memoranda, and waivers that threatened and, in some cases, redirected Obama-era policies on almost every front, Trump’s progress was hobbled by internecine fights in the West Wing that precipitated the exits of National Security Advisor, Michael Flynn, whose rapid departure foreordained the scandal over Russia’s interference in the 2016 election that has plagued – and badly agitated – Trump from the start; his Chief of Staff, Reince Priebus; Press Secretary, Sean Spicer; his chief strategist – and principal conduit to his “alt-right” constituency – Stephen Bannon; and his iconoclastic foreign policy advisor, Sebastian Gorka. Moreover, chaos at the center of the administration has severely hampered the process of staffing important positions in the departments and agencies. A report from the White House Transition Projects shows that the Trump administration has the worst record in 40 years in staffing its political appointments. The blame for this failure to fill critical leadership positions does not lie with Congress, as the pace of Senate confirmations matches the past three presidential administrations. Rather it seems to be symptom of Trump’s mischievous attempt to task the White House as the

52 *Ibid.*

vanguard of an effort to “drain the swamp” and rebuild the executive branch in his own image.⁵³

Trump’s remarkable and troubling rise to the White House has frequently been viewed as idiosyncratic – a cult of personality that will not leave a deep imprint on governing institutions or parties. However, his iconoclastic executive-centered partisanship represents but a new stage – perhaps a final reckoning – of a development that has become deeply interwoven in the fabric of American politics. Ronald Regan, George W. Bush and Barack Obama each demonstrated that modern presidents, especially when motivated by programmatic incentives, can exploit national administrative power for partisan purposes. Obama, in fact, developed more creative tactics that framed administrative partisanship as more routine and less visible. Informal measures such as policy memos and waivers had long been supplanting executive orders and regulations, which have the force of law but require more complex administrative procedures and are subject to more resistance from Congress and the Judiciary; however, the Obama administration brought informal but policy-consequential administrative tactics to a new level (Lowande and Milkis 2014).

The bombastic Trump, as we have noted, has so far used executive orders more than his predecessor; nevertheless, more confrontational tactics were supplemented by a slew of less visible strategies, often pushing controversial policies through behind-the-scenes maneuvers. For example, at the order of the President, the Interior Department began quietly moving to allow energy exploration in the Arctic National Wildlife Refuge in Alaska for the first time in more than thirty years.⁵⁴ Congress has sole authority to determine whether oil and gas drilling can take place within the refuge’s 19.6 million acres, but seismic studies and gauging how much oil is below the ground represent a necessary first step. Under the auspices of the Trump administration, Interior Department officials have been modifying a 1980s regulation to permit such tests. This sub rosa push to open up the refuge, occurring as long-time drilling proponents occupy key positions in Interior, marks a potentially important redeployment of policy in a debate that has raged for decades.⁵⁵

53 *White House Transitions Project*. September, 2017. “Special Analysis on Pace of Confirmations.” <http://www.whitehousetransitionproject.org/appointments/>.

54 “Implementing an America-First Offshore Energy Strategy,” Executive Order 13795. 28 Apr. 2017. Federal Registrar, 82, no. 84, 20815–8.

55 Juliet Eilperin. 2017. “Trump Administration Working Toward Renewed Drilling in Arctic National Wildlife Refuge,” *Washington Post*, September 15. https://www.washingtonpost.com/business/economy/2017/08/16/bbe888a6-82c5-11e7-ab27-1a21a8e006ab_story.html&utm_term=.8c53d52d9ed6.

With partisan loyalties weakening, if not displacing institutional attachments, Congress and, even the courts, have for the most part provided tepid resistance to the onward march of presidency-centered partisanship. There have been some signs of life in the “Madisonian System.” The Courts did slow, and are still considering, the provocative refuge order; and in response to the ongoing scandal over the administration’s possible collusion with Russia, Congress passed tough sanctions, marking the first time that Congress had forced Trump to sign a bill over his objections by passing it with bipartisan, veto-proof majorities. The measure, which imposed a waiting period of 30 days on the White before it could renegotiate any sanctions, expressed the deep skepticism among lawmakers in both parties about Trump’s “bro-mance” with Putin. In particular, the legislature’s unusual incursion into the president’s authority in national security seemed like an effort to prevent Trump from overlooking the Kremlin’s annexation of Crimea, sustained military intervention in Ukraine, and its meddling in last year’s American election.

That the Russian government’s retaliation – seizing two American diplomatic properties and ordering the United States to reduce its embassy staff members in Russia by 755 people – occurred before Trump signed the law might have signaled its intention to target Congress rather than the White House. Indeed, although Trump reluctantly signed the legislation, his approval came with an important caveat – a signing statement that judged those parts of the law that proscribed his discretion to make deals with a foreign nation unconstitutional.⁵⁶ Signing statements had become an important weapon in the president’s administrative arsenal during the George W. Bush administration; yet such executive assertion was unlikely to work in the face of almost unanimous congressional opposition. Trump’s estrangement from the “establishment,” therefore, aroused Congress to assert its prerogative in commercial transactions – and to put a serious crimp in Trump’s determination to reach a rapprochement with an authoritarian regime.

Facing an intractable situation of his own making, Trump sought to reverse his growing political isolation by cutting two deals with the Democratic leaders of the Congress: Senate Minority Leader, Charles Schumer and the head of the House minority, Nancy Pelosi. The first bargain with “Chuck and Nancy,” involving a bipartisan agreement combining hurricane relief aid to Houston and a three month increase in the debt ceiling, did not cause much outrage among Trump’s partisan brethren in Congress or his base. But the second agreement, reached during a convivial dinner of Chinese food at the White House that did not include any Republican leaders, badly rattled the party and its base. An ironic epilogue

56 “Statement by President Donald J. Trump on the Signing of H.R. 3364.” 2 Aug. 2017. *The White House: Office of the Press Secretary*.

to the DACA controversy, Trump and his new Democratic partners reached an understanding that would give legal protection to Dreamers and ramp up border controls, albeit without, at least for a time, building the Wall that had been at the heart of Trump's mobilization of his base. As a drum beat of recriminations were directed at the White House – the conservative firebrand and hitherto strong Trump backer Ann Coulter tweeted bluntly: “At this point, who DOESN'T want Trump impeached?”⁵⁷ Trump attempted to stem the tide with an “urgent” email to his supporters that sought to reclaim high partisan ground: “There's been a lot of noise today and a lot of rumors. Let me set the record straight in the simplest language possible...WE WILL BUILD A WALL (NOT A FENCE) ALONG THE SOUTHERN BORDER OF THE UNITED STATES OF AMERICA TO HELP STOP ILLEGAL IMMIGRATION AND KEEP AMERICA SAFE. Apparently, liberals in Congress and the mainstream media need one more reminder that building the wall is non-negotiable.”⁵⁸

No one is quite sure how the schemes pertaining to DACA and the border will be resolved. But to Republicans facing the 2018 campaign, the president's willingness to deal, not only with the pragmatic Schumer but also the partisan stalwart Pelosi – whom the Republicans have made into an “avatar for the liberal coastal elite” – the deal sowed a sense of betrayal. Taking account of the strong sympathy for the Dreamers, who even have significant support among some ardent conservatives such as the Koch brothers, it seemed that congressional Republicans' uneasy alliance with Trump suffered one of the hazards of executive-centered partisanship: their president has sought to fulfill his own ambition at the cost of denigrating his party as a collective organization with a past and a future.⁵⁹

Beyond the political intrigues of the moment, Trump's embrace of unilateral executive power has dramatically exposed the fault lines between the promise of presidential leadership, administrative aggrandizement, and the institutional weakness of political parties. Far from transcending the divisiveness and sectarian interests that form the core of party politics, presidents are now expected to take center stage in the fight over the services for the American state. The Reagan, Bush, and Obama presidencies raised a concern that has become a glaring

57 Coulter, Ann (@AnnCoulter). “At this point, who DOESN'T want Trump impeached?” 4:05 a.m., 14 Sept. 2017. *Twitter*.

58 Donald J. Trump. “Let Me Be Clear,” e-mail message from victory.donaldtrump.com. 14 Sept. 2017.

59 Jeremy W. Peters, “Conservatives Recoil at Trump's Accommodation with Democrats Over DACA,” 14 Sept. 2017, <https://www.nytimes.com/2017/09/14/us/politics/conservatives-trump-democrats-daca.html&mcubz=0>.

alarm during the Trump's presidency: the joining of presidential prerogative and partisanship creates the false illusion that the executive of a vast bureaucratic state, even with the tools of instant communication and social media, can truly function as a representative democratic institution with meaningful links to the president's party and the public. Instead, we have learned the hard lesson that executive partisanship leads to a plebiscitary politics, which exposes the American people to leaders who scorn the institutional restraints that are a vital ingredient of constitutional government as well as the collaboration that is the sine qua non of organized party politics. Recent developments herald a clarion call, as Hugh Heclo has wisely counseled, for people and their representatives to "think institutionally" (2008). But those who would seek to restore the restraints or refinements of institutions must face the imposing obstacle of a government that for years has sacrificed responsible leadership to aggressive and resolute partisan administration. For better or worse, appeals to patience and acts of forbearance have become frail vestiges of a polity once praised – or blamed – for its pragmatic centrism.

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