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## The Administrative Presidency as Reactive Oversight: Implications for Positive and Normative Theory

**Abstract:** *The fact that centralized executive oversight of agency policy making is primarily reactive reflects the motives and constraints that define the president's relationship with the domestic bureaucracy. Such a strategy allows for the allocation of limited resources to agency initiatives that are inconsistent with the president's agenda or that evoke conflict within the executive branch or the larger political system. This calls into question the descriptive model of presidential administration as proactive management by a unitary actor, as well as its prescriptive corollary that equates a strong executive with coordination across the bureaucracy. Reactive presidential oversight can produce a kind of ad hoc coordination that can be salutary, but its often pluralistic character can also undermine other important values in the administrative process.*

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### Practitioner Points

- A reactive oversight strategy is consistent with the president's institutional incentives and constraints as they relate to the bureaucracy's exercise of delegated policy-making authority.
- White House involvement in the administrative process is more pluralistic in its dynamics than implied by those who stress the president's role as a unitary actor.
- Popular arguments that view the centralization of executive authority as a source of coordination across the bureaucracy often fail to indicate what coordination is or how it occurs.

Regulatory review has emerged as the most important mechanism for direct influence by the Executive Office of the President (EOP) over policy making by the domestic bureaucracy. Although this has hardly gone unnoticed, scholars have given insufficient attention to its implications for our understanding of the administrative presidency. Much as fire-alarm oversight is alleged to serve the legislature's institutional needs, a reactive strategy allows the White House to focus its limited resources on agency initiatives that are salient to it while ignoring the majority that are not. Salience is defined in part by the need to ensure that bureaucratic actions are consistent with the president's agenda in certain areas but to a greater extent by the need to accommodate the conflicting perspectives and constituency ties that are embodied in every administration.

These descriptive insights speak, in turn, to prescriptive theory that endorses centralized executive control as a source of coordination across the bureaucracy. Such analyses have typically been framed in broad, deductive terms that fail to indicate what coordination is or how it occurs. Although reactive oversight can be beneficial, the political coordination that it tends to produce is very different

from the kind of coordination that might be inferred from arguments that stress the president's unique advantages as a unitary actor. It can also undermine other important values in the administrative process such as consistency, efficiency, transparency, and balanced responsiveness.

### Framing the Issues

Many have argued that the expansion of delegated authority has rendered the administrative process a critical medium through which presidents seek to achieve their policy objectives. Some of the most frequently cited efforts to demonstrate this correlate inspections, citations, enforcement proceedings, and other measures of agency output with changes in presidential administration (e.g., Moe 1982, 1985a; Wood 1988, 1992). Other studies focus on presidential initiatives to reorganize government (e.g., Nathan 1983), to review agency policy decisions (e.g., Cooper and West 1988), and to shape program implementation in particular areas (e.g., Durant 1992; Golden 2000).

Many also contend that presidential control of the bureaucracy is a good thing. Only the president, they argue, has the constitutional responsibility, the

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unity of purpose, and the organizational wherewithal needed to coordinate policy implementation across the bureaucracy pursuant to broad and integrated national interests. The case for Hamilton's (1788) "energetic executive" has been reinforced by the piecemeal accumulation of programs and agencies that accelerated with the New Deal and has continued apace (Kaufman 1956, 1969).

One should hasten to add that the assumptions about representation that underlie calls for the centralization of executive authority hardly enjoy universal support.<sup>1</sup> Nor is there a consensus that presidents have the incentive to oversee the bureaucracy. Whereas some assume that the imperative for political leadership furnishes a motive for administrative management, others consider these to be warring objectives (e.g., Moe 1990). Although they tend to be inconsistent on this score, even some of the most influential advocates of centralized executive control concede at some points that presidents care little about administrative economy and efficiency as ends in themselves (Kagan 2001; Moe 1985b).

Scholars have also argued that the White House lacks the resources needed to control the bureaucracy in more than a highly selective way (Pfiffner 1999). Commonly discussed limitations on its institutional capacity are the relatively short tenure of presidents and of the political executives and advisors they appoint and the sheer size and congenial inertia of the bureaucracy (e.g., Aberbach and Rockman 1988; Ingraham 1987). Not the least of the constraints on the administrative presidency are the competing lines of accountability in the United States' separation of powers system. Congress, in particular, plays a critical role in the administrative process, both in the performance of oversight and in the prior enactment of statutes that establish the substantive and procedural criteria that confine bureaucratic discretion (e.g., Gailmard and Patty 2013; Huber and Shipan 2002). Although advocates of a strong administrative presidency have long cited the gap between expectations and capabilities as a reason for augmenting the chief executive's authority and resources, Robert Durant (1992) likens such appeals to a dog chasing a mechanical rabbit.

These observations provide a context for addressing two questions that have received surprisingly little attention: given the president's incentives, capabilities, and limitations, how does centralized executive influence over administration take place, and what managerial values does it promote? The following examination of these issues focuses on *direct control* over the bureaucracy by the EOP and does not include indirect influence that occurs through the selection of like-minded political executives. It also focuses primarily on control over *rulemaking in the implementation of domestic programs*. As such, it does not speak to the management of the foreign affairs and defense establishments. It also does not focus on the budgetary process or on various other forms of administrative action such as regulatory enforcement and decisions allocating benefits and the like in individual cases. Given that it is the most important way in which agencies create policy (e.g., Kerwin and Furlong 2011), however, it is reasonable to assume that the president's oversight of rulemaking reflects his or her interests and constraints as they relate to the bureaucracy more generally.

Subject to these qualifications, the president's role in the administrative process is defined by two characteristics that have underappreciated implications for both descriptive and prescriptive

theory. One is that it is much more reactive than proactive in its impetus. The reasons for this are analogous to those that theoretically induce Congress to prefer "fire-alarm oversight" as a way of coping with the principal-agent problems that arise from its delegation of authority (McCubbins and Schwartz 1984). The other is that "centralized" executive influence over the bureaucracy is more pluralistic in its dynamics than implied by those who view the president as a unitary actor. The first two sections develop these points, while the third discusses their implications for arguments that endorse the administrative presidency as a source of administrative coordination.

### Proactive Direction versus Reactive Oversight

Although much of what goes on within presidential administrations is not readily observable from the outside, available evidence suggests that proactive efforts by the White House to shape the domestic bureaucracy's policy agenda are much more limited than the reactive role it plays in response to agency initiatives. This is consistent with the emergence of regulatory review as the primary institutional mechanism for direct, centralized executive influence over agencies' exercise of delegated policy-making authority.

#### A Limited Proactive Role

Scholars have given little systematic attention to what drives bureaucracy's policy agenda. As an effort to redress this neglect, a recent study examined the origins of a government-wide sample of 276 final and proposed domestic rules that were listed in the spring 2007 Unified Agenda of Federal Regulations (see table 1). Based on interviews with agency staff who were involved in the development of individual policies, it found that most (60.5 percent) were "discretionary" in the sense that they were issued pursuant to statutory language that authorized but did not require rulemaking. The great majority of the remainder were specifically required or informally encouraged by Congress (required by a statute in all but a very few cases). In contrast, only two rules that were classified as "significant"<sup>2</sup> and only seven in all were required or encouraged by the White House. Moreover, these had to do primarily with management practices such as electronic record keeping and procurement guidelines as opposed to substantive policy that had a direct impact on society (West and Raso 2012).

These observations are consistent with the fact that the institution of Office of Management and Budget (OMB) "prompt letters" in 2001 received such fanfare as an unprecedented extension of proactive executive influence over bureaucratic policy, as well as with the minimal effect of that program and its subsequent abandonment in 2006. Only 12 such documents were issued, and the majority of those were comments in support of initiatives that agencies were already considering (West and Raso 2012). The findings are also

**Table 1** Origins of Agency Rules

	Agency Discretion	Congressional Requirement	Presidential Requirement	Judicial Requirement	Total
Significant rules	63	51	2	4	120
Nonsignificant rules	104	43	5	4	156
Total	167	94	7	8	276

Source: West and Raso (2012).

consistent with the views expressed by senior careerists at a recent conference on the regulatory agenda<sup>3</sup> and with studies based on elite interviews (Golden 2000). For example, Lisa Schultz Bressman and Michael P. Vandenberg's survey of 30 political and career officials who served in the Environmental Protection Agency (EPA) during the George H. W. Bush and Bill Clinton administrations indicates that the White House played a very limited proactive role in agency policy making. As the authors note, "only a small portion of ... respondents had experienced a directive or announcement" (2006, 77) from the EOP encouraging them to issue a regulation.

This is not to deny that the White House sometimes initiates policy through the bureaucracy. Based on her experience as a member of the Domestic Policy Council, Elena Kagan (2001) contends that the Clinton White House often sought to achieve its goals by telling agencies to issue particular rules and to undertake other policy actions. John Graham's (2010) insider account of domestic policy making under George W. Bush also indicates that the White House supplemented its efforts to shape policy through legislation with strategically focused rulemaking initiatives in several areas. For example, one study identifies 16 rules that could be traced to the White House Office of Faith-Based Initiatives and its departmental subsidiaries in the Bush administration (Wright 2009). Similarly, the White House directed the EPA and Department of Transportation jointly to develop auto fuel economy and emissions standards at the beginning of the Barack Obama administration. Expressing frustration with a recalcitrant legislature, President Obama indicated more recently that he would pursue his agenda with regard to climate change and income inequality through administrative action.

As a matter of perspective, however, centralized executive influence over the bureaucracy's policy agenda is highly selective. Kagan concedes this point, noting that proactive initiatives by the Clinton White House to create policy through the appropriation of administrative authority were typically ad hoc responses to political targets of opportunity that reflected the "discrete policy goals" of individual advisors (2001, 2344, 2345). Even so, they were confined to a handful of areas. And even within those "regulatory spheres," Kagan notes that "Clinton's activity ... touched but a small fraction of administrative activity: the number of federal register pages devoted in his Presidency to health care and firearms regulation, to use one measure, doubtless far exceeded the number whose content Clinton could claim to have influenced" (2307).

It is worth adding that both academic and journalistic accounts of bureaucratic policy making by presidential administrations often fail to distinguish between the White House and the line bureaucracy. This is illustrated by the publicity surrounding a regulation proposed in the summer of 2013 that would require ceiling fans to be more energy efficient. Although some in the media and Republicans in Congress attributed it to President Obama (and although it did enjoy the administration's blessing), the policy had originated in the Department of Energy under George W. Bush. So-called midnight regulations may also emanate from outgoing political appointees in the line bureaucracy, notwithstanding their attribution to the

White House. In fact, a number of executive agencies ignored a directive from White House Chief of Staff Joshua Bolten placing a moratorium on new regulations at the end of the George W. Bush administration (Copeland 2008).

### ***The Reactive Alternative***

If the EOP exercises relatively little direct control over agencies' policy agendas, its subsequent influence over administration is more substantial. For example, the agency executives interviewed by Bressman and Vandenberg (2006) were clear that the OMB and other White House officials played a much greater reactive role in EPA rulemaking. This finding is consistent with the impressions of veteran OMB officials and of senior careerists who were closely involved in rulemaking by various components of the Departments of Transportation, Energy, Commerce, and Labor (West 2009).

The literature suggests that reactive oversight by the president and other political executives can take various forms (e.g., Carpenter 2001; Krause 1999). Although executive orders are typically viewed as instruments of proactive, centralized control, for example, an excellent study by Andrew Rudalevige (2012) demonstrates that most originate in the line bureaucracy. The role of the EOP in such cases is to ensure that agency initiatives do not conflict with presidential priorities or the interests and responsibilities of other agencies. Legislative clearance performs a similar function with regard to proposed bills, hearing testimony, and other communications between agencies and Congress. The primary function performed by a staff of about 20 analysts in the OMB's Legislative Reference Division is to identify issues that might be problematic and bring them to the attention of appropriate officials in the White House and executive branch.

Of course, legislative clearance does not focus on administration, and most executive orders are concerned with how agencies operate rather than what they do (Mayer 2001). The most important mechanism through which the EOP reacts to the bureaucracy's exercise of substantive policy-making discretion is regulatory review. This process has existed in limited form since the early 1970s but was strengthened and assigned to the OMB's Office of Information and Regulatory Affairs (OIRA) by Ronald Reagan in 1981. It allows the OIRA to examine bureaucratic policy initiatives before they are proposed in the *Federal Register* and again before they become final rules in order to ensure that they are cost-effective, that they do not duplicate or conflict with other agencies' programs, and that they are consistent with presidential priorities.

An OIRA staff of about 30 analysts cannot give careful attention to the thousands of regulations that are promulgated by federal agencies each year. Although review was extended from "major" regulations to all substantive rules in the Reagan administration, it

was confined in practice to agency policies that were especially salient. An executive order issued by President Clinton institutionalized this practice by limiting oversight to "significant" rules.<sup>4</sup> Generally ranging from 500 to 800 regulations per year, these include "economically significant" agency proposals with a projected annual economic impact in excess of \$100 million (the former "major regulations")

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as well as rules meeting one of a number of other criteria.<sup>5</sup> Even significant rules receive varying levels of scrutiny. If regulatory review is far from comprehensive, however, it allows the EOP to consider and influence agency policy initiatives that are important to the administration. This capability is reinforced by an open-ended definition of significance and by the OIRA's final authority to make such determinations. Among other criteria, any rule that poses "novel legal or policy issues" can be so designated.

Regulatory review is by far the most important mechanism that exists for direct and centralized presidential influence over the administrative process. This observation is underscored by early allegations that it was an unconstitutional usurpation of authority delegated to agency heads (e.g., Rosenberg 1981; Verkuil 1980). Its linkage to the needs of the presidency is also underscored by the fact that it is an executive initiative rather than an institution placed within the EOP by statutory law.<sup>6</sup> The oversight it furnishes is selective to be sure, yet its impact far exceeds proactive efforts by the president to influence bureaucratic policy in a direct way. With the caveat that its figures include minor as well as important changes, rules that the OMB reports as having been altered, delayed, or (less frequently) withdrawn pursuant to review number in the hundreds each year. Moreover, these data fail to capture either the anticipatory effects of review or the direct, informal influence that occurs as proposals are being developed. Always a factor because of the common desire of agency and EOP officials to avoid wasted effort, early cooperation has been explicitly encouraged since the Clinton administration (West 2006).

### Implications for Descriptive Theory

Much has been written about regulatory review, and many within government and academia may take it as a given that the role of the White House in the administrative process is primarily reactive. Yet surprisingly little effort has been made to put this in perspective as a way of understanding the administrative presidency. It may be ironic that, although a theory of reactive oversight has been developed to describe legislative behavior, its premises about institutional motives and resources apply more strongly to the executive. Such a strategy addresses two distinct needs of the presidency that together largely define its relationship to the domestic bureaucracy.

#### *Fire Alarms, Police Patrols, and Legislative Oversight*

Mathew McCubbins and Thomas Schwartz (1984) argue in an influential article that the character of legislative oversight is a function of two realities. One is that Congress lacks the organizational capacity to monitor what agencies do on more than a highly selective basis. The bureaucracy is too large, and the "asymmetries of knowledge" it enjoys are too great. This aside, the authors also contend that Congress does not particularly care about effective and efficient program implementation per se. Legislators' interest, rather, is confined to agency actions (or failures to act) that upset important constituents or that otherwise prove to be salient to affected interests in ways that condition their prospects for reelection.

It follows that reacting to "fire alarms" is more closely aligned with the legislature's constraints and incentives than conducting proactive

"police patrols." As may be facilitated by institutional arrangements that provide access to the administrative process and furnish opportunities to complain to Congress,<sup>7</sup> alarms may be sounded by individuals and groups that are adversely affected by agency actions, or they may be triggered automatically. Such a reactive strategy arguably allows legislators to allocate limited resources to the oversight of administrative initiatives that are important to them while ignoring the great majority that are not. As developed more fully in later work, it is portrayed as a way that legislative principals cope with the problem of control posed by their need to delegate policy-making authority to bureaucratic agents who may be inclined to "shirk" from or "sabotage" Congress's substantive or political intent (McCubbins, Noll, and Weingast 1987).

#### *Reactive Oversight as a Presidential Strategy*

If the fire-alarm thesis is overstated (Aberbach 1990) and vague and inconsistent in some respects (West 1997, forthcoming), it also describes significant dynamics of legislative oversight. More germane to the present concerns is that the assumptions about institutional constraints and motives that sustain a theory of reactive involvement in the administrative process apply more strongly to the presidency than to the Congress. Committees as supported by their staff and by organizations such as the Government Accountability Office (GAO), Congressional Research Service, and Congressional Budget Office provide the legislature with a greater capacity to monitor program implementation than exists within the EOP. Joel Aberbach (1990) demonstrates that these resources allow Congress to conduct a good deal more proactive oversight than McCubbins and Schwartz concede. Although few would contend that legislative oversight is

driven by a coherent sense of purpose, it is precisely its decentralized structure that allows for a good deal of it to occur.

It is curious in this regard that proponents of the administrative presidency have stressed the advantages of oversight by a unitary actor without considering its inherent limitations. An organization that is sufficiently large, differentiated, and professionalized to

exercise systematic oversight of the bureaucracy would be inherently resistant to centralized political control (Krause 2004). Even at their current sizes, the OMB and other entities with substantial career staffs are relegated to the EOP's outer circle because of their alleged bureaucratization and lack of responsiveness. Presidents' limited capacity for administrative oversight is further reinforced by their short time in office. Observing that proactive management "takes so much work," a senior official from the Clinton White House asked rhetorically, "Who is going to be there long enough to do it, much less take credit for the results?"

In part, then, what presidents attempt to achieve through centralized influence over the administrative process is a function of what they can realistically expect to accomplish (Durant 2009). As the fire-alarm theory alleges of Congress, moreover, there is little evidence to suggest that the transient advisors who are closest to the president (and who can therefore speak with the president's authority) have either the incentive or the expertise required to direct the bureaucracy on more than a selective basis. This is consistent with insider accounts that stress the development of legislative policy

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but give little, if any, attention to administration (e.g., Anderson 1990; Patterson 2000, 2008; Warshaw 1996). As perhaps an exception that supports the rule, the limited reach of President Obama's administrative initiatives in areas such as energy efficiency and wages illustrates why the White House normally prefers to develop policy through legislation (Baker 2014).

What, then, are the president's incentives as they relate to the implementation of domestic policy? As a former OIRA director noted in an interview for an earlier study, "The White House only cares about problems" (West 2006, 446). Problems consist in part of bureaucratic failures that generate adverse publicity and pressures for reform. Recent examples include the Federal Emergency Management Agency's failures in response to Hurricane Katrina, the laxity of the Minerals Management Service that came to light in the wake of the BP oil spill, the disclosure of poor conditions and delays at Department of Veterans Affairs hospitals, and the mismanagement of the Affordable Care Act rollout. Yet aside from the need to address occasional crises, centralized executive oversight of the bureaucracy is largely a matter of addressing agency initiatives on an ad hoc basis.

Reactive executive oversight of a more "routine" nature promotes several objectives. Regulatory review requires that agencies justify economically significant rules on the basis of cost-benefit analysis, and a belief in the value of that technique is an important part of the OIRA's professional culture. If less formalized in most cases, efforts to anticipate and weigh the policy effects of agency proposals in a comprehensive way inform the review of "other significant" regulations as well. These concerns are often brought to bear independently by OIRA staff as they question agencies' supporting analyses.

As a study by former OIRA officials demonstrates, however, political considerations usually trump objective analysis when they are at odds (Shapiro and Morall 2012). Reactive oversight performs two functions in this respect that are conceptually distinct, if often difficult to disentangle in practice. Much like Graham Allison's (1971) models of decision making, they reflect competing elements of reality. "Problems" derive in part from agency initiatives that deviate from the administration's policy priorities and in part from the fact that presidential administrations also embody conflicting priorities in many areas. Although these two aspects of executive politics may not lend themselves to an elegant theory of reactive oversight, together they account for much of the relationship between the White House and the domestic bureaucracy.

### **Oversight as Screening**

Just as legislators must delegate their authority to the bureaucracy, limited information prevents presidents from providing a priori guidance to their appointees in line agencies on all but a few of the policy decisions those individuals are required to make. And although the process of selecting political executives has become increasingly centralized in the White House (e.g., Lewis 2012), the factors that may induce those individuals to shirk from or sabotage "presidential intent" are well documented. They include pressures from Congress, interest groups, and the career bureaucracy, as well as personal views and ambitions that may be at odds with presidential priorities. George Krause notes that these obstacles to presidential control have become more daunting as "the executive branch

bureaucracy has both 'thickened' and 'deepened'" in recent decades (2009, 76; see also Light 1995). Centralized review of agencies' policy initiatives would hardly be necessary if these problems did not exist.

*Screening* is consistent with a straightforward interpretation of principal-agent theory. It assumes that presidents have goals, either in terms of substantive policy objectives or the interests of constituents they wish to serve, and it views executive oversight as a way of ensuring that those charged with implementing programs do not deviate from those goals. Under Ronald Reagan and the two Bushes, for example, oversight was often portrayed as a way of ensuring that agency initiatives were consistent with those presidents' antiregulatory agendas and pro-business orientations. Long acknowledged to be a purpose of regulatory review (by its critics and defenders alike), screening in light of the president's policy agenda was stated as one of its functions in the Clinton administration.<sup>8</sup>

As with fire-alarm oversight, screening can be triggered by complaints from constituents that may be directed to the OIRA or to other entities within the White House. Indeed, such complaints were solicited by Vice President George H. W. Bush's chief of staff in a talk delivered to the Business Roundtable in 1981 (Tolchin and Tolchin 1984) and by the first director of the OIRA during his son's administration (Union of Concerned Scientists 2008). As with fire-alarm oversight, screening is also facilitated by "alarm boxes." Review of economically significant rules focuses White House attention on bureaucratic actions that are apt to be important to affected interests almost by definition. OIRA analysts also indicate that their attention can be triggered by cues that include signals from the West Wing concerning the importance of certain issues and constituents, feedback from other agencies, and accounts of regulatory activities in trade journals and other media (West 2005, 2006).

### **Oversight as Vetting**

The theory of reactive oversight as screening might explain why regulatory review was less intrusive and confrontational under Bill Clinton than under his Republican predecessors and successor, and why its effects shifted to different agencies. Clinton had different policy priorities and lacked a coherent regulatory philosophy (Kagan 2001). Regulatory review hardly disappeared under Clinton, however, and indeed, its institutional structure remained intact (West 2005). Nor has it abated under President Obama. These observations can be explained by the fact that *vetting* is a second and more important function performed by reactive oversight.

Vetting is based on very different premises than screening. One is that presidents do not have clear agendas in many areas. Another is that presidents rarely become personally involved in issues of domestic administration, and those who conduct "centralized" oversight on their behalf often bring conflicting perspectives to bear. Such conflict is inevitable given the pluralistic character of the president's national constituency and the diversity of agencies and interests those agencies have been created to promote. This is reflected in the EOP itself, which is composed of units that have different and potentially conflicting responsibilities (some of which derive from statutory law). Again, an irony of centralization is the direct relationship between the EOP's organizational capacity and its differentiation (Krause 2009).

Irrespective of executive priorities, therefore, problems are also defined by the conflict that often attends important agency actions and by the perception that the presidency is responsible for resolving those issues. Vetting of agency initiatives within the line bureaucracy and the EOP thus serves a universal need of public sector leadership (Selznick 1984), the importance of which is directly proportional to the diversity of an organization's functions and the constituencies it represents. Unlike screening, which is based on the application of hierarchical goals, vetting involves negotiation and the escalation of disagreement to a level at which it can be resolved. The role of the executive is to facilitate that process.

A telling observation is that centralized review of agency rules did not originate from a president's desire to ensure that the exercise of bureaucratic discretion was consistent with an a priori policy agenda. It emerged instead from the bureaucratic struggle that accompanied the creation and organizational placement of the EPA during the Nixon administration and from concerns that policies developed by the new agency would be objectionable to other agencies and the groups they served. Quality of Life Reviews were a mechanism through which proposed environmental regulations would be circulated within the line bureaucracy and the EOP before they took effect. The OMB's primary role was to mediate conflict among agencies and within the White House (Eads and Fix 1984; Verkuil 1980).

Again, this is not to deny that OIRA analysts often assert their own views in the review process. One should also note that agencies often communicate with each other at their own initiative.<sup>9</sup> With these qualifications, vetting is the sense that a high-level OIRA careerist who had served under five presidents described his job as "getting the right people to talk to the right people." Emphasizing the subordinate role of cost-benefit analysis, the head of the OIRA during President Obama's first term offered a similar assessment of centralized oversight:

Perhaps above all, OIRA acts as an information aggregator. One of OIRA's chief functions is to collect widely dispersed information—information that is held by those within the Executive Office of the President, relevant agencies and departments, state and local governments, and the public as a whole. ... Much of OIRA's day-to-day work is devoted to helping agencies work through interagency concerns, promoting the receipt of public comments on a wide range of issues and options ... , ensuring discussion and consideration of relevant alternatives, promoting consideration of public comments ... , and helping to ensure resolution of questions of law ... by engaging relevant lawyers in the executive branch. (Sunstein 2013, 1838)

### Implications for Prescriptive Theory

Institutional analysis is sterile if it is divorced from the values that we want institutions to promote. How, then, does the predominantly reactive character of presidential oversight

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speak to the popular argument that the centralization of executive authority is a source of coordination across a fragmented administrative state? In fact, the terms of this argument are poorly specified. Although executive influence over bureaucratic policy making may produce a type of coordination, it is generally not the kind of proactive, top-down rationalization that seems implicit in arguments that stress the president's unique role as a unitary actor. If it can have salutary effects, moreover, the reactive "political coordination" that takes place within the EOP can have negative effects as well.

### *The Doctrine of Executive Leadership*

The premises of what Herbert Kaufman (1956, 1969) calls the doctrine of executive leadership are familiar: as a unitary actor who is accountable to a national constituency and who is responsible for ensuring that government operates effectively, only the president has the incentive and the wherewithal to coordinate the bureaucracy pursuant to coherent national objectives. Although the early version of this theory portrayed presidential management as an instrumental, apolitical function,<sup>10</sup> modern advocates of executive centralization view the president's managerial role as an extension of his role as political leader (e.g., Nathan 1983). Under this model, it is the importance of bureaucracy as a source of policy-making discretion that motivates executive involvement in the administrative process. The president's policy agenda theoretically furnishes the unity of purpose that is a prerequisite for coordination across agencies with conflicting objectives.

As mentioned earlier, the appeal of executive leadership has been strengthened by the expansion of bureaucracy over the past century. It has also been strengthened by the argument that Congress is a cause of rather than a solution to the problems of accountability posed by this development. Although the legislature plays a prominent role in the administrative process, advocates of executive control cite its decentralization and its responsiveness to "special interests" as factors that reinforce bureaucratic fragmentation. Congress's inherent parochialism allegedly ensures that the "bureaucracy is not designed to be efficient" (Moe 1989, 267) and that agencies are subjected to conflicting pressures from multiple committees and subcommittees through the oversight process (e.g., Lazarus 1991).

The view of the administrative presidency as a counterpoise to centrifugal forces within the bureaucracy and the larger political system is manifest in government reports that have endorsed the centralization of managerial authority (e.g., Arnold 1980). In prescribing the creation of the EOP, the most famous of these noted that "[t]he very purpose of an Executive Department under the Constitution is to center upon a unified and powerful Executive responsibility for a coordinated policy of administration and its efficient execution" (President's Committee on Administrative Management 1937, 219). The endorsement of executive centralization as a source of coordinative management also enjoys widespread currency within the fields of public administration, political science, and administrative law.

As individual actors in a fragmented system, interest groups and members of Congress are not held responsible for the performance of the system as a whole, as the president is. . . . if presidents are to perform their duties effectively under the Constitution, they must be (and in practice are) regarded as having certain legal prerogatives that allow them to do what executives do: manage, coordinate, staff, collect information, plan, reconcile conflicting values, and so on. That is what it means, in practice, to have executive power. (Moe 1998, 439, 442)

Because he [the president] is a unitary actor, he can act without the indecision and inefficiency that so often characterize the behavior of collective entities. And because his “jurisdiction” extends throughout the administrative state (or at least, the executive branch) he can synchronize and apply general principles to agency action in a way that congressional committees, special interest groups, and bureaucratic experts cannot. (Kagan 2001, 2339)

The view of centralized executive authority as a source of focused accountability and coordination has also informed institutional policy decisions. These include Congress’s delegation of responsibility to the president for preparing a government-wide budget recommendation and its creation and subsequent expansion of the EOP to perform policy advisory and coordinative functions ranging from national security, to economics, to the environment, to drug control. Judges have also been influenced by the doctrine of executive leadership in addressing separation of powers issues within the administrative process.<sup>11</sup> In *Sierra Club v. Costle*, for example, the District of Columbia Court of Appeals upheld *ex parte* communications within the executive branch in noting that “[o]ur form of government simply could not function effectively or rationally if key executive policy makers were isolated from each other and from the Chief Executive.”

### **The Limits of Proactive Coordination**

It is important to reiterate that not everyone views the presidency as an important source of administrative coordination. The theory that it is or can be given adequate resources is nevertheless sufficiently popular and sufficiently vague that its premises deserve much more attention than they have received. Although a thorough examination of these assumptions is beyond the scope of this article, it is useful to consider several types of coordination that do not result from the centralization of executive authority. Available evidence suggests that coordination as planning and as supervised collaboration are low priorities for the White House and that proactive policy making through the bureaucracy is too limited to serve as an important source of “unintentional coordination.”

*Centralized analysis and planning* involves the clarification and ordering of objectives and the comparison of organizational activities in terms of their contributions to those goals. Although it may use information produced by component organizations, it relies on a “headquarters staff” to solicit and analyze that information in order to rationalize the allocation of resources and responsibilities across components. This process of top-down coordination reflects the priorities of the chief executive insofar as it involves trade-offs among competing values and the choice of alternative means of achieving given ends.

Given its size, its knowledge of agency operations, and its professional expertise, the OMB would be critical to the performance of such a function. As the GAO has noted, however, that organization has shown little inclination to engage in the systematic comparison of activities across agencies (GAO 2004). This can be explained in part by the OMB’s limited organizational capacity. A senior OMB careerist noted, “There is not enough time in anyone’s day to become involved in more than a small fraction of the coordinative issues that exist.” Yet even the selective use of coordinative analysis has been deemphasized under recent administrations. “Spring reviews” that required staff to conduct a few crosscutting assessments of program implementation in a few areas each year became less frequent under Ronald Reagan and had been abandoned by the late 1980s (Tomkin 1998).

Recent presidents have shown a similar lack of interest in centralized planning by other units within the EOP. Efforts by the Office of National Drug Control Policy (ONDCP) to develop a comprehensive performance management system have been driven exclusively by Congress, for example, and those involved in that process make no mention of presidential guidance or encouragement (Murphy and Carnevale 2001; Simeone, Carnevale, and Miller 2005). This lack of executive support plausibly helps explain why the ONDCP has struggled to overcome the centrifugal forces within the executive branch that have undermined the planning and coordination of drug control efforts across the bureaucracy. As a former careerist from that organization expressed his frustration, “Under Bush and now Obama, the place [ONDCP] has become irrelevant.”

Like centralized planning, *collaborative planning* is a proactive effort to examine organizational interrelationships. Unlike centralized planning, it relies primarily on cooperation across agencies rather than the imposition of hierarchical goals (e.g., Kaiser 2011; Kuska 2005). It brings representatives of organizations together to share information, identify possible synergies, and address issues of redundancy and conflict in the performance of their missions. There are hundreds of collaborative arrangements within the federal bureaucracy that vary in their level of formality and other structural features (Kaiser 2011). Although the great majority have been established either at agencies’ discretion or by Congress, some have been created by executive orders and other presidential directives.

A recent overview of collaborative mechanisms by Jody Freeman and Jim Rossi (2012) stresses the potential for presidential authority to ensure the viability of such arrangements. Judging from the following statements (with emphasis added), however, it seems clear that the authors view this as more of a possibility than a current reality.

Most [memoranda of understanding] appear to be negotiated by agencies voluntarily, in furtherance of their statutory duties, though . . . the President *presumably* could request or direct that executive agencies sign such agreements if he wished. (1161)

We discuss the circumstances under which greater coordination *has the potential* to advance the strengths of functional fragmentation. (1181)

Given that the problems of duplication and conflict that Freeman and Rossi identify are hardly new, these statements are difficult to reconcile with the authors' assertion that the president "is uniquely motivated and relatively well equipped to impose coordination on executive (and to some extent even independent) agencies" (2012, 1137).

Although there is much to learn about the role of White House offices, councils, and the like, they are rarely mentioned in the emerging literature on interagency collaboration. At best, they have been established by presidents on a very selective basis, and their effects have generally been confined to actions that are mutually beneficial for the agencies involved. Even so, they have often languished. Bureaucrats who have represented their agencies on such bodies cite two related explanations for this. One is the small size, the lack of institutional knowledge, and the high turnover of the staffs assigned to such efforts. The other is a lack of interest and support from the president and those in his inner circle. Whether such bodies reflect the president's interests or are created to appease constituent groups, the White House soon learns that it has more pressing concerns and that its assumptions about the feasibility of administrative coordination were facile in any case. The result is that staff are unable to "speak for the president" in their efforts to secure cooperation from the bureaucracy.

#### **Coordination as a By-Product of Policy Influence**

If centralized planning and collaborative planning are intentionally coordinative, unintentional coordination may result from presidential efforts to shape policy through the bureaucracy. The argument here is not that presidents seek to identify and address problems of duplication and conflict across agencies and programs; it is that coordination will occur as a by-product of influence by a unitary actor. Like the polarizing effect of a magnet on iron filings, executive control will move agencies in a common direction without intentionally focusing on organizational interrelationships.

Presidents do sometimes seek to achieve their policy goals through the bureaucracy. As discussed, however, the appropriation of delegated authority by the White House is not extensive. Nor does available evidence suggest that the impetus for such efforts is sufficiently coherent to be an important source of alignment across programs. Kagan's (2001) admission that efforts by the Clinton White House to shape agencies' policy agendas were idiosyncratic responses by individual advisors to political targets of opportunity is difficult to reconcile with her emphasis on the president's coordinative role as a unitary actor.

It follows that screening to ensure that agency initiatives are consistent with presidential priorities is a more important source of unintentional coordination than proactive efforts to shape bureaucratic policy. Again, centralized clearance of agency rules was used to promote an antiregulatory agenda under the last three Republican administrations. This was not greeted with universal approbation, especially when it allegedly prevented agencies from complying with their legal mandates, but it arguably produced a measure of consistency in the administrative process pursuant to a broad set of executive priorities.

Still, the coordinative role of screening is limited by the fact that, although some administrations are more homogeneous than others, presidents do not have coherent objectives in many areas. Even where such objectives exist, ensuring that discrete actions are consistent with the president's agenda does not focus on the issues of conflict and redundancy that the president is uniquely able to address under the doctrine of executive leadership. The GAO made this point in an early assessment of regulatory review, noting that it dealt with issues on an ad hoc basis and that it did not involve systematic comparisons across agencies (Comptroller General 1981).

#### **Coordination as Ad Hoc Negotiation**

Vetting is a more important way in which the centralization of executive authority may promote administrative coordination. Although the alarm system that triggers the ad hoc resolution of issues is not reliable in any comprehensive sense, the logic of reactive oversight suggests that it will address many of the most important tensions posed by agency initiatives. These occasionally involve duplicative or conflicting mandates but more often reflect varying priorities, interests, and ways of approaching problems within the bureaucracy, the White House, and the political system.

Some have argued that pluralistic politics is pluralistic politics wherever it occurs. Criticizing the notion of a unitary executive, Matthew Dickinson notes that "the difference in administrative and legislative policymaking is not that it signifies a shift between 'unilateral' and 'multilateral' processes. Instead, it is a change in where, and with whom, bargaining takes place" (2009, 757). Yet to say that executive oversight often does not reflect cohesive goals is not to deny the possible advantages of presidential authority in facilitating the accommodation of different perspectives in the implementation of policy. Certainly, this is a function that Congress is ill equipped

to perform. Hierarchical authority can be a source of "potential energy" in this regard. The fact that presidents (and often those closest to them) seldom have the time to become involved in issues of domestic administration is an inducement to settle differences at lower levels.

Yet vetting is a very different form of coordination than is implied by arguments that stress the advantages of top-down control

by a unitary actor, and several issues bear further examination in evaluating its effects. One is that ad hoc negotiation may not result in consistent decisions. Without discounting the role that precedent can play, the theoretical literature suggests that logrolling and other forms of partisan mutual adjustment across discrete issues and over time have the potential to undermine consistency in the administrative process (e.g., Lindblom 1965). This possibility is illustrated by the following excerpt from a White House staff memorandum emphasizing the need to placate EPA administrator Douglas Costle pursuant to regulatory review in the Jimmy Carter administration:

I think we are bound to defer to Doug. ... First, he is head of the Regulatory Council and ... the President ... should appear to give his judgment deference on that account. Second, he is in fact carrying water for us in selling regulatory reform to his regulatory colleagues. ... Third, ozone is

only the first of many EPA regulatory review issues for 1979. (Anderson 1991, 143)

Nor is there a guarantee that vetting will always resolve issues in particular cases. Rather, multilateral processes may result in conflicting signals that agencies are left to sort out. Noting that EPA executives under George H. W. Bush and Bill Clinton described reactive presidential oversight as “coalitions of different offices competing for influence,” Bressman and Vandenberg conclude that “the agency faces many managers rather than one” and that it has “difficulty assessing and following administration policy” (2006, 93). Given that agencies typically spend a good deal of effort attempting to fashion technically sound and politically acceptable proposals (e.g., West 2009), this can further delay what is already a protracted process.

Although exposing the bureaucracy to different perspectives might be justified in the interest of better-informed decisions, it may go without saying that the vetting process is not the only mechanism through which agencies gather relevant information from their environments. They do so informally as they are developing proposed rules and formally through notice and comment and various other procedures (e.g., Kerwin and Furlong 2011). The requirement that agencies base their rules on a record that is subject to judicial review (or the threat thereof) helps ensure that they take such relevant input seriously. For important regulations, at least, these processes routinely incorporate the views of other agencies in addition to those of stakeholders outside of government.

It follows that reactive oversight may reflect a reconsideration and possibly a rebalancing of factors that agencies have already taken into account. As such, it has the potential to advance whatever weighing of preferences that might emerge from the White House but also to undermine the effects of administrative due process. Whether this results in a more comprehensive or balanced assessment of relevant concerns is an open question: there are some who contend that regulatory review has given undue influence to “special interests” that enjoy privileged access to the White House, just as others view it as an antidote to bureaucratic parochialism.

In any case, there is little doubt that reactive presidential oversight can undermine the transparency that the system of administrative procedures and judicial review is intended to ensure. Perhaps ironically, this has been sanctioned by judicial decisions affirming the appropriateness of *ex parte* communications within the executive branch. There are competing values to consider here as well. Openness is obviously desirable as a condition for democratic accountability. As a leading student of administrative law notes, however, “Much as our society values openness, it remains true that candor and the flexibility necessary for collaboration or compromise are more likely to flourish in the shade” (Strauss 1984, 575).

## Conclusion

One can easily cite instances in which the White House has directed the domestic bureaucracy to take certain actions in response to crises or to shape policy in particular areas. This caveat notwithstanding, centralized executive influence over the exercise of delegated authority occurs primarily in response to crises or as a reaction to specific

agency initiatives. Although this observation may not be surprising to some, scholars have given little attention to its theoretical implications.

From a positive standpoint, reactive oversight is consistent with the interrelated motives and constraints of the presidency as they relate to the bureaucracy. Whether it is a conscious strategy or the product of “evolution,” it is consistent with the fact that systematic management of domestic policy implementation is neither a high priority for the White House nor something that is possible with any conceivable augmentation of resources. Much like the theory of fire-alarm oversight by Congress, reactive management allows the White House to allocate limited time and effort to issues that are politically important.

Importance is defined in part by agency actions that conflict with the president’s policy agenda and in part by bureaucratic initiatives that evoke conflict within the executive branch and the political system more generally. In this regard, screening and vetting might be viewed as alternative theories of presidential administration that reflect very different assumptions. Although each represents elements of reality, we can refine our understanding of the administrative presidency by assessing the relative importance of these dynamics and how it might vary over time and as a function of contextual factors. Recent analyses of executive orders and White House memoranda show a great deal of promise as a methodology for addressing such issues (Kennedy 2015; Lowande 2014; Rudalevige 2012).

Positive theory also has important normative implications. Arguments that the centralization of executive authority is an antidote to the centrifugal forces that exist within the bureaucracy (and that are reinforced by Congress) are seldom framed in precise terms. As a consequence, neither those who endorse a unitary executive nor those who take a more skeptical or critical view of the administrative presidency have grappled with its true nature. Although reactive oversight is beneficial in some respects, it is different from and more limited than the kind of coordination that advocates of executive centralization seem to have in mind. Ironically, moreover, its often pluralistic character can undermine the interest of the state in efficient and transparent public administration. These observations deserve much more attention than they have received. Their importance is amplified by the Constitution’s failure to define the bureaucracy’s relationship to the three “named” branches government and by the accompanying argument that separation of powers issues within the administrative process should be decided on the basis of sound institutional policy.

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## Notes

1. Allegations that the White House and the Office of Management and Budget have intervened in the administrative process at the behest of particular individuals or groups are common enough (e.g., Eads and Fix 1984; Olsen 1984; Tolchin and Tolchin 1984). Given that Congress typically delegates authority to agency

- heads in order to protect its own influence over policy outcomes, a related concern is the potential for the president's assumption of that power to undermine constitutional principles for aggregating interests that are embodied in the legislative process. To some, this consideration trumps any possible gains in efficiency associated with the centralization of executive power (e.g., Rosenberg 1981).
2. As discussed later, these include "economically significant" rules having a projected annual economic impact in excess of \$100 million, as well as rules meeting one of several criteria.
  3. Penn Program on Regulation, "Agenda Setting in the Regulatory State: Theory and Evidence," Washington, DC, November 7, 2014.
  4. Executive Order 12866, "Regulatory Planning and Review," September 30, 1993, <http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>.
  5. It is noteworthy that this figure has not been adjusted for inflation since the inception of regulatory review in the 1970s. If it had been, the current threshold for an economically significant rule might be in the neighborhood of \$500 million.
  6. Although the OIRA has a statutory authorization, it was created by Congress at the end of the Carter administration under the Paperwork Reduction Act (Public Law 96-511).
  7. Examples might include notice and comment rulemaking procedures, mandatory consultation with advisory committees, periodic reporting requirements, and temporary authorizations.
  8. Executive Order 12866, September 30, 1993.
  9. Such communications are frequent among senior career officials, notwithstanding the popular stereotype of a "stovepiped bureaucracy."
  10. As such, it complemented the politics-administration dichotomy as a doctrine that did not distinguish between administrative and executive authority and that sought to reconcile both with a simple conception of separation of powers (Kaufman 1956).
  11. The U.S. Supreme Court has protected the president's managerial prerogatives against efforts by Congress to establish nonstatutory controls over administrative decisions (*INS v. Chadha*, 1983) and to delegate authority for implementing programs to legislatively appointed officials (*Buckley v. Valeo*, 1978; *Bowsher v. Synar*, 1986).

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