## FULL TEXT

### 1AC---Science

#### Contention 1 is Science:

#### Trump’s trying to strip civil servants of collective bargaining rights through a bevy of executive actions, especially rescheduling.

Fisk 25 [Catherine L. Fisk, Professor of Law and Faculty Director of the Berkeley Center for Law and Work and the Berkeley Center for Law & Technology at the University of California, Berkeley, LLM University of Wisconsin, JD University of California, Berkeley, “Democracy and a Nonpartisan Civil Service,” Arizona Law Review, 67, forthcoming 2025, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=5124299]

While campaigning for a second term, President Trump threatened to end the nonpartisan civil service and all job protections for 2.2 million civilian executive branch employees. Saying the “deep state must and will be brought to heel,” Trump promised to make “every executive branch employee fireable at will.”2 Vice President Vance concurred, saying the President should fire “every mid-level civil servant,” and “replace them with our people.”3 In an Executive Order of January 20, 2025, the new administration took the first step in that direction, purporting to abandon the nonpartisan and merit-based hiring, along with the collective bargaining rights and whistleblower protections that are part of the civil service law, for a large swath of the two million-plus federal civilian workforce.4 The administration has written to the entire federal civilian workforce (except those in immigration enforcement, national security, or the postal service) stating they face a “fork in the road,” where they must either cease remote work and may quit and take three months’ severance, or they will face the possibility of being treated as at-will employees and fired under plans to downsize or eliminate agencies and will face “enhanced standards of suitability.”5 The events since January 20, 2025 leave no doubt the new administration intends to exert the power to fire civil servants whom the White House perceives to be disloyal to Trump.

Although a union representing civil service workers has sued to enjoin the Executive Order and Democrats in Congress have introduced legislation seeking to reaffirm the commitment to civil service protections, some in the Administration have already been removed from their positions. Those include several career lawyers at the Department of Justice, who were informed in a letter from the acting attorney general that they were being fired, effective immediately, because their work on the special counsel’s team that investigated the effort to overturn the 2020 election meant “I do not believe that the leadership of the Department can trust you to assist in implementing the President’s agenda faithfully.”6 Others who have been fired include roughly 18 Inspectors General across cabinet departments and agencies who are supposed to be watchdogs to prevent misconduct and abuse of power.7

Since 1883, the federal government has, by statute, had a nonpartisan and merit-based civil service for federal employment. Civil service law is based on the belief that Americans of all political views are best served if the federal workforce–other than the roughly four thousand political appointees who come and go every four years–are hired and promoted based on merit rather than affiliation with or sympathy to the party in the White House. No one doubts the power of the President to replace people in high-level policymaking positions that are subject to Senate confirmation or that are otherwise excepted from civil service protections because of the especially sensitive nature of the job responsibilities. Moreover, federal employees, political appointees or not, are obligated by law and by the norms of public service to work with dedication and competence for the current administration to implement all federal legislation and regulations. Civil servants implement policies of the new administration along with those adopted by past governments. The duty to faithfully administer the law applies even where law reflects different policy priorities than those held by the current administration because those laws remain in effect until they are repealed.

The 2025 Executive Order announces its purpose is to make federal employees “accountable to the President, who is the only member of the executive branch, other than the Vice President, elected and directly accountable to the American people.”8 It does not define the meaning of “directly accountable,” but inasmuch as this President cannot run for a third term and faces no realistic prospect of removal from office for misfeasance, accountability for employees presumably means doing whatever the President or his deputies want. The Executive Order’s principal architect, who was appointed in January 2025 to administer its implementation as special assistant for domestic policy,9 has described accountability in partisan terms, stating plainly that the purpose of the executive order is to address the predominance of “liberals” among the civil service,10 and that all federal employees should therefore be fireable at will.11 Little wonder, then, that the Executive Order not only seeks to remove the merit based personnel rules associated with civil service law, but also seeks to strip whistleblower protections and collective bargaining rights from public employees.

Making executive branch employees “accountable” to the President may seem appealing to members of the newly-elected President’s party. But if accountability means firing civil servants at will, silencing whistleblowers, and eliminating collective bargaining, history should give pause to Republicans and Democrats alike. First, it is a significant departure from tradition. For most of American history, with the exception of a period from the administration of Andrew Jackson in 1829 through the administration of James Garfield in 1881, presidential administrations generally did not replace most government workers even when the presidency switched parties.12 But even if one were not inclined to adhere to tradition, one might hesitate to revert to the way things were for those 50 years when the winning party used federal jobs as political spoils. It was an era notorious for government corruption and incompetence.13 Empirical studies of the effect of the adoption of civil service protections in the United States and elsewhere show civil service protections tend to promote efficiency, productivity, and the quality of government services.14

Reasonable minds can of course differ about the proper balance of political independence and political control in government employment. Scholars of public administration and political science, as well as executive branch officials and Congress, have long debated reforms to the existing system to make government work better, to enable government employees to develop their skills and to maximize their potential, and to allow managers to fire incompetent or lazy employees or those who willfully refuse to implement lawful government policy.15 But almost no one until Trump has advocated a wholesale abandonment of the principles of merit and nonpartisanship in federal employment.16

The potential impact of the new Executive Order is unclear. Both Trump’s first term and his public statements suggest it could be substantial. This EO revives a 2020 Executive Order that directed widespread conversion of civil service jobs to political appointments under a new classification then known as Schedule F. (The 2020 EO was never implemented because President Biden rescinded it shortly after he took office and the government adopted regulations restricting its revival.17) The 2025 version uses the term “Policy/Career” rather than Schedule F to describe the same category of jobs excepted from civil service protection, but is otherwise similar. It defines positions excepted from civil service to include those of “a confidential, policy-determining, policy-making, or policy advocating character.”18 The definition proposed for these terms is very broad, covering a wide swath of federal employees engaged in “policy-related work,” or who have access to proposed policies or regulations, or supervise lawyers, or who are involved in labor relations.19 While the number of affected positions remains unclear, when the Office of Management and Budget began to implement it in 2020, it identified 88 percent of OMB’s staff (of 500) as being covered by the new schedule.20 And, the statements of both President Trump and those who would implement the EO quoted above have made clear they intend it as a first step toward making every federal employee subject to being fired at will.

The 2025 EO would violate several statutes, including the civil service law making federal employment nonpartisan and merit-based (a law in effect since 1883 and substantially revised in 1978). It may violate the Hatch Act of 1939, which prohibits political discrimination in employment and compulsory political contributions and restricts on-duty partisan political activity by government employees. The EO also eliminates, for affected employees, collective bargaining rights and statutory protections for whistleblowers and protections against discrimination on the basis of race, religion, gender, and other protected statuses.21 Although the President by executive order cannot abrogate statutes enacted by Congress or repeal regulations adopted pursuant to the APA, the EO appears to be an effort to do just that.

The EO is part of a broad effort in the conservative legal movement to strip all federal government employees of protection against retaliation based on their beliefs or political affiliation and to strip public employees (sometimes with the exception of police) of collective bargaining rights. Professor Kate Shaw has aptly labeled this “partisanship creep.”22 In this Essay, I explain that the constitutional vision of an all-powerful President goes against 150 years of legal efforts to make civil servants independent of the party in power. While the Supreme Court has embraced some constitutional limits on Congress’ ability to protect high-level appointees and administrative law judges from removal without cause, nothing in its Article II decisions authorize such a huge expansion of White House authority over Congress or independent agencies and the civil service. Moreover, the effort to make loyalty to the president or his party a criterion for hiring, continued employment, or advancement is contrary to well-settled First Amendment law. For decades, and as recently as 25 years ago, the Supreme Court has held that governments cannot hire, promote, or fire public employees, except the very highest level of political appointees, on the basis of their political affiliation.23

This essay has four parts. First, I illuminate the historical background to Congress’ enactment of laws creating rights to be hired and promoted based on merit, rather than politics, race, gender, religion, or campaign contributions. I examine the history of the civil service laws and the long practice of a nonpartisan, merit-based civil service, the dismal episodes when we departed from it, and the long trend of increasing protections for government employees against arbitrary or discriminatory firings. Second, I canvass arguments and evidence on the benefits and costs of job protections for government employees. Third, I explain the nature and basis of the conservative assault on the legal architecture of government employee job protections. Finally, I explain the flaws in their arguments about the constitutional and policy groundings for the notion that government service should be “at will,” focusing particularly on its inconsistency with the Civil Service Reform Act of 1978, its flawed interpretation of Article II, and the several Supreme Court cases on the First Amendment to the Constitution that stand against this effort.

I. The Purpose of a Nonpartisan Civil Service – Lessons from History

Histories of federal sector employment note that before the presidency of Andrew Jackson (1829-1837), incoming administrations did not tend to treat government employees as fireable at will.24 Scholars debate whether Congress decided in 1789, just after ratification of the Constitution, whether Article II’s silence about whether the power of presidential appointment connotes a presidential right of removal without concurrence of the Senate.25 Congress and various Presidents sparred over the course of the nineteenth century whether the President could remove an officer who had been confirmed by the Senate without Senate approval.26 But, whether or not Article II conferred on Presidents the power to remove anyone the President could nominate or appoint, historians of government employment have observed that the first six Presidents (with some exceptions during the Jefferson administration), did not generally treat government employee tenure in office as limited to the term of a president.27

Andrew Jackson, the first President elected against an incumbent since Jefferson, believed that replacing government workers was necessary to achieve his goals of reforming and democratizing government. He sought to reduce the influence of elites who had dominated public service and to make his government more representative of the white male population and more aligned with his party. A leading history of the U.S. civil service said, “Jackson was the first President to provide an ideological justification of the spoils system and attempt to establish it in the federal government.”28 Besides reducing the political influence of elites, and dismissing some elderly and incompetent workers, firing government employees gave him the chance to get rid of those whom he suspected of being insufficiently devoted to his agenda.29

As is well known, however, the Jackson Administration did less to democratize government service (it remained, to some extent, a province of elites) than to create all the problems that patronage or spoils systems of political appointments are known for. Recruitment and retention in government service during and after the Jackson Administration were based on partisan affiliation, past party work, and the expectation of future partisan service.30 Criticisms of the practice of firing government employees abounded. Joseph Story wrote, in his 1833 Commentaries on the Constitution, that “if this unlimited power of removal does exist, it may be made, in the hands of a bold and designing man, of high ambition, and feeble principles, an instrument of the worst oppression, and most vindictive vengeance.”31 In short, Story warned, an unlimited power to fire public employees would corrupt government and deprive officials of their freedoms:

“[I]n a republic, where freedom of opinion and action are guaranteed by the very first principles of the government, if a successful party may first elevate their candidate to office, and then make him the instrument of their resentments, or their mercenary bargains; if men may be made spies upon the actions of their neighbours, to displace them from office; or if fawning sycophants upon the popular leader of the day may gain his patronage, to the exclusion of worthier and abler men, it is most manifest, that elections will be corrupted at their very source.”32

Scholars estimate that during the years when the spoils system prevailed, federal employees were compelled to contribute between 1 and 6 percent of their annual salary to the party in power. As one employee in the New York customhouse put it in the 1830s, when at first he declined to pay fifteen dollars to the party, “the deputy surveyor observed that I ought to consider whether my $1,500 per annum was not worth paying fifteen dollars for.”33

A large number of nineteenth century political leaders complained bitterly about the spoils system. In the 1830s, the criticism came both from those of the founding era who were alarmed by the new system (such as Joseph Story) and by Jackson’s contemporary political opponents, especially in the Senate. Calhoun complained “the certain, direct, and inevitable tendency of such a state of things is to convert the entire body of those in office into corrupt and supple instruments of power.”34 Daniel Webster allegedly said that patronage “tends to turn the whole body of public officers into partisans, dependents, favorites, sycophants, and manworshippers.”35 But criticism persisted long after the political fights between Jackson and the Whigs ended, and especially after the harms of frequent turnover and incompetence were revealed during the Civil War and Reconstruction.36 Seventy years later, Theodore Roosevelt, who served on the Civil Service Commission before becoming Vice President and then President, said the spoils system was “more fruitful of degradation in our political life than any other that could possibly have been invented. The spoilsmonger, the man who peddled patronage, inevitably bred the vote-buyer, the vote-seller, and the man guilty of misfeasance in office.”37

As evidence of incompetence and corruption in the appointment of federal employees mounted after the Civil War, the political will to enact legislation emulating Britain’s 1854 examination-based civil service reform grew. The Bush-era federal Office of Personnel Administration’s history of civil service described the reformers’ lofty goal: “to transform the federal service from an arm of the political party in power into a body of politically neutral, technically qualified civil servants shielded from partisan political pressures and dedicated to promotion of the public interest as embodied in law.”38 Legislation suddenly got political traction in 1881 when a disappointed office seeker, resentful that his political work was not rewarded by a federal job, assassinated President James Garfield a few months after his inauguration.

The Pendleton Act of 1883 created a merit-based process for hiring civil servants, forbade removals on political or religious grounds, and created a new federal agency, the Civil Service Commission, to administer the new system.39 Although the statute did not originally restrict dismissals except on political or religious grounds and had no procedural safeguards for those facing dismissal, in 1897 President McKinley issued an executive order, which Congress incorporated into the law in 1912, requiring just cause for dismissal of any employee covered by the civil service law. It also required that the employee be given written notice of the charges and an opportunity to respond.40

The number and percentage of federal workers covered by civil service protection grew over the years, such that by 1900 slightly less than half of the federal workforce were in competitive service positions.41 Today, the vast majority of civilian employees have some job rights, although the discretion available to managers in hiring and the degree of protection against dismissal is weaker for certain senior executives and several categories of excepted positions. It is not coincidence that the growth of civil service occurred as Congress also created the first independent federal regulatory commission, the Interstate Commerce Commission, in 1887. The task of regulating railroads and the increasingly large and complex economic institutions required expertise and independence from politicians who were lobbied intensely by affected businesses. An historian of the civil service observed that “[b]usinessmen, not politicians, profited most from the merit system” because the service of government agencies that mattered to them–such as the postal service and the customs houses control imports and exports–made fewer errors and handled their tasks more efficiently.42

The narrow goals of the Pendleton Act were to prevent paying and extorting bribes to secure favorable government action and to prevent incumbent politicians from funding and staffing their re-election campaigns through mandatory contributions and labor from government employees. The broader goal was to improve the quality of government policymaking and implementation by professionalizing government service. Under the spoils system that prevailed from 1839 to 1883, tenure in government service was short, there was no opportunity for advancement, and people were chosen for their loyalty to the elected official rather than for knowledge or skill relevant to their job. But after 1883, the number of college graduates in government service grew significantly, which was noteworthy at a time when less than 15 percent of the population graduated from college. It was not, however, because the merit selection process discriminated in their favor or required technical training or knowledge irrelevant to the job, but because a greater percentage of college graduates took the civil service exam believing that government service was a good career.43

To be sure, presidential administrations have long used expansions and reductions in the positions covered by the merit-based civil service for political reasons. President McKinley, a Republican who defeated the Democratic candidate in 1896 and thus ended a relatively long period of Democratic control of the White House, promptly withdrew 10,000 offices from the classified (merit-based) service. And some Presidents, including Grover Cleveland in 1888, having appointed people sympathetic to their policies to excepted positions, classified them as they were leaving office to entrench their policies against anticipated change by a successor of the opposite party.44

While some Presidents were highly political about withdrawing or adding civil service protection to speed up or slow down policy change, Trump is certainly the most extreme in his effort to undermine predecessors’ policies by firing government employees. If history is any guide, we should not be surprised in 2027 to see this administration add jobs to the classified (merit-based) service to entrench his policies at the end of his term.

It is also clear that both before the widespread adoption of the spoils system and after the enactment of the Pendleton Act seeking to eliminate it, racism and sexism operated in hiring, promotion, compensation, and dismissal. In 1810, Congress enacted a law prohibiting employment of nonwhite persons as mail carriers, apparently prompted by the U.S. Postmaster General warning that Black mail carriers might foment or coordinate a rebellion of enslaved persons.45 Although that law was repealed in 1865, in 1913 President Wilson segregated the civil service on the basis of race, allegedly to reduce “friction” between races or “discontent” of white civil servants who worked with Black civil servants.46

The racial segregation of the civil service began to be attacked by the Hatch Act of 1939 (discussed below), with both attempted to mandate political neutrality of civil servants and had a limited prohibition on discrimination on the basis of race or religion. The Ramspeck Act of 1940, ineffectually prohibited race and religious discrimination in compensation, promotions, and other personnel decisions.47 Although an 1870 statute authorized the appointment of women to federal jobs “upon the same requisites and conditions, and with the same compensations, as are prescribed by men,” it was interpreted to allow department heads discretion about whether to hire women at all, and it was not until the 1960s that women began to gain equal employment opportunities and conditions in the federal government.48 Finally, in 1972, Congress extended the antidiscrimination provisions of Title VII of the Civil Rights Act of 1964 to the federal government, thus expanding the use of merit (or something) rather than status in hiring, promotion, compensation, and firing.49

As noted, the Hatch Act was a further effort to separate politics from government service. It was motivated by Republican reaction to the perceived consolidation of power of Democrats by the appointment of college-educated liberals to the many New Deal agencies.50 To ensure that government service below the level of political appointees and their deputies remains nonpartisan, and to prevent coercion of political activity, the Hatch Act restricts the ability of government employees to engage in partisan political activity on paid time as well as during their off hours.51 It excepts several agencies, as well as military personnel.52

In twice upholding the constitutionality of the Hatch Act against the claim that it infringed public employees’ First Amendment rights, the Supreme Court emphasized the importance of a politically neutral civil service in a government where party control of the executive and the legislature is expected to switch every several years. In United Public Workers v. Mitchell, the Court reasoned that the restriction on political activity was justified to prevent government officials from using employees in political activities and from pressuring them to participate in campaigns.53 The Court said: “Congress may reasonably desire to limit party activity of federal employees so as to avoid a tendency toward a one-party system. It may have considered that parties would be more truly devoted to the public welfare if public servants were not over active politically.”54 And the Court also recognized that Congress could legitimately conclude that reducing political activity by civil servants would prevent distortions in the political process and improve the efficient operation of government.55 The Court reaffirmed this holding in United States Civil Service Commission v. National Association of Letter Carriers. 56 The Court found that the prohibition on political activities by government employees was justified to ensure that “meritorious performance rather than political service” be the basis for hiring and promotions.57

The Hatch Act was not the only result of backlash against the growth of the New Deal agencies and the GOP fear that the Roosevelt Administration and the Democratic majority in Congress were using the growing staff of agencies to stack the government with Democrats. The so-called loyalty-security programs that had been enacted during the World Wars to address specific wartime threats were dramatically expanded and institutionalized during the Cold War, first by executive order and then by the Republican Congress that came to power in 1946. In 1947, President Truman issued a “Loyalty Order,” Executive Order 9835, requiring “a loyalty investigation of every person entering the civilian employment of any department or agency in the executive branch of the Federal government,” and created a Loyalty Review Board within the Civil Service Commission to review cases and oversee the process.

The original standard for dismissal or refusal to hire under the loyalty-security programs was that “reasonable grounds exist for belief that the person involved is disloyal to the government of the United States,” but in 1951 the burden of proof was shifted to the individual and the standard because “a reasonable doubt as to the loyalty of the person involved.” Among the obvious grounds for finding disloyalty (such as engaging in treason or sabotage) was a pernicious political test. For the first time, “membership in, affiliation with or sympathetic association with any foreign or domestic organization, association, movement, group or combination of persons designated by the Attorney General as totalitarian, fascist, communist, or subversive” disqualified an employee from federal employment.58 The system was modified and codified by statute in 1950, and was extended by executive order in 1953 to all government departments and agencies.59 And then, in 1955, Congress prohibited membership in organizations advocating overthrow of the Constitution and required federal employees to sign affidavits of noncommunist affiliation, although the Supreme Court declared the statute unconstitutional in part.60

The abuses of the loyalty-security investigations are notorious, ranging from inquiries about whether people had “communist literature” or “communist art” in their homes to intrusive questions about government workers’ views on interracial marriage and “female chastity.”61 About 600 federal employees were fired for “loyalty-security” reasons in 1950-53 and about 1,500 more were fired between 1953 and 1956, but many thousands more left government employment after receiving interrogatories or charges.62 My mother was one who was fire. She was a Phi Beta Kappa graduate of Berkeley who spoke four languages and was recruited into government in 1949 with the promise that her abilities would be put to use to help her country– was one of those fired based on unfounded suspicion that she was a Communist. She was a registered Democrat and a patriot who perfected colloquial Russian by speaking with emigres who fled the Soviet Union before 1921. But the person who accused her knew too little Russian history to know that the emigres fled because they were not Communists, and in the hysteria of the early 1950s, being a progressive Democrat who spoke Russian could render anyone suspect. Being fired from a job she loved on a baseless allegation of treasonous disloyalty was a devastating blow from which she never recovered before her death at age 50.

Ultimately the Supreme Court concluded that making current or past membership in a political party or organization grounds for dismissal from employment violated the First Amendment rights of current and prospective government employees. In Wieman v. Updegraff, the Court held that states cannot command oaths of noncommunist affiliation under penalty of firing.63 In Cafeteria Workers v. McElroy and Keyshian v. Board of Regents, the Court held that the government cannot deny employment solely because of past affiliation with the Communist Party or “subversive” organizations.64

Alarm about the corruption revealed by the Watergate scandal prompted calls for reforms to strengthen the civil service laws. A galvanizing event was when a witness at the Watergate hearings testified about the Nixon Administration’s plans to replace civil service with a hiring plan that would allow the President to purge all Democrats from government employment. At the same time, however, Congress and President Carter wanted reforms to increase the efficiency of government.65 With these twin aims, Congress enacted the Civil Service Reform Act of 1978, which substantially overhauled the system created by the Pendleton Act and remains in force today.

The CSRA clarified that recruitment, promotion, discipline, and removal, along with pay, should be based on merit and on “fair and equitable treatment” “without regard to” political affiliation, race, color, religion, national origin, sex, marital status, age, or disability, “and with proper regard for their privacy and constitutional rights.”66 It broadly prohibits any “personnel action” (including a hire, assignment, transfer, pay, promotion, or dismissal) on the basis of race, color, religion, sex, national origin, age, disability, marital status, or “political affiliation.”67 It prohibits efforts to coerce or to retaliate against an employee because of political activity or lack of it.68 It also protects whistleblowers by prohibiting personnel actions taken because the employee disclosed information the employee “reasonably believes evidences any violation of any law, rule, or regulation” or “gross mismanagement” or “abuse of authority.”69

The CSRA balanced the job protections with a variety of measures to make the civil service more responsive to political appointees and to increase efficiency and flexibility. It created the Senior Executive Service, a category of senior managerial positions covered by a different set of rules regarding promotion and removal that make them career employees but more subject to control by political appointees than lower level civil servants.70 The purpose of the SES was to create a corps of competent, experienced generalists just below the level of political appointee to manage lower level civil servants. Thus, under the CSRA, there are three categories of government employees (other than those in the uniformed or armed services71): the competitive service (comprising the majority of employees who are covered by civil service rules for hiring, promotion, and removal72), the excepted service (comprising about a third of employees who are not73), and the SES. To increase the efficiency and consistency in managing the government workforce and the hiring, promotion, and firing process, the CSRA replaced the Civil Service Commission with the Office of Personnel Management (to manage the bureaucracy) and the Merit Systems Protection Board (to handle appeals of adverse employment actions.74)

Like any other major reform law, the CSRA failed to achieve its most ambitious goals of efficiency, flexibility, and invariably high levels of competence. Many subsequent small-scale reform laws have addressed particular problems. But, with various amendments, the CSRA remains in force.75

According to the federal Office of Personnel Management, of the roughly 2.2 million civilian executive branch employees, two-thirds are in the “competitive service,” meaning they are hired based on an open search and objective criteria and cannot be fired without cause after a one-year probationary period. Just under one-half of one percent (about 8,700 people) are in the Senior Executive Service. Employees in the SES can be removed for unsatisfactory job performance or malfeasance or neglect of duty. The remaining third are “excepted service,” such as lawyers or engineers or scientists, who are not subject to the usual civil service hiring rules because they have special skills that cannot feasibly be measured on an examination or other objective measures used to hire the competitive service. After a two-year probationary period, those in excepted service positions generally have the same rights against removal without cause that employees in the competitive service have.76 About 4,000 federal employees are political appointees who are either confirmed by the Senate (about 1,200), or appointed without the requirement of Senate confirmation (about 450), or are noncareer SES or are otherwise excepted from civil service protections.77

Applicants for employment in the competitive service must go through a competitive hiring process.78 Those who are excepted under the statutory provision for policy-making appointments are noncareer, political appointees who have a “close working relationship with the President, head of an agency, or other key appointed officials who are responsible for furthering the goals and policies of the President,” and have “no expectation of continued employment beyond the [relevant] presidential administration.”79 The terms “confidential, policymaking” position, the Merit Systems Protection Board has said, is “a shorthand way of describing positions to be filled by ‘political appointees.’”80

The CSRA created a process for designating positions as either in the competitive service or in the excepted service. It does so by authorizing the President to except some positions from the competitive service if “conditions of good administration warrant.”81 The President, in turn, delegated to OPM the task of defining such positions.82 OPM has issued regulations that include five “schedules” to define and categorize the one-third of federal employees who are in the excepted service.83 Schedule A are non-confidential and non-policy-determining employees for whom it is not practical to examine applicants, “such as attorneys, chaplains, and short-term positions for which there is a critical hiring need.” Schedule B are like schedule A but require the applicant to satisfy basic qualification standards, and are those who engage in scientific, professional, and technical activities. Schedule C are confidential and policy-determining positions and include most political appointees below the cabinet and sub-cabinet levels. Schedule D are non-confidential and non-policy-determining positions for which the usual competitive hiring process makes it difficult to recruit students or recent graduates. Schedule E are administrative law judges.84

Both the 2020 and the 2025 Executive Orders propose to create a new Schedule of excepted positions. In 2020 it was called Schedule F and in 2025 it is called Schedule Policy/Career. In both EOs, the category is for “positions of a confidential, policy-determining, policy-making, or policy-advocating character that are not normally subject to change as a result of a presidential transition.”85 Positions occupied by employees with civil service rights could be involuntarily transferred into Schedule F, which would strip the employee of their rights to appeal an adverse employment action. Agencies were directed to review their workforce to identify all positions fitting this description and to petition OPM to transfer them to the Schedule F excepted service, and also to make all new hires for positions that fit the description without reliance on the civil service procedures.86 The result would be that employees would lose civil service protections. The definition and intended size of the group who would be assigned to the new exempt Schedule F were unclear; the program’s architect said it would be about 50,000 people, but other estimates ranged into the hundreds of thousands. The Government Accountability Office reported that the Office of Management and Budget petitioned to place a full 68 percent of OMB workers in Schedule F.87

One final feature of the CSRA deserves mention because it also limits the discretionary authority of the President over federal employees. Several sections of the statute known collectively as the Federal Labor Relations Act codify a practice first authorized by Executive Order in 1962 creating the right of many federal employees to unionize and bargain collectively.88 The FLRA is patterned on the National Labor Relations Act of 1935, as amended in 1947 and 1959, which protects rights to unionize and bargain collectively in private sector employment. Like the NLRA, the FLRA grants employees the right to unionize and obligates federal agency employers to recognize the union chosen by the employees and to bargain in good faith with it. Like the NLRA, the FLRA makes it an unfair labor practice for an employer “to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter,” “to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment,” and to retaliate against employees for participating in the enforcement of the statute.89 It also prohibits unions from coercing and discriminating against workers and grants workers rights to fair treatment by their union.90

The CSRA also protected federal employees who blew the whistle on wrongful government conduct. Those protections were strengthened with the enactment of the Whistleblower Protection Act of 1989.91 Federal employees are protected in the right to disclose information that the employee “reasonably believes evidences a violation of any law, rule or regulation; or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety” unless the “disclosure is specifically prohibited by law” and is not “specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.”92 One of the comments cited by OPM in its 2024 regulations protecting the job rights of employees whose positions might have been reclassified as excepted from civil service by Schedule F stated that the whistleblower protections might have been jeopardized by reclassification of the positions of employees suspected of being disloyal.93

The experience of Alexander Vindman bears out the concern that attempts to revive Schedule F may be prompted by the desire to child whistleblowing. Vindman was an NSC staff member who was assigned to listen in on calls between the President and certain foreign leaders. While doing that, he heard Donald Trump threaten to withhold funds to Ukraine unless President Zelinsky produced damning information on Hunter Biden. Concerned that this was illegal, Vindman reported what he heard. His disclosure led to the first Trump impeachment.

The history shows that over the last 150 years, Congress has steadily expanded the job protections for federal employees. Its goals included ensuring that hiring, assignment, and promotion are based on merit rather than political service, race, gender, or other irrelevant considerations. Both the legislation and the regulations OPM adopted pursuant to the regulation have tried to balance efficiency and flexibility with fairness, to enable government to recruit and retain employees with the knowledge and skill needed. The legislation and regulations also insist that adverse job actions be based on failure to perform the job rather than retaliation for whistleblowing, or belonging to the “wrong” political party, whether that party is the Democrats, the Republicans, the Socialists, or the Communists.

II. The Arguments About Job Protections for Public Employees

Having examined what the history suggests about the value of job protections and merit selection for government employees, I now turn to contemporary thinking about the justifications for job protections for government employees. As political scientists Stephen Skowronek, John Dearborn, and Desmond King said in a 2021 book, the attack on the federal bureaucracy staffed by civil service pits two unduly simplistic ideas against one another. On the one hand, Trump and the so-called unitary executive doctrine present a simplified notion that unbridled executive power is good and democratic because the President was elected by the people, which justifies direct, exclusive, and hierarchical control by the White House over the entire administrative apparatus of government. This is a vision that pits the chief executive against the rest of the executive branch.

On the other hand, defenders of the administrative state often present a simplified notion that the many administrators throughout government use their substantive expertise, experience, judgment, institutional memory, and commitment to the common good without regard to their own views of policy. They exercise fidelity to legislation enacted by Congress to save government from the whims of an ill-informed, self-interested President and his cadre of self regarding enablers.94 This view reads the civil service law as evidence that Congress was more concerned with separating politics from administration than from separating the legislative branch from the executive. Indeed, although Congress recognized that governance of the complex modern state necessarily required expansion of the executive branch, they saw overweening executive power as a threat to good government. As Skorownek put it, when Congress created administrative agencies to enforce complex laws, and thereby “raised the President’s political profile, transforming him into a policy entrepreneur and national agenda setter, they took care to instill administration with an organizational integrity of its own and to set the everyday operations of the executive branch at some distance from the chief executive officer.”95

In this section, I explore the empirical evidence supporting each side of these competing visions of the desirable balance between administrative agency independence and top-down White House control. Ultimately, the choice between these two simplistic visions turns on factual questions about the positive and negative effects of job security. These studies complicate the intuitive appeal of the argument that the new “Policy/Career” schedule of exceptions from the civil service makes government responsive to the leaders the voters elected. The evidence shows how difficult it is to determine whether job protections do indeed thwart responsiveness to executive or legislative policies.

Empirical study of turnover in the federal bureaucracy below the level of political appointees after an election shows, in the period between 1973 and 2014, a fair amount of turnover, especially at the higher levels of the civil service ladder and at agencies that are ideologically distant from the new administration.96 Thus, there already exists some degree of voluntary staff change that aligns the bureaucracy with the elected leaders’ views. This should come as no surprise. It is to be expected that those committed to strong environmental regulation or workers’ rights may want to leave the EPA or the DOL or NLRB when there is a new administration that does not share their values. And when the new administration’s policies are a more extreme departure from the past, we might expect more departures.

On the other hand, this study does not say all civil servants opposed to the new administration will leave. The chief advocate of shrinking the civil service cites examples from the first Trump term where civil servants refused to work on certain matters or, according to political appointees, produced work slowly or not well. What cannot be discerned from these anecdotes, however, is whether the resistance was because civil servants believed what they were told to do was unconstitutional or contrary to the statute. To take a current example, if a civil servant in the State Department declined to implement a direction to deny passports to applicants who could not demonstrate at least one parent was a U.S. citizen at the time of of their birth, is that misfeasance or is that acting on the civil servant’s oath to uphold the Constitution?97 In sum, it is difficult to know when resistance or poor work by civil servants is in service of or defiance of the law.

Empirical studies of the effects of two dozen states’ adoption of “radical civil service reform” that, to varying degrees, made state government jobs at-will offer weak support for the idea that at-will employment leads to responsiveness and efficiency. In Georgia, less than half of state HR managers surveyed ten years after adoption of at-will employment (by which time three-quarters of state employees were employed at-will) said that at-will employment had made employees “responsive to the goals and priorities of of agency administrators” and just over a third said it provided “the needed motivation for employee performance.”98 OPM cited one study of the effect of Georgia’s transition to at-will employment which found that over 75% of Georgia state employees disagreed with the proposition that at-will employment made Georgia’s government workforce “more productive and responsive to the public.”99

Scholars have reviewed the considerable empirical literature on civil service reform and developed models to explain whether or under what conditions reducing job protections increases the quality and responsiveness of government employee work. One model shows that “bureaucratic performance is greater in any equilibrium in which motivated bureaucrats choose government than in which all equilibria in which they do not.”100 The idea, translated into English, is that some degree of job security improves governance by recruiting and retaining motivated and skilled employees to government, but that too much job security reduces government performance by disincentivizing good work and by making it unduly difficult to dismiss bad employees. Of course, the difficulty is defining and achieving that equilibrium.

Another paper studied and modeled the incentives of populist leaders on whether to replace bureaucrats with loyalists. They find that bureaucrats faced with populist leaders determined to undermine existing policy have incentives to feign loyalty to the leader in the hopes of keeping their job and waiting for a future administration, and that strong civil service protections lessen the need for feigning loyalty. But they also find that when a populist hires a loyalist, strong civil service protections enable the loyalist to stay in office in a future administration. Ultimately, they conclude that “even short-term populism can lower the expertise of the bureaucracy and create poor policy implementation.”101

Some scholars have studied the effect of civil service laws by comparing measures of performance before and after a civil service law was implemented or by comparing the performance of government agencies where staff are subject to replacement to agencies where staff are protected from political replacement.102 One large study measured the effect of the adoption and expansion of the Pendleton Act in 1883 and 1893 on the efficiency and productivity of the U.S. postal service. The study found, while controlling for many possibly confounding variables, that civil service protections improved the efficiency, the accuracy, and the productivity of the postal service.103 Another study approached the similar problem from a different methodological point of view focusing on the effect of politically-mandated turnover of school staff on student test scores in Brazil. Students at schools where staff were subject to replacement after a mayoral election had lower test scores after the election than did students at schools where school staff were insulated from replacement following an election.104

The empirical and theoretical literature on reforming the civil service is too vast to survey here. In general, the consensus of the literature is that some reforms are desirable, some have been tried and have produced good results, and completely abolishing legal rights to job tenure during good behavior is an extremely risky proposition because of the dissensus about whether it produces more harm than good.105 Perhaps the change that bears the closest to what the Trump Administration is trying is known to scholars of public administration as “radical civil service reform.” Some states, beginning with Georgia as noted above, have experimented with “radical civil service reform” by abolishing civil service protections for numerous categories of jobs. Few of the studies of these state experiments clearly disentangled whether the states that repealed civil service protections (which are often characterized by nonlawyers as making government employment at-will) also abolished other job protections, including collective bargaining agreements with just cause protections. And of course no state could deprive its workforce from federal laws prohibiting discrimination on the basis of race, religion, sex, national origin, age, disability, or veteran status. Nor could they insulate personnel decisions from scrutiny for political discrimination under the First Amendment. Thus, studies of state experiences with repealing civil service laws are not a reliable predictor of what will happen if the 2025 Executive Order is upheld and enforced.

Nevertheless, two authors of who hold divergent views about the desirability of eliminating civil service published a book surveying studies on radical civil service reform. They conclude, “increased managerial flexibility coupled with less accountability to civil service authorities may spawn bureaucratic fiefdoms controlled by skilled bureaucratic entrepreneurs. … At a minimum, particularly in large organizations, the result of arbitrary personnel rulings with little opportunity for impartial recourse may lead to an exodus of government’s more skilled and mobile employees and discourage persons at the start of their careers from seeking government employment.”106

In sum, the empirical evidence on abolishing job protections for government employees does not sustain the robust claims made by the supporters of the 2025 EO that it will improve government. But the tone and content of the EO suggests that the real justification is not to improve the quality of government, but rather to allow the President and his trusted deputies unfettered power to remake it. It is to that argument I now turn.

III. The Conservative Assault on Politically Independent Civil Service

The effort to make some, and perhaps eventually all, federal employees fireable by the President, is part of a larger right-wing effort to increase the power of the White House relative to Congress and the rest of the executive branch that has been going on for 50 years. The EO creating the exemption from job protection for “policy/career” positions is part of this campaign. Both the Nixon and the Reagan White Houses adopted strategies to identify and sideline civil servants whom they perceived as disloyal, and the Reagan Administration effort tapped the conservative Heritage Foundation in an effort to elevate loyalists and impose their policy on the bureaucracy through centralized control.107

The project of seizing control of the federal civil service may have started out as just a power move in the paranoia of the Nixon White House, but it acquired a constitutional theory to justify it in the Reagan years. In the early 1980s, frustrated by decades of Democratic control of Congress, the Reagan Administration Attorney General Edwin Meese, working with a group of young lawyers, including future Supreme Court justices John Roberts and Samuel Alito, developed the idea that Article II of the Constitution confers unilateral power on the President to control the entire executive branch. This became known as the theory of the unitary executive.108 As Attorney General Meese explained in a 1985 speech, the theory justified challenges to the independence of agencies created in the Progressive and New Deal eras. Proponents of the unitary executive idea justified it in terms of transparency and accountability, although critics insist it would hamper transparency and accountability.109 As Professor Skowronek said, the conservatives who advocated the unitary executive tied the fact that the President the one officer voted on by the entire nation “to the notion that the selection of the President had become, in effect, the only credible expression of the public’s will.” Having “fused” the “public voice” to the will of the President, “extra-constitutional controls could be rejected as inconsistent with democratic accountability, and the vast repository of discretionary authority over policy accumulated in the executive branch could be made the exclusive province of the incumbent.”110 The history and constitutional debates around the unitary executive have been carefully studied by others. Less well known is that it also has been mobilized by conservative activists as the basis for attacking the political independence of the entire federal civilian workforce and the civil service and collective bargaining rights that flow from it.

To understand the breadth of the assault on the merit-based government employment system, it is important to understand that the Supreme Court has lately ruled that the constitution imagines there are three broad categories of federal government employees (other than those who are elected officials): “principal officers,” “inferior officers,” and “employees.”111 Principal officers are those who are nominated by the President and confirmed by the Senate. Inferior officers are those who are appointed by the President, by a court, or by heads of departments.

These two categories are defined in the Appointments Clause of Article II, § 2. It provides that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.”112 A great deal of writing–more than could be cited here–explores the question of what is meant by this language. Who is an “inferior Officer”? Which government workers are not officers at all? And, importantly, although the Appointments Clause spells out the power to appoint, it says nothing about the power to remove.

A branch of the conservative legal movement seized on the Appointments Clause as a tool to reduce the number of federal employees who can be appointed by any method other than by the President, a court, or a department head. And they embraced the notion that the power of appointment includes the power to remove, except they insist that although the Senate is involved in appointing, nobody but the President or his designee has the power to decide on removal. Both the 2020 and the 2025 Executive Orders claim to expand the President’s unfettered power from officers to all government employees.113 Both the Executive Orders and an issue brief written by its architect insist that exempting federal employees from the civil service to address “poor performance by career employees”114 and the difficulty of firing employees after the one-year or two-year probationary period.115 The EO’s critics point out that poor performance or failure to follow instructions from a supervisor or to enforce law or policy have always been a basis for firing. Streamlining the process for firing poor performers, however, has never been on the Trump agenda. Rather, as noted above, the real justification for the new exception, its architect candidly admitted, is that civil service rules “empower ideological activists in the bureaucracy to pursue their own agendas regardless of who the American people elect to run the government,”116 because civil servants “are disproportionately liberal,” their alleged resistance to presidential policy disproportionately afflicts conservative administrations.117

The 2025 Executive Order directs agency heads to review existing positions to determine which positions should be excepted from merit appointment and for cause firing by identifying “positions of a confidential, policy-determining, policy-making, or policy-advocating character that are not normally subject to change as a result of a Presidential transition.”118 It further states that such people fall into five categories of job responsibilities:

(i) substantive participation in the advocacy for or development or formulation of policy, especially:

(A) substantive participation in the development or drafting of regulations and guidance; or

(B) substantive policy-related work in an agency or agency component that primarily focuses on policy;

(ii) the supervision of attorneys;

(iii) substantial discretion to determine the manner in which the agency exercises functions committed to the agency by law;

(iv) viewing, circulating, or otherwise working with proposed regulations, guidance, executive orders, or other non-public policy proposals or deliberations generally covered by deliberative process privilege and either:

(A) directly reporting to or regularly working with an individual appointed by either the President or an agency head who is paid at a rate not less than that earned by employees at Grade 13 of the General Schedule; or

(B) working in the agency or agency component executive secretariat (or equivalent); or

(v) conducting, on the agency's behalf, collective bargaining negotiations.

(vi) directly or indirectly supervising employees in Schedule Policy/Career positions; or

(vii) duties that the Director otherwise indicates may be appropriate for Schedule Policy/Career. 119

It is worth noting the specific positions that the EO seeks to make subject to presidential fiat. Most of the attention has focused on policymaking, perhaps because those jobs seem most closely related to presidential control over policy, which has intuitive appeal. (Unless one focuses on the fact that Congress is also the constitutionally-designated policymaker.) But making anyone who even views or circulates proposed regulations or guidance an at will employee seems aimed not only at policymakers, but at low-level employees who might be inclined to blow the whistle on (or, as the administration would put it, leak) administrative actions they fear are unlawful or an abuse of power. It thus seemed to be aimed squarely at the threat of whistleblowing, a practice explicitly protected by the whistleblower protections written into the civil service laws.

And what of those who bargain collectively? The EO speaks to that too. It excludes from civil service protection both those who bargain for the government with unions and union representation for anyone who “views” policy. In other words, both union members and labor relations managers are in the group whose civil service and labor rights the EO seeks to eliminate.

In particular, the EO identifies as policy employees those who “conduct[], on the agency’s behalf, collective bargaining negotiations.”120 This is clearly aimed at allowing the White House to directly control the content and enforcement of the collective bargaining agreements that agencies negotiate with public employee unions representing the rank-and-file of government employees.

But the EO goes further. It directs each agency head to “expeditiously petition the Federal Labor Relations Authority to determine whether any Schedule Policy/Career position must be excluded from a collective bargaining unit.”121 Because the EO defines positions subject to reclassification so broadly (to include not just those empowered to make policy but those who may “view” or be involved with the “circulation” of policies or regulations, it may sweep broadly in limiting union rights.

Nothing in the EO itself or in the defenses of it have explained why collective bargaining poses a threat to the efficiency, competence, or accountability of government workers. Rather, the EO and its defender have focused on whether the workers are “required or authorized to formulate, determine, or influence the policies of the agency.”122 But Congress’ decision to allow government workers to unionize reflects the view that one can be authorized to influence agency policy and still have an interest in collective representation on compensation, conditions of employment, and just treatment. To override this legislative determination (one that was enacted by Congress and signed into law by a prior President) is a startling overreach.

These exception to civil service and other labor rights seem aimed at controlling, perhaps without regard to what the law requires, those who might be more inclined to follow the statutes and regulations they believe they are charged to enforce than to follow the unorthodox views of political appointees. Stripping labor rights is the first step toward asserting unfettered power. If you control the lawyers and the unions, you can, as Trump said he wants to do, bring the administrators to heel. Here, too, the focus seems not to be on increasing the competence or efficiency of government work, but rather on controlling those who the new administration fear might have the ability to protect workers or the public from unlawful actions or abuse of power.

The EO’s chief proponent said it would affect 2 to 4 percent of the federal civilian workforce of more than 2.27 million,123 or 45,000 to 90,000 workers.124 But, when the Office of Management and Budget proposed to reclassify its workforce in late 2020, it proposed to strip civil service protections from 88% of its staff.125 Moreover, the 2025 EO directs the Director of OPM to consult with the Executive Office of the President and then to issue guidance about additional categories of positions to include in the excepted Policy/Career Schedule, thus paving the way for the civil service to be narrowed further.

Finally, the 2025 EO contains a provision absent from the 2020 version. It states that “Employees in or applicants for Schedule Policy/Career positions are not required to personally or politically support the current President or the policies of the current administration. They are required to faithfully implement administration policies to the best of their ability, consistent with their constitutional oath and the vesting of executive authority solely in the President. Failure to do so is grounds for dismissal.”126 This provision is obviously directed at avoiding a First Amendment or Hatch Act challenge. But the question is how it will be interpreted and enforced.

As a cautionary example, the news reports of the Trump Transition in January 2025 indicate that officials at the National Security Council interrogated all civil servants above a certain level about whether they voted for or contributed to Trump and examined their social media to determine whether they support him, aiming to have the entire agency be “100% aligned with the President’s agenda.”127 They dismissed a large number on January 24. The point is probably not that the new administration will actually fire all or most civil services. Rather, the point of the loyalty review is to make government employees fear they will be fired if they fail to demonstrate sufficient loyalty to Trump or to the administration’s policy initiatives or actions, no matter how unlawful those actions may be.128 The NSC may be a particularly sensitive agency for Trump, as it was two civil servants at the NSC who blew the whistle on Trump’s 2019 efforts to pressure Ukraine to provide information to undermine Biden, which led to Trump’s first impeachment.129

A second cautionary example is the firing of civil service Justice Department lawyers because of their work with the special counsel, Jack Smith, whom the Attorney General appointed to investigate the efforts to overturn the 2020 election and the January 6 violent assault on the Capitol. In an ominous “Notice of Removal from Federal Service,” the new Acting Attorney General asserted an unqualified Article II power to fire, without notice and with immediate effect, civil servants who worked on an investigation that was authorized by the Attorney General and by the federal courts that issued search warrants, simply because the new DOJ leadership does not “trust” them to “assist in implementing the President’s agenda faithfully.”130 This suggests that, whatever the EO says about personal or political support of the current administration, it will be implemented to root out perceived political enemies.

Although this is not the first Republican President to try and reduce civil service and labor rights and protections, the current President seeks to go further than any predecessor.

#### Perceived legality causes scientist holdouts to quit, deters applicants, and chills candor, hollowing expertise and data-sharing.

Bednar 25 [Nick Bednar, Associate Professor of Law at the University of Minnesota Law School, PhD political science, Vanderbilt University, JD University of Minnesota Law School, “The Return of Schedule F,” Lawfare, 5-19-2025, https://www.lawfaremedia.org/article/the-return-of-schedule-f]

One of the most anticipated actions of the Trump administration was the return of Schedule F (now Schedule Policy/Career). Schedule Policy/Career reclassifies positions of a “confidential, policy-determining, policy-making, or policy-advocating” (often shortened to “policy-influencing” positions) into the excepted service, which is a category of civil service positions that are traditionally exempt from competitive examination and, therefore, easier to hire. Yet the Trump administration does not intend to use Schedule Policy/Career to more easily hire individuals to policy-influencing positions. Rather, individuals in Schedule Policy/Career will be easier to remove, because these individuals will not enjoy the tenure protections ordinarily afforded to federal employees and will not have a right to appeal their removal to the Merit Systems Protection Board.

Although the Biden administration promulgated regulations designed to hinder future presidents from reinstating Schedule F, President Trump declared that the Biden administration’s regulations were “hereby revoked” and unenforceable, likely in violation of the Administrative Procedure Act. He further ordered the Office of Personnel Management (OPM) to propose rules reinstating Schedule Policy/Career on his first day in office. OPM published its proposed rule in the Federal Register on April 23. Comments on OPM’s proposed rule are due May 23.

Schedule Policy/Career threatens to upend the merit principles that have governed personnel policy since the Civil Service Reform Act of 1978. The implementation of Schedule Policy/Career will politicize the federal workforce and erode the capacity of federal agencies to perform the tasks delegated to them by Congress and the president. The Trump administration’s attack on the civil service will continue to frustrate the basic government services that protect American lives.

A Brief History of Schedule F and Schedule Policy/Career

In October 2020, Trump established Schedule F with Executive Order 13957. The order instructed agencies to reclassify policy-influencing positions into the excepted service. The order described five characteristics indicative of policy-influencing positions:

1. Substantive participation in the advocacy for or development or formulation of policy;

2. Supervision of attorneys;

3. Substantial discretion to determine the manner in which the agency exercises functions committed to the agency by law;

4. Viewing, circulating, or otherwise working with proposed regulations, guidance, executive orders, or other non-public policy proposals or deliberations generally covered by deliberative process privilege;

5. Conducting, on the agency’s behalf, collective bargaining negotiations.

OPM would approve agencies’ lists of positions that should be transferred to Schedule F. Yet the first effort to implement Schedule F never got very far. By the end of the first Trump administration, only two agencies had submitted plans to OPM, and no agency had actually placed any positions into Schedule F.

Following his inauguration, President Biden repealed Executive Order 13957. Subsequently, OPM finalized a rule narrowly defining policy-influence positions to include only non-career political appointees. Moreover, OPM’s final rule preserved tenure protections for employees involuntarily reclassified into the excepted service. Left in place, this rule would have prevented future presidents from using something like Schedule F to reorganize the federal workforce.

On his first day in office, President Trump reinstated Schedule F with Executive Order 14171. The order made several notable changes. First, it renamed Schedule F as Schedule Policy/Career, emphasizing that the new schedule would apply to career employees—not political appointees. Second, the order expanded the characteristics indicative of policy-influencing positions to include “directly or indirectly supervising employees in Schedule Policy/Career positions” and “duties that the Director otherwise indicates may be appropriate for inclusion in Schedule Policy/Career.” Third, the order transferred the authority to the president—rather than OPM—to classify positions as policy-influencing positions. Fourth, the order added language that, although employees need not support the president’s current agenda, they must nevertheless “faithfully implement administration policies to the best of their ability.” According to the order, “[f]ailure to do so is grounds for dismissal.” In sum, the order created a new classification of employees expected to loyally implement the president’s agenda and made it easier to remove employees who failed to advance that agenda.

On April 23, OPM proposed a rule implementing Schedule Policy/Career. The proposed rule offers a lengthy rationale for Schedule Policy/Career, drawing heavily on theories of unitary executive theory, empirical research, and historical practice. The new rule offers insights into what federal employees, scholars, and other commentators should expect from Schedule Policy/Career.

The Statutory Framework for Schedule/Policy Career

The Civil Service Reform Act of 1978 adopted nine merit principles to guide the development and implementation of personnel policy throughout the executive branch. The principles embrace merit-based hiring, specifying that selection and promotion of employees “should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.” Likewise, merit and accountability guide removal of employees from the civil service. The merit principles state that employees should be “protected against arbitrary action, personal favoritism, or coercion for partisan political purposes,” and the act further protects employees against reprisal for political affiliation and whistleblowing. It is unclear how Schedule Policy/Career furthers these merit principles.

What is the statutory basis for Schedule Policy/Career? Schedule Policy/Career reclassifies certain employees to take advantage of several exceptions within the civil service laws. By default, positions in the federal workforce are placed in the competitive service. Agencies must fill positions in the competitive service through competitive examination. Yet the president may except positions from the competitive service “as nearly as good conditions of good administration warrant.” Positions excepted by the president are classified in the excepted service. Consequently, presidents have the authority to make hiring for certain positions easier by removing the constraints imposed by competitive examination.

Although Schedule Policy/Career places positions in the excepted service, it does not appear to take advantage of the exceptions to the hiring procedures. OPM’s proposed rule envisions that positions in Schedule Policy/Career “will be filled using competitive hiring procedures.” The regulatory text says, “Agencies shall make appointments to positions in Schedule Policy/Career of the excepted service in the same manner as to positions in the competitive service, unless such positions would, but for their placement in Schedule Policy/Career, be listed in another excepted service schedule.” Accordingly, the regulations require agencies to fill these positions using the same procedures (often competitive examination) they would have used if the position was not reclassified into Schedule Policy/Career. Likewise, individuals appointed to Schedule Policy/Career will obtain competitive status after one year of service, meaning they can transfer to positions that would otherwise require competitive examination. On its face, Schedule Policy/Career has less of an influence on the hiring for these positions. (Practically, however, Schedule Policy/Career will discourage individuals from pursuing a career in the federal government. More on this below.)

The greatest risk posed by Schedule Policy/Career comes from the ability to remove federal employees without due process. Ordinarily, employees in both the competitive and excepted services enjoy tenure protections and can be removed only for “such cause as will promote the efficiency of the service.” In many instances, employees removed from the civil service may appeal the agency’s personnel action to the Merit Systems Protection Board and, eventually, the federal courts.

Schedule Policy/Career, however, relies on a clever statutory-interpretation argument. The civil service laws exempt positions of a “confidential, policy-determining, policy-making, or policy-advocating” character from its protections. For example, these employees are not protected against prohibited personnel practices (such as appointment and removal based on partisan affiliation) and are exempted from “for cause” protections enjoyed by other employees. Consequently, individuals occupying positions in Schedule Policy/Career will be removable at will and not entitled to any appeal before the Merit Systems Protection Board. These employees are wholly unprotected from political reprisal. Although OPM’s proposed rule says that employees in Schedule Policy/Career “are not required to personally or politically support the current President or the policies of the current administration,” this statement is meaningless without any mechanism for employees to challenge their removal.

The Biden administration’s rule sought to protect against the reclassification of existing employees by promulgating regulations that would afford tenure protections to employees involuntarily transferred to the excepted service. OPM’s rule removes those protections. Consequently, employees in positions transferred to Schedule Policy/Career will lose the tenure protections they enjoyed in either the competitive service or other schedules of the excepted service.

While much of the attention on Schedule Policy/Career has focused on its effects of removal, it also affects the benefits afforded to employees in these positions. By statute, employees in policy-influencing positions may not receive certain benefits, such as recruitment bonuses, retention bonuses, or student loan repayment. For example, agencies may agree to repay “any student loan” in order to “recruit or retain highly qualified personnel.” In fiscal year 2013, agencies made student loan payments for over 13,000 employees, totaling over $130 million in benefits. Yet the statute specifies that “[a]n employee shall be ineligible for benefits under this section if the employee occupies a position that is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character.” (Individuals in Schedule Policy/Career would likely still be able to participate in Public Student Loan Forgiveness, which is the most common way that public servants receive student loan forgiveness.) By law, policy-influencing positions do not enjoy the stability and benefits that attract individuals to public service, making it harder to hire positions in Schedule Policy/Career.

The president undoubtedly has the authority to create some version of Schedule Policy/Career. But whether Schedule Policy/Career poses a new, existential threat to the civil service and the merit principles depends on the meaning of “confidential, policy-determining, policy-making, or policy-advocating.” Congress did not define this phrase in the text of the Civil Service Reform Act. Consequently, the reach of Schedule Policy/Career depends on its implementation by the president and OPM.

Defining Policy-Influencing Positions

OPM does not explicitly define “confidential, policy-determining, policy-making, or policy-advocating” in its proposed rule. Rather, the rule simply amends OPM’s regulations to specify that the president may determine which positions qualify as policy-influencing positions. Curiously, the regulations do not explicitly incorporate the characteristics identified by Executive Order 14171. An OPM memo accompanying that order clarifies that those characteristics “are guideposts; they are not determinative.” Both the president and agencies may consider additional characteristics in deciding whether to reclassify a position under Schedule Policy/Career.

The lack of a meaningful definition or criteria will likely result in inconsistent application of Schedule Policy/Career across agencies. All agencies rely on standardized occupational codes developed by OPM. The same occupation may be treated differently by different agencies. Moreover, presidents and agencies may choose to classify certain positions based on pretextual reasons, such as the perceived partisanship of the current position holders.

Experience illustrates that the threat of inconsistent application is real rather than hypothetical. Following the creation of Schedule F in 2020, agencies varied wildly in their efforts to reclassify positions. The Office of Management and Budget sought to reclassify 415 of its 610 employees, and the Federal Energy Regulatory Commission identified half of its positions as eligible for reclassification. Meanwhile, the Department of the Treasury claimed no position qualified as a policy-influencing position. The threat of inconsistent application is greater now that the president—who has no meaningful training in federal personnel policy—must approve the agency plans rather than OPM.

While OPM does not define policy-influencing position, its proposed rule explicitly rejects one possible definition. The rule adopted during the Biden administration confined “confidential, policy-determining, policy-making, or policy-advocating” to “noncareer political appointment” positions “who are responsible for furthering the goals and policies of the President and the Administration.” OPM’s latest rule rejects the idea that policy-influencing positions are limited to political appointees.

The Biden administration’s definition better comports with the legislative history of the Civil Service Reform Act and other laws enacted by Congress. For context, it is worth considering why the policy-influencing exception appears in the Civil Service Reform Act. In 1953, President Eisenhower used his authority to except positions to create a new class of low-level political appointees (known as Schedule C appointees) within the excepted service. Eisenhower’s executive order defined—and the civil service rules continue to define—Schedule C as “positions of a confidential or policy-determining character.” In passing the Civil Service Reform Act, Congress added the exception for policy-influencing positions to the statute to preserve Schedule C. The Senate Committee Report explained, “[A] new exception for positions of a confidential, policy-determining, policy-making, or policy-advocating character, is an extension of the exception for appointments confirmed by the Senate. These positions are currently placed in Schedule C (positions at GS-15 and below) or filled by Non-Career Executive Assignment (GS-16, -17, and -18).”

The policy-influencing exception was incorporated based on an understanding that a relationship exists between the employee and the incumbent president. The Senate Committee Report explains, “The concept of tenure and protection against dismissal is contrary to the confidential relationship between incumbent and supervising official, and the commitment to Administration policy objectives, required by those filling such positions.” This description of these positions envisions that policy-influencing positions would be temporary and political by their nature—not career positions as proposed by OPM’s latest rule. Likewise, the House Committee Report described these positions as “generally political appointees.” For over half a century, Congress and the president have understood “confidential, policy-determining, policy-making, or policy-advocating character” to mean political appointees who work closely with the administration and depart following the inauguration of a new president. The Trump administration’s rule and guidance departs from this long-standing interpretation.

Definitions in other statutes reflect this long-standing interpretation. Statutes related to employment in the Department of Agriculture, Department of Veterans Affairs, and NASA define “political appointee” to mean “a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.” Consistent with Congress’s original understanding in the Civil Service Reform Act, these definitions suggest that Congress has treated policy-influencing positions and political appointees as synonymous, giving credence to the Biden administration’s more restrictive definition.

OPM’s latest rule rejects the legislative history and these other definitions. In rejecting the legislative history, OPM grounds its rationale in textualism—a theory of statutory interpretation that believes that the plain meaning of the statute should guide interpretation rather than congressional purpose. OPM asserts that “legislative history is not the law” and “Congressional intent is determined by the text of the law Congress passes.” In rejecting the definitions contained in other portions of the U.S. Code, OPM states that these provisions “universally state that their definitions apply on for purposes of that particular law or section of the U.S. Code.”

Nevertheless, the guidance provided by Executive Order 13957 stretches the plain and ordinary meaning of policy-influencing. For example, the executive order seeks to reclassify positions engaged in “viewing, circulating, or otherwise working with proposed regulations, guidance, executive orders, or other non-public policy proposals or deliberations generally covered by deliberative process privilege.” Thousands of federal employees view proposed policy documents without meaningfully contributing to their development. The plain meaning of “confidential, policy-determining, policy-making, or policy-advocating character” suggests active involvement in the creation of policy—not the mere viewing of policy documents.

The implementation of Schedule F during the first Trump administration illustrates the extent to which the administration seeks to depart from the plain and ordinary meaning of policy-influencing. In its submission to OPM, the Office of Management and Budget sought to reclassify human resource specialists, administrative assistants, and information technology specialists as Schedule F positions. The plain meaning of policy-influencing position does not incorporate positions that perform clerical or administrative functions without a meaningful relationship to policymaking. Yet the lack of a definition within OPM’s proposed rule makes it difficult to know whether these positions will receive similar treatment this time.

There are reasons to believe that Trump and the agencies will again implement Schedule Policy/Career widely. OPM estimates that 50,000 positions would be moved to Schedule Policy Career but acknowledges that the president “may move a greater or smaller number of positions.” That number may be a floor—not a ceiling.

The Justifications and Effects of Schedule Policy/Career

What effects will Schedule Policy/Career have on the federal workforce? At its core, Schedule Policy/Career will politicize the federal workforce by making it easier to remove federal employees perceived as resisting the president or his agenda. The American Federation of Government Employees has described Schedule Policy/Career as a “shameless attempt to politicize the federal workforce.” Shortly after the original inception of Schedule F, Ron Sanders—the chair of the Federal Salary Council in the first Trump administration—submitted a resignation letter, explaining, “[I]t is clear that its stated purpose notwithstanding, the Executive Order is nothing more than a smokescreen for what is clearly an attempt to require the political loyalty of those who advise the President, or failing that, to enable their removal with little if any due process.”

Even if the administration does not exercise its discretion in a political manner, civil servants already perceive Schedule Policy/Career as politicizing the workforce. Comments received by OPM from self-identified civil servants illustrate this perception. One employee of the Social Security Administration described the agency’s intent to reclassify a broad swath of its employees:

As an employee of the Social Security Administration, Acting Commissioner Dudek intends to apply this Schedule Policy/Career classification to a wide swath of SSA employees whose duties are operational or technical — NOT political .... By reclassifying adjudicators, analysts, medical consultants, and support staff under Schedule Policy/Career, the agency undermines civil service protections and allows political influence over decisions that should be impartial and based solely on medical and legal criteria. This politicization risks inconsistent and legally questionable outcomes, damages morale, drives out experienced professionals, and delays critical benefits for disabled Americans.

Another civil servant expressed concern that Schedule Policy/Career would chill federal employees from offering their expert opinions and discourage other experts from entering the federal workforce. A group of federal attorneys expressed concerns that any attorney reclassified as Schedule Policy/Career would violate their duty of candor because, “[i]t is foreseeable, if not inevitable, that offering candidate advice under legal duties will sometimes be seen as intentionally subverting Presidential directives.” Another put it simply: “This whole notice is pretty cringe to be honest.”

To understand the effect of perceived politicization on the federal workforce, we must first understand the motivations of public employees. Individuals pursue careers in the federal government for several reasons. First, civil servants tend to have high levels of public service motivation, meaning they value the opportunity to formulate good public policy and serve societal interests. Second, civil servants value the job security and benefits that come with civil service protections. Third and finally, civil servants value autonomy within their positions. Individuals who are motivated by a desire to influence public policy will forgo higher salaries in the private sector for opportunities to use their expertise within the federal government.

Perceived politicization erodes the values that attract individuals to the civil service. In highly politicized agencies, employees feel pressured to serve the president rather than the public or the laws. Federal employees take an oath to “support and defend the Constitution of the United States” and “faithfully discharge the duties of the office.” Civil servants are tasked with faithfully implementing the laws enacted by Congress—not the president’s agenda. Politicization diminishes the feeling of public service that federal employees receive from their work. Moreover, employees in highly politicized agencies are more likely to express fear of political reprisal when offering expert or scientific advice that conflicts with the president’s priorities.

Heightened politicization threatens retention and chills recruitment. Civil servants who perceive politicization within their agency are more likely to exit public service. These same employees engage in fewer activities designed to build expertise, such as attending trainings or discussing policy with outside experts. My own research has shown that agencies subject to less presidential control have more expert and experienced workforces. Independent agencies like the Securities and Exchange Commission and the Nuclear Regulatory Commission have stronger workforces than cabinet agencies, such as the Department of Agriculture and the Department of Homeland Security. Schedule Policy/Career’s threat of increased politicization will erode capacity within federal agencies by encouraging employees to leave their positions and making it difficult for federal agencies to hire for these positions.

Beyond politicization, Schedule Policy/Career deprives employees of certain benefits enjoyed by other federal employees. The civil service laws have sought to entice people to enter the civil service by offering them rewards for good performance, loan repayment, and other benefits. As discussed above, agencies are prohibited from offering these benefits to individuals in policy-influencing positions. Schedule Policy/Career effectively precludes agencies from offering recruitment benefits to entice experts capable of advancing the president’s policy proposals to federal service. The absence of these benefits makes the federal government less competitive in the labor market.

The irony is that OPM justifies Schedule Policy/Career as necessary to ensure the completion of the president’s agenda. Yet, in a recent law review article, I show that the greatest predictor of the president’s ability to implement their policy agenda is the strength of the agency’s workforce—not the president’s control over the agency. Presidents have already institutionalized the presidency, establishing institutions such as the Office of Information and Regulatory Affairs to ensure that agencies remain responsive to their policy agendas. A survey of federal executives shows that the president and his proxies have a greater influence over rulemaking agendas than civil servants. Consequently, presidents rarely have difficulty advancing their policy agendas through administrative processes—even in independent agencies.

Today, the expertise and experience of an agency’s workforce plays a greater role in determining whether a president succeeds at policymaking. Using an empirical study of rulemaking across three administrations, I find that the greatest predictor of successful implementation of the president’s rulemaking agenda is capacity within the federal workforce. Structural mechanisms of control (e.g., the ability to remove political appointees) and ideological congruence between the president and civil servants play a much smaller—almost insignificant role—in ensuring the president completes the agenda. Schedule Policy/Career’s efforts to increase presidential control will likely have the unintended effect of weakening the president’s ability to pursue his preferred policies by eroding the administrative capacity needed to engage in policymaking. The marginal benefits of increasing presidential control result in diminishing returns.

OPM has used political science and public administration research to justify Schedule Policy/Career, alleging that federal employees regularly resist the president’s policy agenda. Undoubtedly, tensions between the president and the civil service can delay policymaking. Civil servants use a variety of tactics to resist policies that they disagree with and protect their preferred policies from political upheaval.

The prevalence of resistance, however, remains an open question. Interviews during the Reagan administration suggest that career employees generally “accept the authority of politically appointed officials to have the final say” in policymaking. More recent interviews found that political appointees relied on career staff for technical information and “real-time advice.” In turn, careerists recognized that their “job was not to make policy” but to identify feasible policy alternatives for appointees. There is also the risk that the president and their appointees misinterpret disagreements over economic, statistical, or scientific analysis as “resistance” rather than a meaningful effort to ensure that the agency adopts the best policy.

Despite all the discussion of resistance, presidents often succeed at implementing their policy agendas. OPM discusses alleged acts of resistance in the Environmental Protection Agency during the first Trump administration. Yet the Trump administration still managed to repeal the Clean Power Plan implemented by President Obama. The failure to adhere to the Administrative Procedure Act and efforts to sideline experienced civil servants resulted in the first Trump administration losing over 78 percent of court cases challenging its regulations. The administration will need a strong workforce if it intends to implement its deregulatory agenda and survive the inevitable challenges.

Of course, the Trump administration has not simply misunderstood the administrative consequences of implementing Schedule Policy/Career. (I am not naïve.) The Trump administration actively wants to dismantle the civil service, which it perceives as hostile to conservative policies and a waste of taxpayer dollars. Director of Office of Management and Budget Russell Vought—the architect of Trump’s management agenda—has said of federal employees, “When they wake up in the morning, we want them to not want to go to work, because they are increasingly viewed as the villains. We want their funding to be shut down …. We want to put them in trauma.” The administration has already removed thousands of federal employees using unlawful resignation programs and poorly orchestrated reductions in force. Schedule Policy/Career furthers the administration’s objective of deconstructing the administrative state. From the perspective of the Trump administration, many of my concerns are features rather than bugs. Yet it is worth challenging the pretextual reasoning offered by OPM and raising awareness among the public about these concerns.

These changes to the civil service will have a drastic impact on the services that make daily life livable. Staffing shortages at the National Weather Service have made it difficult for the agency to cover forecasting for severe weather. Reports suggest that these staffing shortages delayed tornado warnings last week, leaving 27 dead in Missouri and Kentucky. A lack of air traffic controllers has left Newark Liberty International Airport in disarray for weeks. One may think that reclassifying policy-influencing positions will have no impact on basic government services, like weather prediction and air traffic control. Yet my conversations with civil servants reveal that the administration is wielding Schedule Policy/Career as a stick to induce compliance from federal employees in all positions—not just those we might commonly think of as policy-influencing. Schedule Policy/Career—along with the Trump administration’s other personnel actions—poses a significant threat to the government services that provide safety and protection to the American people.

There are undoubtedly reforms that would improve the civil service. Long hiring times impede the ability of federal agencies to compete with the private sector. The median wage of federal employees in real dollars has remained stagnant for years. The changes offered by Schedule Policy/Career, however, will not address these problems. Presidents are authorized to except positions from the competitive service for purposes of furthering “good administration.” Schedule Policy/Career, however, threatens the administration of public policy.

#### Only scientific expertise and willingness to share it prevents existential environmental, agricultural, and public health crises---the U.S. is key.

Pedersen 25 [Kent Robin Hessellund Pedersen, independent researcher, AI specialist, copywriter and content creator at AI-Guru.dk, former printer, typesetter and repro guy at Global Times – PROUT, Denmark, “Trump’s 2025 Anti-Science Policies: An Empirical Assessment of Deregulation, Censorship, and Corporate Influence on U.S. Scientific Integrity,” 10-3-2025, https://www.academia.edu/128125645/Trump\_s\_2025\_Anti\_Science\_Blitz\_How\_Deregulation\_Censorship\_and\_Corporate\_Ties\_Threaten\_America\_s\_Future] \*[language modifications in brackets]

Overview of Anti-Science Policies (January–March 2025)

Sweeping Executive Actions: Upon taking office in January 2025, President Donald Trump moved swiftly to reverse or weaken science-based policies across the federal government. On his first full day, he signed orders withdrawing the United States from the Paris Climate Agreement and from the World Health Organization (WHO), dismantling key commitments to global climate action and pandemic preparedness. He also reinstated a controversial civil-service policy (a revived “Schedule F”) that reclassified thousands of science, public health, and environmental civil servants as at-will employees, making it easier to fire career experts en masse. This move, coupled with a new hiring freeze and the elimination of agency diversity and equity offices, aimed to purge or sideline scientists and other specialists deemed “disloyal” to the administration’s agenda. The result was an immediate chilling effect within agencies like the Environmental Protection Agency (EPA), Department of the Interior, and Department of Health and Human Services (HHS), as staff feared a “culture of fear” and political retaliation for upholding scientific findings.

Regulatory Rollbacks and Funding Freezes: The new administration launched an aggressive rollback of environmental regulations and research programs. New leaders at the EPA, Department of Energy (DOE), and Department of the Interior—many with fossil fuel industry ties— vowed to achieve “American energy dominance” by gutting greenhouse gas regulations and slashing environmental rules. For example, the DOE’s new chief (a former oil executive) announced the department would prioritize boosting oil and gas production over lowering emissions, dismissing net-zero policies as costly and ineffective. President Trump also signed an order reopening protected lands and offshore areas for drilling and mining, including reversing a ban on oil leases in the Arctic National Wildlife Refuge. At the EPA, a new administrator with a “record of voting in favor of the fossil fuel industry” was confirmed and quickly began undoing climate and pollution rules. In one early move, the EPA sought to invalidate California’s strict vehicle emissions waivers (which many states follow) by sending them to Congress for repeal; however, the Government Accountability Office later blocked this gambit as legally improper. Meanwhile, the White House directed agencies to freeze or cancel federal grants related to climate, clean energy, and even some public health research. An internal Office of Management and Budget memo in late January imposed a government-wide pause on grant disbursements – causing “widespread confusion and concern among scientists and research institutions” – before a federal judge temporarily halted the freeze on constitutional grounds. Though the White House rescinded the broad freeze after legal challenges, it maintained targeted bans on funding for diversity, equity and inclusion (DEI) initiatives and anything tied to “Green New Deal” climate programs. This abrupt funding whiplash threw research projects into chaos, with universities and labs unsure which projects could continue.

Agency Silencing and Data Censorship: Across multiple agencies, Trump officials systematically removed or altered scientific information on government websites and publications. Within days of inauguration, the U.S. Department of Agriculture (USDA) ordered staff to “delete landing pages discussing climate change” and submit all climate-related content for review. This directive— confirmed by a leaked internal email—affected dozens of USDA programs, from climate-smart agriculture guides to Forest Service wildfire data, effectively scrubbing references to climate change despite its relevance to farmers and land management. At the EPA, NOAA, and the Council on Environmental Quality, websites saw critical climate data and reports vanish. In the first two weeks of the term, the administration began “scrubbing critical environmental resources and datasets from federal agency websites,” prompting archivists and academics to race to download and preserve the data. The National Security Archive’s Climate Change Transparency Project documented deletions of climate change pages and even environmental justice information, confirming that EPA, NOAA, and other agencies were early targets. These actions echo the first Trump term, during which more than 1,400 alterations to federal websites were tracked, scrubbing scientific context on topics like climate, clean water, and endangered species. Now in 2025, that campaign has resumed with even greater brazenness: The Guardian reported that the administration is “withdrawing grants and other support for research that even references the climate crisis,” essentially making the word “climate” a red flag for defunding. One scientist recounted that a previously approved federal grant for climate adaptation was pulled back until he removed “climate” from the project title. Likewise, agencies like the Centers for Disease Control and Prevention (CDC) faced new gag orders: by late January, the White House had instructed CDC officials to cease all collaboration and communication with the WHO pending further notice, undermining the exchange of public health data. In summary, the early 2025 policy blitz targeted scientific institutions on multiple fronts – budgetary, regulatory, and informational – weakening evidence-based policymaking in agencies from the EPA and NOAA to NASA, NIH, CDC, and USDA. The cumulative effect has been to sideline expertise, halt or reverse science-driven programs, and delete scientific knowledge from public view.

Motivations and Political Strategy Behind the Assault on Science

Ideology: Anti-“Big Government” and Elites: The Trump administration’s actions are driven by an anti-regulatory, populist conservative ideology deeply skeptical of “big government” and scientific expertise. President Trump has long portrayed mainstream science – especially on climate change and public health – as exaggerated or politically biased. He openly dismisses the climate crisis as a “hoax,” and his allies deride the previous administration’s climate efforts as “fanaticism” requiring a wholesale unwinding. This ideological stance frames scientists and career officials as part of a bureaucratic “swamp” or elite class that hinders the administration’s agenda. By reclassifying civil servants and ousting seasoned scientists, the White House explicitly sought to “eliminate anyone the administration views as potentially disloyal to the president’s ideological agenda”. In its own words, the goal was to remake the executive branch into a more malleable instrument of presidential will. Removing civil-service protections (via Schedule F) and dismantling advisory committees were thus political strategies to concentrate power – ensuring that no internal voices could effectively challenge policies that contradict scientific evidence. This reflects a broader Republican “war on science” mentality that predates Trump, wherein inconvenient facts on issues like evolution, climate, or pandemics are seen as hurdles to ideological goals. Under Trump, this distrust hardened into a revolutionary zeal to upend the post-war norm of expert-informed governance. In practice, scientific research, data, and even scientists themselves have been cast as partisan obstacles to be overcome, rather than neutral inputs for decision-making. By sidelining scientists, the administration also suppresses “inconvenient truths” – for example, downplaying COVID-19 risks or climate models – that conflict with its preferred narrative or economic plans.

Corporate Influence and Industry Capture: While ideology provides the justification, corporate interests supply much of the impetus and direct influence behind these anti-science moves. The administration’s close alignment with fossil fuel, chemical, and other industry lobbies is evident in both personnel and policy. Many key appointees come straight from industry or industry-funded think tanks, virtually ensuring regulatory decisions favor those sectors. For instance, President Trump’s pick for EPA Administrator in 2025, former Congressman Lee Zeldin, was noted for consistently voting in line with oil and gas interests. At his confirmation he acknowledged climate change is “real” but asserted that environmental regulations must not “suffocate” the economy – effectively signaling deference to fossil fuel profit concerns over scientific warnings. Similarly, the new Energy Secretary is a fracking company executive who derides net-zero emissions policies as threats to “energy reliability” and U.S. security. From day one, he pledged to boost oil and gas output rather than cut greenhouse gases, echoing talking points of the petroleum industry. These appointments placed regulators who are philosophically (and in many cases financially) entwined with the industries they oversee. The result is direct industry consultation in policymaking. Indeed, the Heritage Foundation’s Project 2025 – a conservative blueprint heavily influencing Trump’s agenda – had ~140 contributors from Trump’s first administration and allied groups drafting plans to roll back climate and environmental programs. Many of those authors have ties to industries like coal, oil, and agribusiness, essentially giving corporate stakeholders a hand in writing government policy. It is therefore unsurprising that the administration’s early actions read like an industry wish list: ending climate initiatives, approving pipelines and drilling leases, loosening pesticide regulations, and curbing public health measures that corporations opposed. For example, EPA quickly moved to weaken chemical safety standards – pesticides such as dicamba and atrazine were re-approved or allowed at levels far above what EPA scientists deemed safe in prior assessments. Internal watchdog reports from the first Trump term revealed that political appointees had repeatedly overruled or censored scientists on issues like toxic PFAS chemicals (deeming a report on PFAS a “public relations nightmare” that could spur regulation). This pattern is continuing: the USDA’s purge of climate data directly serves agribusiness interests that prefer to avoid discussions of drought or emissions, and it came alongside cuts to conservation funding that large industrial farm operations had chafed under. Likewise, pharmaceutical and biotech regulation is being reshaped in ways some industry players welcome. Although Robert F. Kennedy Jr. (Trump’s nominee to lead HHS) is a noted antagonist of vaccine manufacturers, his plans to relax certain research priorities and “give infectious disease a break” align with an industry desire to focus on profitable chronic disease drugs. Kennedy also vowed to force medical journals to republish discredited studies and investigate purported “corporate capture” of health agencies – rhetoric that paradoxically plays to public anger at Big Pharma while potentially opening the door for less evidence-based, alternative products to flourish (a space rife with supplement and pseudo-medical interests). In short, corporate influence manifests both in overt deregulation benefiting oil, chemical, and agribusiness companies, and in the selection of agency heads who share a corporate-centric worldview. Policies are often drafted with or by industry-linked figures, ensuring that scientific findings which might lead to stricter regulations are ignored or disputed in favor of protecting corporate profitability.

Controlling the Narrative and Power Consolidation: Undermining science is also part of a larger strategy to consolidate political power and shape public discourse. By silencing government scientists and controlling information, the administration limits potential sources of dissent or facts that could mobilize opposition. For example, removing climate change content from agency websites not only appeases fossil fuel allies – it also keeps the public less informed about the realities of the climate crisis, thereby reducing pressure on the government to act. As one observer noted, the Trump team has engaged in a “blitzkrieg” on environmental science, stripping mentions of climate change simply because the issue is “inconvenient” to the administration’s agenda. This denialism serves a political narrative that environmental and health regulations are unnecessary burdens foisted by alarmist experts. By promoting this narrative, the administration seeks to reshape public discourse so that scientific consensus is just another opinion – one that can be dismissed if it clashes with populist or economic aims. Indeed, President Trump has frequently elevated fringe figures and “alternative facts” to muddy the waters. In the COVID-19 context, he surrounded himself with “his own Lysenkos, quacks who tell him what he wants to hear”, sidelining reputable experts like Dr. Anthony Fauci when their advice contradicted Trump’s preferred messaging. The same playbook is visible now in 2025: appointing RFK Jr., a prominent conspiracy theorist on vaccines, to the top health post indicates an effort to formally legitimize anti-scientific viewpoints within government. This not only consolidates Trump’s appeal among segments of the public that distrust experts, but it actively “provides a focal point for a more robust anti-vaccine movement” and other misinformation to grow. In essence, co-opting or crushing scientific institutions is a means to an end: it removes constraints on the administration’s actions and allows political rhetoric to trump empirical reality. By casting aside evidence-based policymaking, the administration can pursue short-term political wins (like boosting oil extraction or minimizing a pandemic) without authoritative internal voices contradicting them. The ultimate motivation is to solidify a narrative of success and strength – even if that means suppressing data on rising greenhouse gas emissions, COVID cases, or environmental damage that would tell a less flattering story. Observers note that this authoritarian approach to knowledge – rejecting unwelcome facts and punishing those who produce them – is aimed at “turning the executive branch into a partisan political weapon”. The alignment of ideological fervor with corporate profiteering and personal power has produced a uniquely hostile environment for science under the Trump administration’s second term.

Consequences of Undermining Science

Environmental Degradation and Climate Setbacks: The immediate and long-term environmental impacts of the administration’s science-denying policies are profound. Rolling back climate policies and pollution standards virtually guarantees higher emissions and more pollution, with cascading effects on ecosystems and public health. The U.S. re-withdrawal from the Paris Agreement in 2025 means the world’s second-largest emitter has once again abandoned emissions targets, undermining global efforts to limit warming. Environmental experts warn that this delay in U.S. climate action could be disastrous. Each year of stalled emissions reductions makes it harder to avoid the worst impacts of climate change – from more intense droughts and wildfires to stronger hurricanes and heatwaves. By “ignoring the global clean energy boom,” the U.S. not only misses out on climate mitigation but also “sends vast wealth to competitor economies” that capitalize on clean technology, noted the UN Climate Chief in response to Trump’s Paris exit. Domestically, the revival of fossil fuel leasing on public lands and weakened greenhouse gas rules will increase carbon output. For instance, reopening the Arctic Refuge and other sensitive areas to drilling threatens critical wildlife habitats and could lock in oil dependence for decades, just as the window to transition to renewables narrows. The administration’s suspension of environmental justice programs and climate resilience grants also means vulnerable communities – often low-income and minority populations – lose resources to adapt to climate impacts. Experts caution that freezing federal climate funds “will imperil public health and worsen inequities”, hitting communities already overburdened by pollution the hardest. Indeed, the weeks-long halt on climate-related grants and loans in early 2025 left sustainability projects in limbo across states like Mississippi, potentially stalling clean water initiatives and air quality improvements. In the big picture, America’s retreat on climate science jeopardizes not only its own environment but global climate stability. The world may increasingly face higher temperature trajectories if the U.S. fails to curb emissions, increasing the risk of crossing dangerous climate tipping points. Every policy that dismisses scientific evidence of climate risk – such as instructing the EPA to ignore “unrealistic” worst-case warming scenarios in its decisions – raises the likelihood of under-preparing for severe outcomes like accelerated sea-level rise or ecosystem collapse. Additionally, sidelining climate research (e.g. disbanding NOAA’s climate research units as proposed ) means critical monitoring of phenomena like ocean warming, Arctic ice melt, and carbon sinks is reduced. This loss of data and expertise makes it harder to respond to environmental changes in real time. In sum, the environmental consequence of the Trump administration’s anti-science stance is a dangerous slow-down or reversal in the nation’s climate response, leaving both the U.S. and the world less able to prevent and cope with environmental crises. As Brazil’s environment minister observed of Trump’s early actions, “his first announcements go against…common sense imposed by the reality of extreme weather events” – essentially, U.S. policy is moving in the opposite direction of what scientific reality dictates, with potentially calamitous results measured in rising temperatures and degraded natural systems.

Public Health Risks and Pandemic Vulnerability: The erosion of scientific integrity in health agencies carries direct risks for Americans’ well-being. Perhaps most alarming is the administration’s approach to infectious disease and pandemic preparedness. By choosing a known anti-vaccine figure (RFK Jr.) to head HHS and explicitly planning to “give infectious disease a break for about eight years”, the administration signaled a deprioritization of epidemic prevention and response. In practical terms, this means agencies like NIH and CDC may see funding and focus shift away from emerging pathogens, vaccine development, and disease surveillance. Should a new COVID-19 variant or entirely new pathogen arise, the U.S. could be caught [unprepared] flat-footed. The decision to sever ties with the WHO – ordering CDC staff to halt cooperation with the global health body – further undermines early warning systems for outbreaks. Public health experts have condemned these moves, noting that leaving WHO and sidelining infectious disease research will have “far-reaching negative consequences” for both U.S. and global health security. Moreover, the administration’s promotion of health misinformation threatens to reverse decades of progress against communicable diseases. RFK Jr. has a long record of spreading the debunked claim that vaccines cause autism and opposing childhood immunizations. Empowered by his leadership role, such views could influence federal health messaging and policy – potentially leading to lower vaccination rates for measles, polio, and other diseases that vaccines have kept at bay. Indeed, medical and scientific leaders are gravely concerned that with Kennedy at the helm, “a more robust antivaccine movement” will take hold, fueled by his rhetoric on social media and beyond. Lower community immunity could allow once-controlled diseases to resurge in the U.S., endangering children and immunocompromised individuals. Public health is also imperiled by the administration’s tendency to marginalize data and promote false narratives. During the COVID-19 pandemic in 2020, Trump officials infamously manipulated CDC reports and models to downplay the severity of the crisis. In 2025, this pattern may repeat or worsen: vital health data (such as COVID hospitalization numbers or air quality alerts) could be suppressed if deemed politically inconvenient. Already, the new HHS leadership has signaled hostility to evidence-based medicine – for example, expressing intent to force journals to publish discredited studies to “challenge” the scientific consensus. This undermines the very foundation of public health knowledge. Additionally, environmental health safeguards are being relaxed, which poses chronic health risks. The EPA’s retreat from enforcing clean air and water standards means more pollution in communities – more particulate matter, more toxic chemicals in drinking water. EPA scientists warned that loosening vehicle emissions rules would harm respiratory health, but their analysis was ignored in favor of a weaker rule based on cherrypicked data. The result is likely higher rates of asthma and lung disease, especially in urban areas with heavy traffic. Likewise, by halting the publication of agricultural climate adaptation research, the USDA is depriving farmers of information needed to cope with extreme weather, potentially leading to crop failures that can trigger malnutrition or economic distress. In the food safety arena, reduced science input could mean slower responses to outbreaks or tolerance of higher contamination levels. Overall, the sidelining of science is making Americans less safe: whether from the slow-burning crises of pollution and chronic disease or the acute threat of pandemics. The “public’s health [is] in jeopardy,” as 77 Nobel laureates wrote in opposing Kennedy’s nomination. They highlighted that an HHS secretary who rejects basic immunology and epidemiology would put lives at risk. Sadly, those risks may materialize – in preventable disease outbreaks, in higher COVID mortality if effective measures are scorned, and in an erosion of trust that leads segments of the public to forgo lifesaving medical interventions.

Economic and Technological Consequences: Undermining science doesn’t just harm health and the environment; it also carries significant economic costs and threatens U.S. leadership in innovation. America’s research enterprise – from biotech to clean energy to aerospace – has long been an engine of economic growth. The administration’s budgetary and policy choices risk stalling that engine. For example, the freeze and uncertainty around federal research grants early in 2025 sent a chilling signal to scientists and entrepreneurs. Labs that rely on NIH, NSF, or Department of Energy funding faced chaos when a blanket grant pause was announced. Although the broad freeze was lifted, targeted bans remain on climate and clean energy research spending, and a comprehensive spending review is underway to strip out programs disfavored by the administration. Research fields with any connection to “climate” or DEI have effectively become radioactive in terms of funding. Academics have described an “outcry” as projects are cancelled or need to be rebranded to avoid forbidden terms. This disruption can drive scientists to either switch fields, seek state/private funding, or leave the country – a potential brain drain that would weaken the U.S. innovation ecosystem. The United States also risks ceding leadership in emerging industries. Clean energy is a prime example. Trump officials insist their rollback of climate policies will not derail the clean tech transition, because of market and state-level momentum. However, even a “slowdown could be costly”. The Inflation Reduction Act’s clean energy investments, which Trump has pledged to repeal or defund, are credited with spurring manufacturing jobs and competitive advantage in batteries, electric vehicles, and renewable power. If those incentives are dismantled or confidence in them shaken, companies may scale back U.S. projects or move them abroad. Competing nations – from China to EU countries – are eager to attract green industry. The World Resources Institute warned that while many U.S. states and businesses remain committed to clean energy, federal rollback might “slow America’s push to gain a competitive advantage over China on future green technologies”. In concrete terms, fewer R&D dollars for solar, wind, or energy storage means fewer breakthroughs and potentially that foreign firms end up dominating those markets. Technologically, the administration’s hostility to certain science could hamper not just environmental tech but broader innovation. The DOE plans outlined in Project 2025 would eliminate many applied research programs (e.g. ARPA-E for advanced energy tech) as “market interference”. Such shortsighted cuts ignore the history that government-funded science often yields transformative inventions (the internet, GPS, mRNA vaccines, etc.). Similarly, restricting international scientific exchange – such as drastically reducing visas for researchers from countries like China – could hurt U.S. universities and high-tech industries. American labs and companies might lose top talent, and collaborative projects (from basic physics experiments to biomedical trials) could suffer. A former NASA official noted that deprioritizing Earth science at NASA would be a “major blow” to climate researchers worldwide, but it also means the U.S. could fall behind in satellite technology and data analytics that have commercial applications. Another economic impact is on agriculture and natural resource sectors, ironically ones the administration aims to help. By censoring climate adaptation science, the USDA is making it harder for farmers to adjust to changing conditions, which can “directly threaten their financial stability”. In 2023 alone, extreme heat and wildfires caused over $16.5 billion in U.S. crop losses. Ignoring such data and cutting off access to “climate-smart” farming knowledge leaves farmers more vulnerable to crop failures – meaning more uninsured losses, higher food prices, and hits to the rural economy. Indeed, fewer farmers will have access to best practices for soil health and water management at a time when droughts and floods are worsening. This jeopardizes long-term agricultural productivity and America’s food security. More broadly, the sidelining of science erodes the foundations of evidence-based decision-making that underpin a stable economy. Markets and businesses rely on government data – whether it’s public health statistics to plan workforce safety, or climate risk maps to guide infrastructure investment. If such data are suppressed or politicized, it introduces uncertainty and risk. For example, if pandemic data are not trusted, businesses might either overreact or underreact in ways that harm economic activity. If climate risk is hidden, investments may flow into projects doomed to fail in a changed climate (like coastal developments not built for sea-level rise). Over time, the loss of U.S. credibility in science can even affect trade: allies have hinted at carbon border taxes on U.S. goods if America shirks climate responsibility, which would hurt exporters. In summary, the antiscience agenda carries significant economic opportunity costs (missed innovation and jobs in future industries) and heightened risks (from agriculture losses to public health crises) that can damage the nation’s prosperity. The United States’ decades-long scientific dominance – a pillar of its economic strength – could be permanently diminished if research is starved and young scientists lose trust in public institutions.

Erosion of Scientific Institutions and Long-Term Risks: Perhaps the most insidious consequence of these policies is the damage to the integrity and capacity of scientific institutions themselves. Government agencies like the EPA, NOAA, NASA, NIH, and CDC are not just bureaucracies; they are reservoirs of expertise built over decades. Purging veteran scientists, gagging experts, and disregarding scientific advisory committees can hollow out these agencies. Already in the first term, many experienced staff resigned or retired in frustration – for example, scientists at the Fish and Wildlife Service who faced pressure to alter their findings chose to leave rather than compromise their integrity. In 2025, the threat of Schedule F-style firings looms over any civil servant who stands by evidence that conflicts with political directives. This will drive some of the best and brightest out of public service. The “culture of fear” instilled by these actions means younger scientists will think twice about careers in government, or they may self-censor to avoid conflict. The result is a brain drain and a decline in morale among those who remain. Restoring a gutted agency is not as simple as flipping a switch in a future administration; it can take years to recruit talent back and rebuild trust. Furthermore, if official channels for science are corrupted, the scientific output of government (which is huge, from the USGS’s geological surveys to CDC’s disease reports) becomes suspect. Once data tampering or suppression occurs, public trust in those agencies drops – and trust, once lost, is hard to regain. For instance, the CDC’s reputation took a hit after political meddling in COVID guidance in 2020; a partisan takeover now would likely exacerbate skepticism among large segments of Americans. A Pew Research survey has found Americans’ confidence in scientists fell after the pandemic became politicized. A continued assault on agencies’ credibility could leave a lasting scar, where a significant portion of the populace simply does not believe government scientific information. That makes it exceedingly difficult to mobilize society for future challenges, be it vaccinating against a new pathogen or evacuating due to a climate disaster. The integrity of federal science is foundational to informed policy, and its degradation means future policy debates will lack a shared factual basis. Longterm, the U.S. risks normalizing a dangerous precedent: that science is optional or even adversarial to governance. If evidence can be routinely overridden by edict, the country may stumble blindly [ignorantly] into crises. Climate change, for example, is a slow-motion crisis that demands sustained, science-guided action over decades. Undermining climate science now – by disbanding research programs, discrediting scientists, and ignoring official assessments – could leave the U.S. unprepared for tipping-point scenarios like rapid ice sheet collapse or megadroughts. The administration’s directive that agencies only use climate projections it deems “realistic” (implicitly dismissing worst-case scenarios) suggests critical contingency planning will be neglected. Similarly, neglecting infectious disease research for years means the scientific groundwork (vaccines, antivirals, genomic surveillance) for the next outbreak won’t be laid, potentially costing countless lives when a new epidemic strikes. In the international sphere, America’s abdication of scientific leadership creates a vacuum that adversaries could exploit. For instance, by withdrawing from WHO and other bodies, the U.S. surrenders influence on setting global health standards and responding to international crises – which could allow less scientifically rigorous or more self-serving approaches (by Russia, China, etc.) to dominate. The loss of U.S. credibility might also reduce the effectiveness of global scientific collaborations on issues like climate change, where trust and shared commitment are vital. Ultimately, the risk to the fabric of science in policymaking is existential: if the public comes to see federal science as just another political tool, then the objective authority of institutions like NASA or the National Weather Service could erode beyond repair. We may enter a post-truth policy era where every scientific finding is viewed through a partisan lens. The long-term consequences of that are profound – society could fail to act on urgent warnings (whether about a pandemic, a collapsing bridge, or a failing crop system) until it’s too late, because the warnings were dismissed as politically motivated. In short, undermining science today sets the stage for governance failures tomorrow, some of which could be catastrophic. The actions of 2025 might seem politically expedient, but they have planted seeds of future crises in climate response, public health resilience, and the institutional memory needed to tackle complex problems.

Global and Domestic Response to Anti-Science Policies

Outcry and Action from the Scientific Community: The Trump administration’s renewed war on science has met with fierce resistance from scientists, public health experts, and watchdog groups. Across the country, researchers are mobilizing to defend the integrity of science. One notable response has been a surge of whistleblowers and leaks shining light on censorship. The internal USDA email ordering climate webpages deleted was leaked to the press, allowing the public to learn of the suppression. Similar leaks from EPA and other agencies have helped journalists document the manipulation of science. Scientific organizations are also raising alarms. In an extraordinary show of solidarity, 77 Nobel laureates signed an open letter urging the Senate to reject Robert F. Kennedy Jr.’s nomination as HHS Secretary, warning that his anti-vaccine, antiscience views “would put the public’s health in jeopardy.”. Likewise, over 17,000 doctors and health professionals signed letters or petitions opposing his confirmation, calling him “actively dangerous” to medical progress (as reported in news outlets ). These unprecedented interventions by Nobel Prize–winners and thousands of physicians underscore the depth of concern that Trump’s policies are fundamentally at odds with public well-being. Outside of health, climate scientists and environmental experts have been vocal as well. Many participated in open letters and op-eds decrying the purge of climate data. Some have organized under groups like the Union of Concerned Scientists (UCS) and the Environmental Data and Governance Initiative (EDGI) to monitor and publicize scientific integrity violations. EDGI, for example, had already prepared for the 2025 transition, and immediately began tracking website changes and scraping data to preserve endangered scientific information. Their efforts, alongside universities, have created parallel archives of climate and environmental data, ensuring that even if government sites go dark, the information isn’t lost to researchers and the public. There have also been signs of revival of the “March for Science” ethos from 2017. In late January and February 2025, smallscale protests and rallies were reported in cities like Boston, San Francisco, and Washington, D.C., where scientists and students gathered with signs like “Stand Up for Science” and “Evidence Over Ignorance.” Professional societies have joined the chorus: the American Association for the Advancement of Science (AAAS) issued statements condemning interference in research funding, and the National Academy of Sciences leadership quietly lobbied Congress to safeguard critical programs. Importantly, legal challenges are being mounted. Public-interest organizations like Earthjustice and NRDC filed lawsuits within weeks of the new administration’s actions. Earthjustice sued the USDA in federal court for “climate censorship,” seeking to restore the removed climate-change resources for farmers. That lawsuit argues that scrubbing publicly funded scientific information violates administrative law and impedes farmers’ rights to vital knowledge. Other lawsuits target environmental rollbacks: a coalition of states and NGOs has challenged the suspension of climate grants, arguing that the White House exceeded its authority by unilaterally freezing Congressionally-appropriated funds. Already, as noted, a judge issued a temporary injunction on the research grant freeze, a small but meaningful victory for the scientific community. More litigation is expected as specific regulatory rollbacks (for instance, any weakening of air quality standards or attempts to revoke states’ clean car authority) are finalized – states like California and New York have pledged to sue immediately to block actions that increase pollution or threaten public health. Scientists inside the government are also pushing back via official channels. Inspectors General (independent watchdogs within agencies) have been alerted to instances of scientific misconduct. For example, at EPA, if political appointees override toxicologists’ assessments on chemical safety, staff have indicated they will request the EPA’s Scientific Integrity official and IG to investigate, as happened during the first term. Whistleblower protections, though weakened, still exist; groups like the Project on Government Oversight (POGO) and the Office of Special Counsel stand ready to assist federal scientists who face retaliation for speaking up. This internal resistance is crucial for slowing the most egregious abuses. In summary, while the administration is attempting a broad suppression of science, the scientific community is not acquiescing. Through public protest, open letters, data-preservation efforts, and legal action, scientists are actively defending the role of evidence in policy. The conflict has also galvanized many in the STEM fields to engage more with policy and communication, determined not to let hard-won knowledge be erased or ignored without a fight. As one climate scientist told The Guardian, “We all feel like we have a target on our backs”, but this sense of siege has spurred a new wave of activism among researchers.

International Reaction and Isolation: Globally, the Trump administration’s anti-science stance has drawn strong criticism and is reshaping America’s relationships. Allies and adversaries alike have reacted to major U.S. policy shifts with concern or condemnation. The move to quit the Paris Climate Agreement for a second time was met with near-universal disapproval abroad. Leaders from Europe, Asia, and Latin America voiced their alarm. The U.N.’s climate chief warned that Trump’s decision “ignoring [the clean energy transition] only sends vast wealth to competitor economies” while climate disasters worsen. China’s Foreign Ministry stated it was “concerned” and emphasized no country can opt out of the global challenge of climate change, subtly positioning China as a responsible actor in contrast to the U.S. European officials, such as the EU Climate Commissioner, lamented the U.S. retreat, calling it “truly unfortunate” that the world’s largest economy was backtracking on climate commitments. Many international observers explicitly linked the U.S. actions to a rejection of science. Brazil’s Environment Minister Marina Silva pointedly said Trump’s inaugural climate announcements “go against…evidence brought by science and common sense”. The diplomatic fallout is significant: trust in U.S. leadership on global issues has eroded. In climate negotiations, other countries are now moving forward without American support. The EU and China, for example, have reaffirmed their own commitments and even increased collaboration with each other to fill the void. There’s talk of the EU imposing a Carbon Border Adjustment Mechanism that would levy fees on imports from countries (like the U.S.) that don’t meet climate standards – effectively pressuring American industry via trade measures. In global health, the reaction to the U.S. withdrawing from WHO and elevating an antivaccine crusader to HHS has been one of alarm and strategizing around the U.S. absence. European and Asian allies doubled their funding to WHO programs to mitigate the loss of U.S. support. The director-general of WHO diplomatically noted that the “door remains open” for U.S. cooperation, implying hope that America might reverse course. Meanwhile, other nations see opportunity in America’s retreat. China in particular is likely to increase its influence in international bodies – it has already stepped up funding for UN health and climate initiatives, portraying itself as the champion of multilateralism. A Johns Hopkins analysis concluded that Trump’s renewed WHO withdrawal would have “broad impacts,” weakening global disease surveillance and handing more control to countries like China. This could result in slower international responses to outbreaks and more opaque sharing of data (if, for instance, nations fear the politicization of health information). U.S. allies such as the G7 nations have quietly formed their own climate and pandemic working groups that exclude the U.S., hoping to continue technical collaboration on emissions reduction and COVID preparedness on their own. The global scientific community has also responded. International research partnerships have sought assurances that U.S. scientists can remain involved despite political headwinds. For example, European climate scientists launched an initiative to keep sharing data with American colleagues through universities and NGOs, bypassing federal channels if necessary. There have even been symbolic rebukes: at the late 2024 UN Climate Conference (COP30), multiple countries’ delegates left an empty chair labeled “United States” during a session on science-based targets, highlighting the U.S. absence. On the positive side, some of Trump’s more extreme steps have been partially checked by global and domestic pushback. After the initial fallout, the White House showed small signs of flexibility under pressure. Facing lawsuits and an uproar from aid organizations, the administration in February moderated its blanket freeze on foreign aid for climate and health programs – the Supreme Court allowed a 90-day pause on certain funds, but critical humanitarian aid flows were quietly exempted after allies protested humanitarian crises being exacerbated. And as noted earlier, the GAO’s ruling thwarted EPA’s attempt to fast-track repeal of California’s auto emissions rules, a decision welcomed by environmental authorities in Canada and the EU who feared a rollback would affect vehicle standards globally. These examples show that while Trump’s policies have made the U.S. something of an outlier, there are countervailing forces limiting some damage. Internationally, America’s reputation has undeniably suffered. A Pew survey found allies overwhelmingly believe U.S. global leadership in science and environment has diminished. In response, other nations and global NGOs have intensified efforts to “quarantine” the impact of U.S. anti-science moves, effectively treating the U.S. federal government as an unreliable partner while trying to maintain ties with American scientists and subnational leaders (like U.S. states and cities that remain committed to climate action). States like California, for instance, continue to participate in international climate forums and uphold stringent standards, somewhat preserving U.S. representation in spirit. Overall, the international community’s response has been a mix of censure, adaptation, and circumvention. The world is not waiting for the United States on science-based challenges – and in many ways, the U.S. is increasingly isolated, its policies viewed as a cautionary tale of politics overpowering science. The long-term effectiveness of any “course corrections” since January 2025 remains to be seen. While legal rulings and protests have forced minor reversals (like lifting the general research freeze ), the core trajectory of U.S. policy remains one of disengagement from evidence. The true test will be whether domestic and global pressure can mount sufficiently to compel the administration to soften some stances (for example, perhaps re-engaging in a pandemic treaty if a new health crisis emerges) – or whether Trump’s team will double down despite the criticism.

Comparisons to Historical and International Precedents

Modern history offers several sobering analogues to the Trump administration’s assault on science – from authoritarian regimes that suppressed science for ideology, to industry campaigns that subverted science for profit. These parallels highlight both similarities and unique aspects of the current situation.

Soviet Lysenkoism: A frequently cited precedent is the case of Trofim Lysenko in the Soviet Union, where pseudo-science was elevated to state doctrine. In the 1930s–50s, Lysenko rejected basic genetics and promoted flawed agricultural ideas that pleased Soviet leadership. Under Stalin’s patronage, Lysenko’s unscientific methods (like “educating” seeds with cold to increase crop yields) became mandatory, while real genetic science was outlawed. The outcome was disastrous: crop failures exacerbated famines, contributing to millions of deaths, as valuable time was lost to quackery in the face of hunger. The Trump administration’s hostility to climate and health science has echoes of Lysenkoism. In both cases, political leaders imposed an ideologically driven reality over empirical evidence – Stalin insisted Lysenko’s ideas were correct because they fit Marxist ideology of environmental conditioning; Trump insists climate change isn’t a serious threat because it conflicts with his economic and political ideology. In both cases, scientists who disagreed were silenced or removed (Soviet geneticists were imprisoned or executed; U.S. federal scientists are being reassigned or pushed out). The Bulletin of the Atomic Scientists explicitly drew this parallel, noting that “unscientific policy making can have farreaching negative consequences”, as shown by Lysenko’s USSR and also Thabo Mbeki’s South Africa. The difference, of course, is in degree. The U.S. is still a democracy with some institutional checks, whereas Stalin’s totalitarian grip allowed no dissent. American scientists won’t be sent to gulags. However, the effect – policies that lead to preventable suffering by denying science – is a real risk. One could argue the U.S. COVID-19 response under Trump (particularly in 2020) bore this out: tens of thousands died as officials downplayed the virus and undermined health measures, a situation one writer described as “a man-made epidemic… perpetuated by policy choices” that ignored expert advice .

Nazi Germany’s Politicization of Science: Under Adolf Hitler, the Nazi regime infamously rejected and manipulated science that did not align with its racial ideology. The most famous example is the denouncement of Einstein’s theory of relativity as “Jewish physics.” Top Nazi-aligned scientists like Johannes Stark and Philipp Lenard led campaigns to discredit modern physics simply because Einstein was Jewish and his ideas were deemed inconsistent with Aryan philosophies. The Nazis burned books by prominent scientists and pushed a notion of “German Physics” that excluded relativity and quantum mechanics. This purge drove many leading scientists (including Einstein, who fled to the U.S.) out of Germany. While Nazi Germany did continue scientific endeavors (especially in warfare and technology), their ideological interference likely stifled potentially game-changing research (some historians suggest Nazi antipathy to “Jewish science” handicapped their nuclear program). The Trump administration’s actions are obviously not motivated by racial ideology, but there is a similar theme of political litmus tests for science. Under Trump, scientific facts are accepted or rejected based on whether they flatter the leader’s agenda. For example, weather forecasters were pressured to conform to a presidential misstatement about a hurricane’s path (the “Sharpiegate” incident), leading the Commerce Secretary to threaten to fire NOAA scientists who corrected the record. This recalls how autocratic regimes force reality to bend to propaganda. Another Nazi parallel is the cultivation of alternative experts who echo the party line – much as Hitler’s inner circle elevated cranks in eugenics and Aryan science, Trump has elevated fringe voices on climate (e.g. those who call climate scientists “alarmists”) and health (promoting marginal figures who touted unproven COVID cures). The key difference is that in Nazi Germany, outright dissent was punishable by imprisonment or worse, whereas in the U.S. context, dissenters can speak out (as many scientists are) and use legal channels to fight back. Still, the undermining of mainstream science in favor of loyalist narratives is a common tactic. Both scenarios show how facts become casualties when power seeks to legitimize itself – Nazi propaganda chief Goebbels famously said, “we do not need ‘objective’ science,” akin to the Trump era notion of “alternative facts.”

Thabo Mbeki’s South Africa (HIV/AIDS Denial): A more recent precedent is South African President Thabo Mbeki’s refusal in the early 2000s to accept the scientific consensus that HIV causes AIDS and that antiretroviral drugs save lives. Mbeki was influenced by AIDS denialists and questioned orthodox science, leading his government to delay providing life-saving antiretroviral treatment to HIV-positive citizens. Studies later concluded that Mbeki’s policies led to over 330,000 avoidable deaths and tens of thousands of preventable mother-to-child HIV infections. Mbeki even convened a panel including discredited scientists to debate AIDS, giving false equivalence to fringe theories. The parallels to the Trump/Kennedy approach to COVID-19 and vaccines are striking. Just as Mbeki’s health minister promoted beetroot and garlic over antiretrovirals, we saw Trump promote hydroxychloroquine and other unproven treatments while undermining proven interventions like masks and mRNA vaccines. RFK Jr.’s prominence means anti-vaccine views are now elevated to a high office, which could lead to reduced vaccination and the embrace of unscientific health alternatives. The lesson from South Africa is that rejecting medical science for ideology can inflict tragedy on a massive scale – a warning that many public health experts are currently invoking. Indeed, the Bulletin of Atomic Scientists explicitly cautioned against ignoring the Lysenko and Mbeki experiences when assessing RFK Jr.’s appointment, given the potential for similarly dire outcomes .

Tobacco Industry’s War on Science: Different from state-driven cases is the precedent of corporate science suppression, epitomized by the tobacco industry. Starting in the 1950s, major tobacco companies knew of the scientific evidence linking smoking to cancer and disease, yet they orchestrated a decades-long campaign to “manufacture doubt” about those findings. They funded biased research, harassed and discredited independent scientists, and launched PR efforts to confuse the public. An infamous 1969 tobacco memo stated, “Doubt is our product since it is the best means of competing with the ‘body of fact’ in the public’s mind.”. This playbook of emphasizing uncertainty and cherry-picking data is exactly what the fossil fuel industry later adopted to stall action on climate change. In fact, some of the same public relations firms and operatives who denied smoking harms were later hired to cast doubt on climate science. The Trump administration’s tactics often mirror this tobacco/fossil fuel playbook – unsurprising, given the deep fossil fuel ties. By insisting that climate science is exaggerated or uncertain (despite overwhelming consensus), and by sidelining or censoring scientific reports, they are following the same strategy of “spread confusion, prevent consensus.” For example, refusing to incorporate the high-end emissions scenario (RCP 8.5) in planning is a form of downplaying worst-case outcomes, analogous to tobacco companies questioning whether smoking really caused cancer in all cases. The uniqueness here is that a government is doing it at a national policy level. Historically, U.S. government agencies eventually confronted tobacco truth (the Surgeon General’s report in 1964, etc.), whereas now the government itself is a leading purveyor of climate and health disinformation. That aligns the state with what used to be solely a corporate disinformation campaign. One might recall that even during the George W. Bush administration – which had its own issues with politicizing science (e.g. tampering with climate reports, limiting stem cell research) – the scale and brazenness were more limited compared to today. The Trump administration’s approach is broader and more systematic, touching virtually every domain of science-based policy, which is unprecedented in U.S. history. Previous cases in America, like the Reagan administration’s slowness on acid rain or Bush officials interfering with climate scientist James Hansen’s public statements, were serious but comparatively narrow.

Key Similarities: Across these examples, a common thread is the suppression or distortion of truth for a perceived higher goal – whether it’s ideological purity (Soviet, Nazi), economic interest (tobacco, fossil fuels), or political convenience (Mbeki, Trump). In all, the short-term “gains” (maintaining dogma, avoiding regulation, preserving power) came at the expense of long-term harm to the populace and the scientific enterprise. They also show how scientists often become targets, painted as enemies of the state or public. Trump’s labeling of some experts as part of a “deep state” or dismissing climate scientists as politically motivated resembles those earlier vilifications.

Key Differences and Unique Aspects: The U.S. in 2025 still retains democratic institutions, so the battle is playing out in courts, press, and elections, not just behind closed doors. That means there is pushback and partial course correction (something impossible under Stalin or Hitler). Another unique feature of the current situation is the role of social media and the fragmentation of information. In the past, regimes controlled media tightly (Nazi radio propaganda, Soviet state press) to enforce their version of science. Today, while Trump can bypass traditional channels via platforms like Truth Social or sympathetic media to propagate falsehoods (e.g. casting doubt on vaccines or climate data), scientists and opponents can also harness digital platforms to mobilize and inform the public. The information battlefield is more complex and diffuse. Another difference is that the stakes are global in a way some historical cases were not. Lysenko’s failures, tragic as they were, mostly affected the Soviet Union’s food security. In contrast, U.S. abdication on climate affects the entire planet’s climate trajectory; U.S. mishandling of a pandemic affects worldwide health security given the U.S. role in travel and drug development. This global interconnectedness makes the current anti-science surge particularly dangerous – and has spurred international responses as discussed. Lastly, a unique aspect is the phenomenon of a leader returning to power after an initial period known for anti-science actions (2017–2020) and intensifying them. We are essentially witnessing “Trump 2.0”, where lessons from the first term have been learned – but in the wrong direction: the administration is more skilled at subverting norms, having tested where the guardrails were. This situation might be compared to a hypothetical scenario where a Lysenko regained influence after being partially discredited, doubling down on damaging policies. It underscores the importance of institutionalizing protections for science, because unlike past cases that ended with regime change or external pressure (e.g., South Africa eventually shifted course post-Mbeki), here we see a resurgence. The current administration is consciously echoing strategies from those historical precedents (one Heritage Foundation contributor even praised Lysenko’s ability to bypass “bourgeois” science in a warped justification for radical policy changes). All told, while history has seen science suppressed before, the Trump administration’s combination of populist politics, industry collusion, and democratic backsliding presents a distinct 21st-century challenge. It mixes the authoritarian contempt for truth with the modern instruments of misinformation and polarization, creating a perilous environment for fact-based governance that historians warn is reminiscent of the worst chapters of the past but uniquely tailored to the present.

#### It saves CDC’s fungal surveillance.

Pugh 25 [Tony Pugh, Senior Reporter at Bloomberg Law; **internally quoting** Carol **McLay**, president of the Association for Professionals in Infection Control and Epidemiology; and Arturo **Casadevall**, professor of microbiology and immunology at the Johns Hopkins’ Bloomberg School of Public Health; “Specter of Job Cuts Looms Over CDC’s Infection-Tracking Efforts,” Bloomberg Law, 4-15-2025, https://news.bloomberglaw.com/health-law-and-business/specter-of-job-cuts-looms-over-cdcs-infection-tracking-efforts]

The epidemiology community is hoping a federal program to thwart infections among patients and health-care staff will emerge intact amid job cuts and reorganization at the Centers for Disease Control and Prevention.

The concern about federal surveillance for health care-associated infections, or HAIs, comes as a drug-resistant fungus, Candida auris, is spreading in hospitals in the US and around the world.

The CDC, the premier microbiology laboratory, maintains the National Healthcare Safety Network, the nation’s leading HAI tracking system.

More than 38,000 hospitals, nursing homes, dialysis centers, and other health-care facilities report data through the network, which helps the CDC and its state and local partners identify and respond to HAI outbreaks and prevent recurrences.

“Nobody wants to go into a hospital with a problem and end up with an infection that they didn’t come in with,” said David Weber, president of the Society for Healthcare Epidemiology of America.

Yet C. auris—which can be deadly for patients with compromised immune systems—grew from 51 US cases in 2016 to 4,514 in 2023, the CDC reported. Containment requires “rapid identification” and “adequate resources” for “infection prevention programs and clinical microbiology laboratories,” according to research published last month in the American Journal of Infection Control.

But after Health and Humans Services Secretary Robert F. Kennedy Jr. announced plans to eliminate 2,400 CDC employees, Weber and others working to prevent infections fear the safety network’s staff and infrastructure could be on the CDC’s organizational chopping block—even though no funding cuts have been reported at this time.

“We fear that the whole thing is going to go. We think it’s going to disappear,” said Carol McLay, president of the Association for Professionals in Infection Control and Epidemiology.

Potential Impact of Downsizing

Downsizing the network’s operations, or easing its mandatory infection reporting requirements, could cause HAIs to spike and undermine public confidence in the health-care system amid ongoing concerns about Covid-19, bird flu and C. auris, which spreads readily among patients in medical facilities and attaches to hard surfaces.

“When a patient gets it, it is very hard to get rid of,” Arturo Casadevall, a professor of microbiology and immunology at the Johns Hopkins’ Bloomberg School of Public Health said of C. auris. “This stuff is pretty tenacious. It causes major medical problems.”

If downsized or eliminated, Casadevall said, it could take years to reconstitute the CDC’s fungi-tracking mycology unit, a small group of scientists, epidemiologists, and lab personnel who test and analyze C. auris samples and share their findings with physicians, researchers, and the public.

“There aren’t that many people who know how to do that. It is not something you can get rid of and re-assemble,” he said. “What I am concerned about is when teams are broken up, a lot of knowledge is lost. And that is not that easy to put back.”

The HHS did not respond to a request for comment about CDC job cuts or the status of the safety network.

#### Lab capacity is improving globally---but CDC surveillance is key to effective responses.

Rodríguez et al. 23 [Roxana M Rodríguez Stewart, Laboratory Leadership Service and Mycotic Diseases Branch in the National Center for Emerging and Zoonotic Infectious Diseases at the Centers for Disease Control and Prevention; Jeremy AW **Gold**, Tom **Chiller**, D Joseph **Sexton**, and Shawn R **Lockhart**, all in the Mycotic Diseases Branch, National Center for Emerging and Zoonotic Infectious Diseases at CDC; “Will invasive fungal infections be The Last of Us? The importance of surveillance, public-health interventions, and antifungal stewardship,” Expert Review of Anti-Infective Therapy, 21(8), 6-22-2023, pp.787-790, DOI 10.1080/14787210.2023.2227790]

1. Introduction

The video game-turned-HBO show ‘The Last of Us’ is a fanciful representation of a zombie apocalypse caused by a fungal infection. Although Ophiocordyceps, the ‘zombie fungi’ featured in the show, do not infect vertebrates, the show serves as a reminder that many fungi can cause life-threatening invasive fungal infections (IFIs). Candida and Aspergillus species are the most common and well-known causes of IFIs, but at least 300 species of opportunistic human pathogenic yeasts and molds exist.

Each year, IFIs are responsible for over 1.5 million deaths globally and, in the United States alone, impose health-care costs ranging from five to seven billion dollars [1,2]. During the COVID-19 pandemic, rates of death from fungal infections have increased [3], and the burden of IFIs is poised to grow given the expanding population of patients living with immunosuppressive conditions (e.g. solid organ and stem cell transplantation), increasing antifungal resistance, and potential climate-change related expansion of the geographic ranges in which pathogenic fungi live. Despite the morbidity and mortality associated with fungal infections and their growing public health importance, we still have much to learn about their diagnosis and management. In this review, we discuss gaps and global disparities in fungal laboratory capacity including antifungal susceptibility testing, the paucity of fungal surveillance, and the importance of antifungal stewardship, all against the backdrop of increasing antifungal resistance and a limited armamentarium of antifungal therapies.

2. Diagnostic testing and laboratory capacity

Patients who develop IFIs frequently have complex medical comorbidities, and the clinical manifestations of IFIs are often nonspecific, making diagnosis challenging [4]. Rapid identification of fungal infections is critical to ensure early treatment and prevent severe disease and deaths. Laboratory diagnosis of fungal diseases can involve microscopic examination, culture, antigen or antibody testing, and several molecular assays [4]. Although automated systems exist that can identify certain yeast species, no automated systems exist for the identification of filamentous fungal isolates. Therefore, laboratories depend on personnel with expertise in phenotypic identification of fungi. Because IFIs are uncommon compared with bacterial and viral infections, dedicated clinical mycology sections are generally only maintained in large tertiary medical centers. Smaller facilities often must send out fungal isolates to reference or public health laboratories for identification, a process that frequently causes diagnostic delays and increased cost.

Clinical microbiology laboratories serve as the front line for disease detection, including IFIs. However, establishing mycology laboratories can be challenging in developing countries given limitations in infrastructure, funding, and personnel with fungal expertise. Identifying laboratory deficiencies and expanding laboratory capacity through diagnostic assay development, education, and training are crucial for strengthening a country’s public health surveillance and response to fungal diseases. Even in settings with governmental or nongovernmental organization support for clinical diagnosis and testing of bacterial and fungal diseases, fungal laboratory diagnosis is often ignored [5]. The inability to diagnose IFIs, which depends in large part on laboratory testing, can lead to these infections going untreated, often resulting in death, or treated empirically, which can lead to misuse and overuse of antibacterial and antifungal medications, a driver of antimicrobial resistance [6]. Increasing clinical awareness of fungal diseases in at-risk populations is the first step in highlighting the importance of advancing laboratory testing capacities through diagnostic assay implementation and increased personnel training. This would lead to improved accuracy and turnaround time of results, resulting in proper diagnosis and a decrease in empiric treatment.

Many institutions lack access to essential diagnostic tools to identify fungal infections. For example, the current gold standard for fungal diagnosis is culture and most European laboratories (99%) can process isolates for culture-based testing, but this figure drops to 89.5% for Asian laboratories and 78% for Latin American and Caribbean laboratories [7-9]. While no similar survey data exist for Africa, we know that South Africa is the only country on the continent with a mycology reference laboratory [10]. Although several countries, including Nigeria and Kenya, are actively increasing their fungal laboratory capacity, diagnostic capacity for fungal infections is lacking in the majority of countries in Africa. Availability greatly declines when assessing other more complex methods for fungal identification, such as MALDI-TOF and molecular methods, or antifungal susceptibility testing. Even in Europe, laboratory capacity for fungal diagnostics greatly varies depending on gross domestic product. In Latin America and the Caribbean, only 9% of diagnostic centers reach the minimum standards for fungal laboratory diagnostic capacity as defined by the European Confederation of Medical Mycology [8,9]. A survey conducted in seven Asian countries assessing laboratory practices for diagnosis of fungal infection showed many laboratories in Indonesia, the Philippines, and Thailand have almost no access to advanced diagnostic tests [7]. To our knowledge, no fungal laboratory capacity assessments have been conducted in other areas of the world. These examples highlight the disparities of fungal diagnostic testing around the world.

Lagging even further behind our ability to diagnose fungal infections is our ability to perform antifungal susceptibility testing (AFST). Publications from both the United States and the United Kingdom highlight the paucity of laboratory ability to perform AFST [5,11]. While yeast susceptibility testing is available in just over half of UK laboratories, only a handful perform mold AFST [5]. In the United States, fewer than a dozen clinical laboratories perform mold susceptibility testing [5,11]. Only a handful of countries around the world have tried to perform comprehensive susceptibility testing for yeasts, but no country has a comprehensive program for the susceptibility testing of molds [12].

Several efforts to improve laboratory capacity for fungal diagnostics nationally and internationally are underway. The Fungal Diagnostics Laboratories Consortium (FDLC), composed of clinical mycologists, was recently created to facilitate and support research and assay development, commercialization, clinical validation, and laboratory implementation of diagnostic assays [11]. The Centers for Disease Control and Prevention (CDC)’s Antimicrobial Resistance Laboratory Network (AR Lab Network) provides enhanced monitoring of antimicrobial resistant pathogens by building laboratory capacity to detect certain antimicrobial-resistant pathogens, increasing diagnostic testing potential and tracking of antifungal resistance.

CDC has established a platform for fungal genome data comparison called FungiNet. This platform is currently being rolled out across the world for countries that are interested in international data sharing. Increased fungal sequencing capacity results in more robust genomic surveillance for fungal diseases, including rapid detection of pathogenic strains, monitoring for prevalence of fungal pathogens in a population, and determining their geographical distribution.

3. Fungal surveillance and antifungal resistance

Antifungal resistance is a growing global public health concern. Worldwide, azole resistance is increasing in Aspergillus fumigatus, Candida parapsilosis, and Candida tropicalis [13,14]; terbinafine and azole resistance is increasing in dermatophytes like Trichophyton indotineae and Tricophyton rubrum [15]; and certain strains of C. auris have acquired multidrug- and pan-resistance [16]. Unfortunately, because very few countries have effective surveillance for fungal diseases and limited laboratory capacity to detect resistance, the global burden and impact of resistance is unknown. Historically, no coordinated global surveillance for fungal diseases has existed. There have been attempts to estimate the global burden of fungal disease, but most of the data have been based on crude estimates and extrapolated data from a limited number of countries [2,17]. While these estimates provide some useful data, they generally do not represent resource-limited settings where the basic tools to diagnose fungal diseases are not available, and often do not include antifungal resistance. The rising rates and geographical spread of antifungal resistance, as suggested by limited studies and surveillance, underscore the critical importance of including IFI-causing fungi, such as C. auris and A. fumigatus, in existing surveillance programs [18]. In the United States, a subset of state public health laboratories in the AR Lab Network is building capacity to detect and monitor antifungal resistance for notable fungal antimicrobial-resistant threats, including C. auris, other Candida species, and Aspergillus fumigatus. Although these efforts are relatively new, they were helpful in tracking increased spread of C. auris during the COVID-19 pandemic [19].

Given the paucity of laboratories performing AFST worldwide, this is a leading diagnostic gap. The World Health Organization (WHO) is making an effort to incorporate fungal pathogens into their existing surveillance system, the Global Antimicrobial Resistance and Use Surveillance System (GLASS), the first global collaborative effort to standardize antimicrobial resistance surveillance [20]. Recognizing that one of the major limitations in addressing the threat of antifungal-resistant fungi is a lack of surveillance data at the global level, GLASS started an early implementation protocol in 2019 for the inclusion of Candida spp., to support countries in strengthening or building their national fungal surveillance for invasive Candida infections. The WHO, in partnership with international subject matter experts, next created the Fungal Pathogen Priority List (FPPL). The FPPL has the objective of increasing research and development, improving surveillance, and informing public health interventions for historically neglected fungal pathogens [21]. Access to diagnostic testing and antifungal resistance were two of the criteria evaluated when deciding on the inclusion and ranking of various types of fungi in this list.

In the United States, the (CDC) uses the National Notifiable Disease Surveillance System (NNDSS) and the National Healthcare Safety Network (NHSN) to standardize national surveillance. While the NHSN is generally concerned with healthcare-associated infections, the NNDSS collects national data for only two fungal pathogens, Coccidioides and certain cases of C. auris. Several fungal pathogens, including C. auris, are included in CDC’s list of nationally notifiable diseases, but notifying CDC of these cases is not mandatory. Although these efforts allow for better tracking of fungal infections and antifungal resistance, they do not come close to the surveillance mandated for bacterial and viral pathogens.

4. Antifungal stewardship

Antifungal stewardship (AFS) focuses on coordinated interventions to monitor and direct the appropriate use of antifungals to achieve the best clinical outcomes and minimize antifungal resistance [22]. Antifungal stewardship may improve patient outcomes, reduce treatment costs, and decrease the emergence and spread of antimicrobial resistance around the world [23]. Antifungal stewardship is inextricably linked to diagnostic testing as part of a comprehensive fungal disease management system [24]. The Mycoses Study Group Education and Research Consortium has developed a set of recommendations for enhancing AFS that center around increasing personnel training, diagnostic testing, antifungal susceptibility testing, disease reporting, and patient monitoring [23]. There are few systemic antifungal classes available to treat IFIs, with only two approved classes containing antifungals effective against molds. Antifungal stewardship efforts are becoming increasingly critical, with a growing number of antifungal agents in phase 2 and phase 3 clinical trials, which include three new classes, essentially doubling the treatment options [25]. As these new antifungals are rolled to our armamentarium, a comprehensive plan for improving laboratory capacity, judicious use of antifungals, and susceptibility testing should become part of a comprehensive stewardship program to provide optimal, timely treatment.

5. Conclusion

IFIs are a growing threat to public health, and the lack of emphasis given to these pathogens has led to improper diagnosis, inadequate treatment, limited surveillance, and increased antifungal resistance. Enhancement of laboratory capacity around the world is critical to prevent disease and deaths caused by fungal infections. The development of quicker and more reliable diagnostic tools, expansion of training programs, and adequate funding could help achieve this goal. The incorporation of fungal pathogens into already existing surveillance programs will likely improve tracking of fungal infections and the spread of antifungal resistance, both nationally and internationally, to guide public health activities. Emphasizing antifungal stewardship to educate the healthcare community about proper antifungal usage can aid in curbing antifungal resistance. By improving laboratory capacity, public health surveillance, and antifungal stewardship, we will better understand the burden of invasive fungal infections, mitigate the development of antifungal resistance, and maybe even prevent a fungal zombie apocalypse.

#### Inevitable fungal pandemics overcome historical checks on extinction.

Casadevall 19 [Arturo Casadevall, Department of Molecular Microbiology and Immunology, Johns Hopkins School of Public Health, “Global Catastrophic Threats from the Fungal Kingdom,” Chapter 2, *Global Catastrophic Biological Risks*, eds. Inglesby & Adalja, Springer, 2019, DOI 10.1007/82\_2019\_161]

The fungal kingdom poses major catastrophic threats to humanity but these are often unappreciated and minimized, in biological threat assessments. The causes for this blind spot are complex and include the remarkable natural resistance of humans to pathogenic fungi, the lack of contagiousness of human fungal diseases, and the indirectness of fungal threats, which are more likely to mediate their destructive effects on crops and ecosystems. A review of historical events reveals that the fungal kingdom includes major threats to humanity through their effects on human health, agriculture, and destruction of materiel. A major concern going forward is the likelihood that physiological adaptations by fungal species to global warming will bring new fungal threats. Fungal threats pose significant challenges specific to this group of organisms including the potential for intercontinental spread by air currents, capacity for rapid evolution, a paucity of effective drugs, the absence of vaccines, and increasing drug resistance. Preparedness against bio-catastrophic risks must include consideration of the threats posed by fungi, which in turn requires a greater investment in mycology-related research.

When it comes to biological threats, humanity often has a blind spot for the fungal kingdom. The reason for this has more to do with human perception than a careful risk assessment. In contrast to viruses and bacteria, which have caused historical high-mortality events such as the 1918 influenza epidemic and the Black Death, respectively, humanity has no collective memory of equally devastating events caused by fungi. In fact, humans and mammals are remarkable by their resistance to systemic fungal diseases, a fact that sets them apart from other animals and plants. Human fungal diseases tend to occur in individuals who have impaired immunity or receive heavy exposures of pathogenic fungi and these diseases are not communicable. For example, fungal diseases are common in individuals with advanced HIV infection or medically induced immune suppression as used to prevent rejection in organ transplant recipients. Fungal outbreaks, when they occur, reflect unusual exposures such as histoplasmosis in cave explorers (Lyon et al. 2004) or meningitis in individuals receiving mold-contaminated steroid preparations (Andes and Casadevall 2013). This, in turn, tends to minimize the threat. Fungal diseases are generally not reportable to public health authorities, which compounds the problem of assessing the true burden of mycoses in the human population. However, this essay will argue that such views are shortsighted by exploring fungal threats to humanity, agriculture, and material.

The human blind spot for fungal threats extends to the support given to mycology research, which in turn affects preparedness against a catastrophic threat from the fungal kingdom. Suffice it to say that medical mycology is underfunded relative to other infectious diseases such as tuberculosis and malaria even when the total mortality from fungal diseases, 1.6 million deaths annually, is comparable or greater (Rodrigues and Albuquerque 2018). Cryptococcosis alone ranks fifth among lethal infectious diseases behind AIDS, tuberculosis, malaria, and diarrhea (Rodrigues 2018). When non-lethal fungal diseases such as dermatomycosis are considered, the total burden of fungal diseases affecting humanity rises to over 800 million people (https://www.gaffi.org/). However, there are some encouraging indications that perceptions of the threat from the fungal kingdom are beginning to change. Mycetoma, a devastating fungal infection that cripples millions in equatorial regions was added to the World Health Organization of Neglected Tropical Diseases in 2016. Prominent journals have published articles highlight the fungal threat in recent years (Rodrigues and Albuquerque 2018; Fisher et al. 2018; Brown et al. 2012; Gow et al. 2018) including an editorial titled ‘Stop Neglecting Fungi’ (2017).

The blind spot does not extend to agricultural experts or plant scientists, who are well aware of the destructive effects on fungal pathogens on crops. In contrast to the paucity of serious fungal diseases among immunologically intact humans, fungi are major pathogens of plants, insects, and ectothermic vertebrates. In fact, today, a few species of fungi are destroying entire ecosystems as amphibians, bats, salamanders, and snakes are decimated by fungal diseases [reviewed in (Fisher et al. 2012)].

1 The Fungal Kingdom

The fungal kingdom is enormous, with an estimated 5 million species (Blackwell 2011). This kingdom is tremendously diverse and includes species ranging from mushrooms to microscopic organisms such as Saccharomyces cerevisiae. Fungi are generally considered auxotrophs, such that their major role in the biosphere is that of being decomposers of plant and animal matters. However, there is some evidence that fungi can harvest electromagnetic energy for nutrition (Dadachova et al. 2007; Robertson et al. 2012), which could allow them with a capacity to synthesize their own food and this could have significant implications for exobiology and their potential to threaten materiel. Among the large phylogenetic relationships, animals and fungi are each other’s closest relatives (Baldauf and Palmer 1993). A practical consequence of this close relationship is that it is more difficult to find metabolic differences to exploit in making antifungal drugs. Hence, although there are relatively few fungal species that are pathogenic to humans, fungal infections, when they occur, tend to be chronic and difficult to treat.

One of the remarkable characteristics of fungi is their metabolic capacity to produce secondary metabolites. Many of our current drugs such as penicillin, statins, and anticancer drugs are secondary metabolites of fungi. However, the same machinery also produces compounds that are harmful to animals such as mycotoxins. The mycotoxins are a diverse lot of compounds that includes cancer-causing aflatoxins, the neurotoxin ergot alkaloids and the amatoxins found in poisonous mushrooms (Peraica et al. 1999). Some mycotoxins such as T-2 have considerable weapon potential (Paterson 2006) and were implicated in the “yellow rain” episode in Southeast Asia (Rosen and Rosen 1982; Mirocha et al. 1983), although the veracity of this conclusion has been questioned (Ashton et al. 1983). On the other hand, there is strong evidence that aflatoxins were developed by the Iraqi bioweapons program prior to the First Gulf War (Davis 1999). Contamination of grains with trichothecene-type mycotoxins produced by Fusarium spp. caused an epidemic mycotoxicosis with 60% mortality during a 1932 outbreak in the USSR (Peraica et al. 1999). From the viewpoint of considering catastrophic threats from the fungal kingdom, it is noteworthy that they are major pathogens of plans and non-mammalian animals, as well as sources of compounds with significant toxicity.

2 On the Nature of Fungal Catastrophic Threats

Fungal pathogens differ from such communicable pathogens as viruses in that do not need a host to survive. Most pathogenic fungi are environmental organisms capable of surviving in the environment without a need for a host. For example, the chytrid responsible for worldwide amphibian declines has caused the extinction of several species of frogs and yet survives in infected lakes even when its hosts are decimated. This non-dependence of hosts for survival means that selection pressures that could attenuate virulence will not necessarily apply. In addition, non-dependence on their hosts for survival means that fungal pathogens can drive a species to extinction.

The nature of the fungal threats differs depending on the possible targets and we will consider three major target categories: humans, agriculture, and materiel.

Humans. None of the currently known human pathogenic fungal species is likely to pose a catastrophic risk to humans unless there is a severe decline in the immunity of the population, as happened in certain groups with HIV infection or unless the fungal species is weaponized in some fashion to deliver overwhelming innocula and/or weaken the immune response. Of course, the emergence of a new fungal species with pathogenic potential for immunocompetent humans would be an unforeseen threat. Many new pathogenic fungi are reported yearly, but these tend to be isolated cases in association with severe immune deficiencies or unusual exposures. Nevertheless, recent years have witnessed the emergence of Candida auris as a major nosocomial pathogen, which appeared suddenly in 2009 without a yet identifiable origin (Forsberg et al. 2018). Although fungal pathogens are not usually considered as biological weapons for use against humans, some species have significant weapon potential (Casadevall and Pirofski 2006). As early as 1961, one authority wrote that “the fungi seem to be ideal warfare agents in many ways, such as ease of handling, ease of dissemination, resistance to damage by explosives, production of severe but temporary illness in most cases, ability to cause temporary, or permanent infection of local areas depending on the organism selected” (Furcolow 1961). The military had noted the high infectivity of Coccidioides spp., a fact that could have contributed to the designation of this organism as the sole fungal species in the original select agents list (Casadevall and Pirofski 2006).

Agriculture. In contrast to mammals, fungi are major pathogens for plants and the susceptibility of human plant food staples to fungal diseases means that fungal pathogens represent a tremendous threat to agriculture. Threats to agriculture that disrupt the food supply for humans or domesticated animals could rise to the threat level of potential global catastrophic threats if the food supply is diminished, with resulting famine and social instability. Several fungal species have been developed as agents of biological warfare including Puccinia graminis tritici (stem rust of wheat) (Rogers et al. 1999). Certainly, a simultaneous outbreak of fungal pathogens on major food crops such as wheat, corn, and rice would have a devastating effect on human and domestic animal food supplies. Today, the world’s bananas are being threatened by Pseudocercospora spp. (Churchill 2011). Since the major consumer strain of banana is maintained by grafting, breeding-resistant crops is not an option, and there is concern for a catastrophic decline in this food staple, which will reduce a major source of calories for humanity and income for subsistence farmers (Churchill 2011). The Irish potato famine of the mid-1840s stands out as a singular catastrophic event where a plant pathogen destroyed a food staple crop for a population. The pathogen responsible for the Irish potato famine, Phytophthora infestans, was considered a fungus until recently, given its morphological similarities to fungi (Goodwin et al. 1994), but was re-classified as oomycetes based on genomic analysis (Cooke et al. 2000). Despite the taxonomic change, this event serves to illustrate the catastrophic risks posed to agriculture by fungal pathogens.

Materiel. Although microbial destruction of equipment and materiel is not usually a consideration when evaluating biological risks to humans, human dependence of technology raises the possibility that fungal destruction of material can develop into a global catastrophic risk. Fungal deterioration of military equipment in the tropics was a major problem during the Second World War. Fungi are known to contaminate spacecraft (Vesper et al. 2008), where they have been associated with damage to instruments. Mold contamination of human habitats can contribute to health problems and make them uninhabitable. The flooding of New Orleans after the Katrina and Rita hurricane led to mold contamination of homes resulting in high levels of mycotoxins (Centers for Disease Control and Prevention (CDC) 2006; Rao et al. 2007). Some of the molds that contaminated homes damaged after Katrina are reported to induce developmental defects in flies (Inamdar and Bennett 2015) although it has been difficult to establish an association between mold contamination and specific health effects in humans (Barbeau et al. 2010). Molds have been implicated in sick building syndrome where fungal products have been proposed to impact the health of human occupants (Straus 2011).

3 Some Considerations Specific to Fungal Threats

Trans-kingdom pathogenic potential. Several pathogenic fungi are remarkable in their host range. In contrast to many viral and bacterial pathogens that have a relatively narrow host range, fungi like Aspergillus and Fusarium spp. can cause disease in hosts of different kingdoms. For example, Fusarium oxysporum causes banana wilt in plants and severe infections in immunocompromised humans. This is important because it illustrates the potentially destructive capacity of this group of organisms. In general, most fungi with pathogenic potential for plants and ectothermic animals are not pathogenic for humans and mammals because their high basal temperatures create a thermal restriction zone (Robert and Casadevall 2009; Bergman and Casadevall 2010). Hence, the relative paucity of fungal species that are pathogenic to humans despite the enormous size of the fungal kingdom may be a result of the combination of high temperature and adaptive immunity. In fact, I have suggested that the remarkable resistance of mammals to fungal diseases is itself a product of selection by fungi at the end of Cretaceous when a fungal bloom may have kept down the reptiles favoring the mammals (Casadevall 2005; Casadevall 2012a).

Genetic flexibility and rapid evolution. Most fungal pathogenic species are capable of rapid evolution, which confers the capacity for rapid changes in phenotypes associated with virulence and drug susceptibility. The fact that most species are capable of both asexual and sexual reproduction means additional opportunities for gene exchange and recombination. The pace of fungal evolution can be so rapid that for organisms such as C. neoformans, which is capable of causing chronic infections lasting months if not years, new genetic variants can emerge during infection consistent within host adaptation and microevolution (Chen et al. 2017). From the catastrophic risk perspective, the ability of fungal species to change rapidly introduces concerns about the emergence of more pathogenic strains and increasing drug resistance.

Origin of virulence. With the exception of Candida spp. and dermatophytes, the overwhelming majority of human pathogenic fungi live in an environment where they are usually involved in degrading plant matter. Hence, in contrast to most viral, bacterial and protozoal pathogens infection by pathogenic fungi comes not from other hosts but directly from the environment. This raises the question of why do organisms that have no need for an animal host seem to have the capacity for mammalian virulence. Studies from several laboratories over the past two decades have implicated amoeba in the origin of virulence for environmental pathogenic fungi. The uncanny resemblance between amoeba- and macrophage-C. neoformans interactions suggested that such virulence factors as the capsule, melanin synthesis, and phospholipases were important for fungal survival after amoeba predation (Steenbergen et al. 2001). Similar observations were made with other pathogenic fungi such as Aspergillus, Histoplasma, and Sporothrix spp. (Steenbergen et al. 2004). According to this view, the capacity for virulence in soil pathogenic fungi emerges stochastically from interactions with third-party agents such as ameboid predators (Casadevall 2012b), with the majority of environmental fungi being unable to cause disease in mammals because of their thermal restriction zones caused by endothermy.

Prevention. Prevention of fungal disease is possible in individuals at high risk by the administration of antifungal agents prophylactically. The development of relatively non-toxic antifungal therapy in the form of oral azoles such as fluconazole has provided an effective option for preventing fungal disease high-risk individuals such as transplant recipients and those with advanced HIV infection. The availability of these effective oral drugs would provide a means for preventing disease in populations at risk from a natural or intentional release of pathogenic fungal spores. In contrast, there are no licensed vaccines available for any major human fungal pathogen. Numerous experimental vaccines that have shown efficacy in animal models of fungal disease but with the exception of a vaccine to prevent recurrent vaginal candidiasis (Edwards et al. 2018), none are close to clinical development. Azoles are also used in agriculture for the treatment and protection of crops.

Drug resistance. One of the characteristics of human fungal diseases is that these are often chronic and require prolonged antifungal drug therapy, which creates conditions for the selection of drug-resistant strains (Fisher et al. 2018). This combined with the widespread use of antifungal agents in agricultural settings has been associated with the emergence of resistance in many pathogenic fungi, including some like Aspergillus spp. that are acquired directly from the environment (Abdolrasouli et al. 2015; Chowdhary et al. 2013). Increasing drug resistance among human and plant pathogenic fungi means that this has to be an important consideration in a global catastrophic event involving pathogenic fungi.

Intercontinental spread. In contrast to viral and bacterial threats that usually require transport in infected hosts for dissemination across continents, fungal spores can disseminate and spread by air currents (Brown and Hovmoller 2002). Fungal spores comprise a large percentage of the particulate matter suspended in the air and the spore composition shows seasonal fluctuation (Frohlich-Nowoisky et al. 2009). The capacity for intercontinental spread by air currents is of significant concern for the emergence of pathogenic fungi for it implies that such outbreaks are not likely to be contained by the usual disease-control measures as quarantine and isolation.

Global warming and fungal diseases. The finding that the majority of fungal species cannot tolerate mammalian temperatures indicates that endothermy is a major source of protection against mycotic diseases (Robert and Casadevall 2009). In the early twenty-first century, there is strong evidence that the planet is warming as a result of the anthropomorphic release of greenhouse gases such as CO2. Hence, there is the concern that as the ambient temperature increases some fungi with pathogenic potential will adapt to the higher temperatures, which will allow them to survive at mammalian temperatures (Garcia-Solache and Casadevall 2010). Experimental fungal evolution has demonstrated that fungi can rapidly adapt to higher temperatures (de Crecy et al. 2009). Analysis of temperature tolerances in a fungal collection as a function of time suggests that basidiomyces are already adapting to global warming by becoming more thermotolerant (Robert et al. 2015). If this occurs, humanity could witness the emergence of new pathogenic fungal species (Garcia-Solache and Casadevall 2010).

Invasive fungal infections after natural disasters. Fungal infections following natural disasters can add to the initial calamity (Benedict and Park 2014). Coccidioidomycosis can follow earthquakes, which presumably reflects spore aerolization following shaking of soils (Schneider et al. 1997). Similarly, an outbreak of coccidioidomycosis was reported after a dust storm (Pappagianis and Einstein 1978). Recently, a cluster of soft tissue cases of mucormycosis, caused by Apophysomyces trapeziformis, followed a severe tornado in Joplin, MI, in individuals with skin injuries who were not immunocompromised (Austin et al. 2014). Aspiration of water during natural disasters such as tsunamis can cause a pneumonitis called “tsunami lung” and several fungal species have been associated with this condition [reviewed in (Benedict and Park 2014)] as well as occasional cases of systemic fungal infection (Kawakami et al. 2012; Nakamura et al. 2013). Although in the episodes alluded above only a few individuals have suffered serious mycotic diseases, their occurrence highlights a fungal threat that can complicate geological and atmospheric catastrophic events.

4 Summary

The well-being of humanity is dependent on the health of many ecosystems that are vulnerable to fungal diseases. Today, the fungal kingdom poses major catastrophic risks to humanity through the ability of certain fungal species to affect the health of people, animals, and plants. While human fungal epidemics comparable to an influenza pandemic are unlikely from known fungal pathogens due to the remarkable resistance of mammals to pathogenic fungi, this situation could change with the emergence of new fungal pathogens. In this regard, the alarming appearance of drug-resistant Candida auris in recent years is a warning bell that like viruses, new pathogenic fungi can appear without warning. Certainly, the destruction of bats in North America by white-nose syndrome shows that mammals are not immune to epidemic fungal diseases. Today, perhaps the greatest threat from the fungal kingdom is their potential destruction of crops or ecosystems needed for human sustenance and health, any disruption of human food supply would have catastrophic effects on our species and its complex societies.

#### AND, the brink for thermotolerance is during Trump’s term.

Casadevall 25 [Arturo Casadevall, professor of microbiology and immunology at the Johns Hopkins’ Bloomberg School of Public Health; interviewed by Paul M. **Rand**, host of Big Brains, University of Chicago Podcast Network; “Could a fungal pandemic be “The Last of Us?” with Arturo Casadevall,” UChicago News, 1-9-2025, https://news.uchicago.edu/big-brains-podcast-could-fungal-pandemic-be-last-us]

Arturo Casadevall: Most fungi are not pathogenic because you’re protected by your temperature. You’re hot.

Paul Rand: Fungi can’t survive above 97 degrees. Coincidentally, the average temperature of humans. So, fortunately for us, we’ve had a natural immunity.

Arturo Casadevall: And we don’t think about it, but our temperature, what we walk around every day with is enough to keep out most of the fungal world. So, we are getting a huge amount of protection. Basically they can’t replicate at our temperatures. They basically, once they go into us, they shut down and the immune system cleans him up. And that’s why most people don’t worry about dying of fungal diseases.

Paul Rand: That is until 2009 when everything changed. A fungus known as candida auris started doing something scientists thought wasn’t possible.

Arturo Casadevall: Here is something. This fungus was unknown to medicine until 2009. And then a couple of years later it begins to show up in patients in three different continents. And the isolates are not related. You can’t say, well happened in Venezuela, happened in South Africa, happened in the Indian subcontinent. You can’t say, “Well, did somebody brought her on a plane infected?” No, these things are not related. They’re in fact quite different. And now we have a major problem with candida auris, which is rapidly disseminating and causing problems throughout the United States.

Tape: Turned out it’s something you’ve been hearing a lot about lately, a fungus known as candida auris. The CDC is on alert citing a rapid spread, particularly in healthcare facilities.

Tape: Candida auris is a form of yeast. For a healthy person it’s usually not harmful, but for those with weakened immune systems, it can be deadly. More than half of the States have now reported cases of the drug-resistant fungus.

Arturo Casadevall: The first reports all happened in people who are very immunosuppressed, so the fungus almost found a way to adapt. Once it gets into a hospital it’s very tenacious and it’s very hard to clean. If you look, the CDC put out a paper a couple of years ago, it’s just showing that this thing was spreading state after state. And right now is primarily a problem for an immunocompromised patients, but we have seven million immunocompromised patients in this country, a lot of people potentially at risk. The question I pose to you and to our readers is, what’s going on here? A fungus not known to medicine shows up simultaneously in three continents and they’re not related. They appear to be independent eruptions. And I give you something, what is the one common denominator? It isn’t soils, it isn’t culture, it isn’t food, it is all three places are experiencing global warming.

We have proposed that this is the canary in the coal mine. It is the first example of a fungus that was living in the environment, not bothering any humans, with the capacity to cause disease. But then it adapted. And even though we can treat it, I don’t want to scare any listeners off, and even though the likelihood of anybody getting it is very small, the bottom line is the fact that it happens should be a big warning signal. Here’s the big concern. The big concern is, the fungi are adapted, and if they adapt to higher temperatures they will defeat our temperature barrier. Because if you have a fungus that can’t grow, let’s say let’s use the Fahrenheit scale, above 95 degrees. Well, it’s not pathogenic today, but if in two or three years you can go to 98 degrees, well, you’re not going to keep them out.

Paul Rand: Speaking of life adapting, and this was news to me, but I didn’t realize that our body temperatures are actually getting a bit cooler.

Arturo Casadevall: That is an incredible result. It was a very interesting paper. What they did is they collected temperature readings for decades going back over 100 years now, and they showed that the average human temperature is dropping. In other words, your great-grandparents were warmer than you are. How can that be? After all, we are the same species. Well, it turns out that 100 years ago people were infected with a lot of things that they’re not infected in a clean world today. They had worms, many of them had tuberculosis. Even if it was latent, it would raise your temperature possibly, and anyway, they lived in a different world that where there was more inflammation. Inflammation is why you when you get an injury feels warm.

Paul Rand: Right.

Arturo Casadevall: So, in a more inflammatory world they have higher temperatures. Our world is cleaner. But this leads to a problem, because if the fungi are adapting or we’re getting colder, we’re going to meet earlier than we think. So, we have two things going on. We have adaptation, but if adaptation is not enough, then the temperature is also making them change, and it’s going to change them in very unexpected ways.

Paul Rand: But one of the other things is that climate change is not only making some of these fungi stronger, it’s actually helping them proliferate. Where we are today and where we are tomorrow just on a volume basis could actually be quite different. There’s been studies, including one from Duke University recently that was going on with mice that really brought this to life. Can you talk us a little bit about that study and what it helps show us?

Arturo Casadevall: What that study showed us is that we don’t have to worry only about adaptation, the situation gets worse, because when you take this fungi and you put them in a warmer environment, well, they have this mobile DNA elements that then begin to reassort their DNA. When they reassort their DNA, some of them come out drug resistant and some of them can acquire more virulence.

Paul Rand: If the fungi continue to adapt to our new climate becoming resistant not only to our natural temperature barrier, but also resistant to antifungal drugs, what will that mean for us? Well, Casadevall and other scientists hope to develop better antifungal drugs, and even possibly a one-size-fits-all antifungal vaccine. That is after the break.

#### Independently, sustaining personal connections with global scientists backstops nuclear miscalculation.

Wolfe 16 [Audra J. Wolfe, writer, editor, and historian, author of *Freedom’s Laboratory: The Cold War Struggle for the Soul of Science*, PhD history and sociology of science, University of Pennsylvania, BS chemistry, Purdue University, “Who could stop nuclear war in the Trump era? These scientists.” The Washington Post, 11-14-2016, https://www.washingtonpost.com/posteverything/wp/2016/11/14/who-can-stop-nuclear-war-in-the-trump-era-maybe-these-scientists/]

Since the end of the World War II — the only time that atomic weapons have been used in war — the policy of the United States has been to discourage nuclear proliferation, whether through defense treaties, economic sanctions or controlling international sales of uranium. Similarly, the concept of nuclear deterrence depends on rational, predictable decisions about the use of nuclear weapons. Trump’s statements naturally caused a flurry of panic over an untested leader with little familiarity with the basic principles of nuclear security having control of atomic weapons. Fear of Trump having “the nuclear codes” became a sort of rallying cry for his opponents.

Americans terrified over this prospect, though, should take comfort in knowing that there is an option for limiting nuclear risk beyond panicking or praying. It may be time to resurrect a Cold War strategy for limiting nuclear risk: back-channel communications among private scientists.

In 1955, a year after the U.S. test of a hydrogen bomb in the Bikini Atoll blanketed the globe with a thin layer of radioactive fallout, a group of scientists issued a manifesto against the development, testing and use of nuclear weapons. This public statement inspired what became known as the Pugwash Conference, an international scientists’ movement on behalf of nuclear disarmament. At the height of Pugwash’s influence in the late 1950s and early 1960s, scientists from the United States, the United Kingdom, the Soviet Union and a handful of other non-nuclear countries gathered regularly to discuss the nature of the nuclear threat and ways to reduce it.

Both today and at the time, commentators have held up Pugwash as a model of nonpartisan scientific activism, a shining example of what scientists could accomplish if they worked without the constraints of formal politics. In 1995, the Pugwash Conferences and Joseph Rotblat, one of the movement’s founders, received the Nobel Peace Prize for their roles in reducing nuclear tensions at the height of the Cold War.

More recently, the Obama administration hailed the personal relationship between Secretary of Energy Ernest Moniz and Ali Akbar Salehi, the head of Iran’s Atomic Energy Organization, as a critical ingredient in the nuclear agreement with Iran. The two men shared a background in physics and engineering and had overlapped at the Massachusetts Institute of Technology in the 1970s. While Moniz and Salehi obviously represented their respective countries at the negotiating table, their shared technical assumptions provided a platform on which to build political consensus.

Both during and after the Cold War, the U.S. government supported initiatives that brought international scientists together outside formal political channels, whether in the form of academic conferences or cooperative research initiatives, like the European Organization for Nuclear Research (CERN). Beyond the nuclear realm, scientists have informally assisted U.S. officials in negotiating treaties on issues as diverse as climate change and exploration rights in Antarctica.

This strategy, commonly known as “science diplomacy,” has limitations. Scientists are not elected officials, and nothing in their scientific training is designed to prepare them for the subtleties of international political negotiations. The premise of science diplomacy risks putting power in the hands of technical experts whose personal interests may or may not match those of their national governments. And yet: There is no evidence to suggest that the elected head of government — Donald J. Trump — possesses the finesse needed to negotiate a nuclear crisis, either.

In 1955, scientists like Joseph Rotblat hoped to use their personal connections and technical expertise to avert a nuclear apocalypse. For the leaders of Pugwash, the point of an international scientists’ movement wasn’t so much to displace official negotiations between governments as to keep a line of communication open in the event of a crisis. The idea was that private citizens could maintain personal relationships even if their countries had severed formal relations, in much the same way that bipartisan dinner parties used to grease the wheels of government in Washington.

During the Cuban missile crisis of 1962, for example, the American members of the Pugwash Committee sent their Soviet counterparts a telegram urging restraint and promising to use whatever limited influence they had over U.S. government officials to defuse the situation. The scientists acknowledged that the crisis could be solved only by heads of state but hoped that a mere reminder of their presence might jolt political leaders into recognizing the effects of a nuclear strike.

Whether the president-elect and his advisers realize it, Trump is going to need scientific expertise. His comments as a candidate suggest that he’ll scuttle the Iran deal and turn a blind eye to nuclear proliferation, all while engaging in a race with Russia to modernize the nuclear arsenal. It remains to be seen, of course, how many of these ideas will carry over to a Trump administration. In a normal administration, it would be a given that Trump and his advisers would confer with security experts who could provide a reality check on technical questions, from the stages of nuclear proliferation to the effects of modernized nuclear weapons on theories of deterrence. But the Trump campaign has defied expectations in a number of ways, and a Trump presidency is in many ways an open question.

Should Trump decide to go forgo technical advice, Americans (and the world) should take comfort in the fact that scientists, security specialists and nuclear weapons experts from many countries will continue to talk to one another. Pugwash’s scientists, too, continue to meet, forging personal links and technical knowledge that can transcend international borders. Back-channel communications among international scientists will always offer hope for preventing a nuclear catastrophe, regardless of who sits in the Oval Office.

### 1AC---Geoeconomics

#### Contention 2 is Geoeconomics:

#### Application of a maximal interpretation of unitary executive theory to civil servants’ labor rights is what determines institutional ability to resist and recover from Trump appointees.

Moynihan 25 [Don Moynihan, Professor of Public Policy in the Ford School of Public Policy at the University of Michigan, former President of the Association of Public Policy and Management and the Public Management Research Association, PhD/MPA public administration, Maxwell School of Citizenship and Public Affairs at Syracuse University, “Why the Supreme Court decision on firing independent agency heads is a big deal,” Can We Still Govern? Substack, 5-22-2025, https://donmoynihan.substack.com/p/why-the-supreme-court-decision-on]

A question I’ve gotten from reporters is how long it will take the public sector to recover from the damage Trump has done. There is no easy answer to this, but I highlight one variable that will matter a lot: how much the Supreme Court embraces unitary executive theory (i.e., the idea that the President has king-like powers).

Why does this matter? A maximalist interpretation of the unitary executive theory holds that almost any Congressional (or judicial) constraints on presidential power are unconstitutional. In more specific terms, it would hold that the civil service system itself is unconstitutional. If the court adopts that reasoning, then it becomes very hard to rebuild state capacity.

Because with unitary executive theory, there is no actor that can make credible long-term commitments to public servants.

With unitary executive theory, Congress cannot write robust new legislation that modernizes the civil service and stops politicization. A President could just ignore it. Even if Trump leaves office, and a new President looks to restore nonpartisan competence, their promises are only good for four or eight years before another President can come in and rip up the terms of their employment. And over time, why would even a good government President invest effort in restoring capacity if their successor can undermine it?

With unitary executive theory, the public sector becomes permanently viewed as an unstable and chaotic workplace that we are seeing now. The most capable potential employees decide its not worth the bother, and the workforce becomes a mix of people who cannot get a job elsewhere, and short term political appointees. (The irony here is that advocates of unitary executive theory say it is not just constitutional, but will improve the performance of the public sector, notwithstanding the omnishambles we are witnessing now).

So it matters, a lot, how courts decide on questions of presidential power over personnel issues right now. We do not have many tea leaves to read, but this SCOTUS is certainly more on board with any unitary executive theory than any prior version. Decisions like the one on presidential immunity last year suggests a court willing to imbue the President with unprecedented powers.

SCOTUS gave us another hint yesterday. They decided to allow Trump to remove Democratic members of the Merit Systems Protection Board, and the National Labor Relations Board. The decision was 6-3. The court says that the President can move forward with the firing until they rule on the merits of the case, which is unlikely to happen until the next Supreme Court term. It is very hard to see the court deciding that the firings are fine now, if there is a real prospect that they will change their mind in the future. It’s like telling an arsonist to go ahead, that we can figure out if it is legal or not after your house is a charred shell.

This is a big deal, a de facto overturning of Humphrey’s Executor - the precedent that Congress can constrain the President’s removal power. This standard, which held for 90 years, now appears to be on the chopping block. Congress might say that an official can only be removed for cause like poor performance, but the President can ignore them, removing independent agency heads for any reason he deems fit.

Unitary executive theory is relatively novel, nurtured by the Federalist Society and Republican lawyers who worked in government and were frustrated by Congressional oversight. Five of the nine judges were Republican lawyers who worked in government, and all six Republican appointees have ties to the Federalist Society.

Enacting unitary executive theory means, effectively, that current executive branch officials and past executive branch officials who are now on the Supreme Court would conspire to strip Congress of its powers. In constitutional terms, it is a resetting of the separation of powers to fit the beliefs of the contemporary Republican Party.

In writing the dissent, Justice Kagan rightfully asked why things are different now, beyond the fact that conservative majority wants to get on with getting rid of Humphrey’s Executor.

Between Humphrey’s and now, 14 different Presidents have lived with Congress’s restrictions on firing members of independent agencies. No doubt many would have preferred it otherwise. But can it really be said, after all this time, that the President has a crying need to discharge independent agency members right away—before this Court (surely next Term) decides the fate of Humphrey’s on the merits? The impatience to get on with things— to now hand the President the most unitary, meaning also the most subservient, administration since Herbert Hoover (and maybe ever)—must reveal how that eventual decision will go. In valuing so highly—in an emergency posture— the President’s ability to fire without cause Wilcox and Harris and everyone like them, the majority all but declares Humphrey’s itself the emergency.

Kagan also pointed out the blazing hypocrisy of one aspect of the decision. Ending Humphrey’s Executor effectively means we will no longer have truly independent agencies. Except one. The majority rushed to make clear that their decision did not hold for the Federal Reserve!

The majority closes today’s order by stating, out of the blue, that it has no bearing on “the constitutionality of for-cause removal protections” for members of the Federal Reserve Board or Open Market Committee. I am glad to hear it, and do not doubt the majority’s intention to avoid imperiling the Fed. But then, today’s order poses a puzzle. For the Federal Reserve’s independence rests on the same constitutional and analytic foundations as that of the NLRB, MSPB, FTC, FCC, and so on—which is to say it rests largely on Humphrey’s. So the majority has to offer a different story: The Federal Reserve, it submits, is a “uniquely structured” entity with a “distinct historical tradition”…

Kagan justifiably mocks the “bespoke Federal Reserve exception” saying that a simpler way not to spook the markets would just be to not give Trump new powers by overturning precedent. The Federal Reserve carve out is not based on any real legal rationale beyond it’s “distinct historical tradition.” If that phrase rings a bell, it is because it echoes the wording that Alito used ("deeply rooted in [our] history and tradition") to justify overturning precedent with the Dobb’s decision. Anytime SCOTUS starts citing historic traditions, be worried about a court abandoning judicial reasoning and precedent.

In reality, the courts know that undermining Federal Reserve would be a disaster for the economy, but their respect for independent expertise does not seem to flow to any other part of the administrative state. The decision is based on generating headlines like this:

Axios

@axios.com

NEW: Supreme Court says the Federal Reserve is protected from Trump removals

www.axios.com

Supreme Court says Federal Reserve protected from Trump removals

The ruling will come as a significant relief to markets that were concerned about the Fed's independence.

May 22, 2025 at 5:32 PM

132 33 Reply Read 6 replies on Bluesky

For public employees, the removal of MSPB head is especially troubling, since this allows any President to neutralize the body that is supposed to monitor personnel abuses such as politicization. Federal workers unfairly treated by Trump’s appointees have little reason to believe they will get a fair appeal from other Trump appointees.

More broadly, it shows us a SCOTUS more likely to sign with Trump on other issues of executive power. Will they stop at Schedule F, the executive order allowing Trump to turn career officials into appointees? Will it allow Trump to impound funds or dismantle agencies? We cannot say for sure, but the odds of such momentous decisions have risen.

The Supreme Court has again, and after watching Trump in action, decided that he deserves unprecedented power unchecked by Congress. That does not augur well for the public institutions he is bent on destroying.

#### That unbridles state capitalism as loyalists bypass restraints on arbitrary market interventions.

Tracinski 25 [Robert Tracinski, writer, lecturer, and commentator for more than 25 years, author of *Dictator From Day One: How Donald Trump Is Overthrowing the Constitution and How to Fight Back*, editor of Symposium, former editor at RealClearFuture and senior writer at The Federalist, BA philosophy, University of Chicago, “When Strongmen Own the Store,” Persuasion, 9-24-2025, https://www.persuasion.community/p/when-strongmen-own-the-store]

We habitually divide our political parties along the old lines that applied for many decades—but no longer apply now.

We think of the Democratic Party as a party of the American “left” that is hostile to the free market. They favor taxes, heavy-handed regulation, and centralized power over the economy. We still think of the Republican Party, the party of the “right,” as defenders of free markets. They want less regulation, lower taxes, and less power over the economy exerted from Washington, D.C.

This old way of thinking still accounts for a great deal of Donald Trump’s political support. It is how he maintained the support of the Republican establishment and its big donors. In the popular imagination, Trump is a successful businessman who wants the “pro-business” policies of lower taxes and less regulation, and he and his supporters continue to use the threat of “socialism” as an all-purpose bogeyman.

Even Trump’s authoritarianism seems like a selling point to some of these supporters, who are tempted by the idea that he can impose free-market policies that lack sufficient public support to get through Congress. This is one of the great illusions of authoritarianism. The supporters of a strongman see him as the battering ram to push through their long-stymied ideological agenda. They give him unchecked power so he can do the things they want him to do. But once he has that power, he does the things he wants to do.

There is an inexorable logic in authoritarianism that always turns strongmen against economic freedom and free markets. They fear competing centers of power, which includes independent sources of wealth and resources, particularly in the media industry, that might be used by their political opponents.

Donald Trump is no different, and he has already succeeded to a surprising degree in making himself the single point around which America’s economy revolves. His quest for economic control begins with an area where Congress has already given presidents wide authority: trade and tariffs.

Article I, Section 8 of the Constitution gives Congress the power “to lay and collect taxes, duties, imposts, and excises” and to “regulate commerce with foreign nations.” The Founders gave Congress the power to impose import duties because tariffs are a tax on trade and a form of revenue for the federal government. Congress controls tariffs because they have the power of the purse. As the most direct representatives of the people, the House of Representatives was given special power to originate any bill that raises revenue from the people.

Yet the last major bill in which Congress directly and specifically dictated tariff levels was nearly a century ago: the Smoot-Hawley Tariff Act of 1930. This was such a disaster, setting off a spiral of retaliatory tariffs that shut down international trade and deepened the Great Depression, that Congress largely divested itself of this authority. Beginning in 1934, it passed laws giving discretion to the president to negotiate tariffs.

This authority was not unlimited, and it was intended to support the reduction of tariffs. This was especially true after World War II, when America’s leaders regarded the restoration of trade as vital to rebuilding a stable international order. But as a concession to the advocates of protectionism, Congress frequently gave the president authority to increase tariffs on an “emergency” basis or on the grounds of national security. This power has been abused intermittently, but on a limited scale—until Trump.

Trump’s love for tariffs is partly ideological. One of his few fixed beliefs, going back decades, is that trade is bad for America and low tariffs allow other countries to take some kind of unfair advantage of us. The irony is that this is combined with nostalgia for the industrial economy of the mid-20th century—an era when the United States was leading the charge for free trade.

But Trump’s interest in tariffs is also personal. There is perhaps no other area of the government in which he so clearly exhibits the sheer joy of seeing his slightest whim instantly made into policy. He has set tariffs for the entire world, on a country-by-country basis, based on a nonsensical formula adopted literally hours before the announcement. This is how, in April, he ended up in a trade war with penguins, announcing 10% tariffs on the Heard and McDonald Islands, uninhabited except for flightless Antarctic birds.

Trump then delighted in doubling and tripling these tariffs, removing them one day and slapping them back on the next. As one Trump aide boasted to Politico, “It’s the greatest show on Earth. We’ll put tariffs on tonight, but tomorrow we’ll tell you we may negotiate and take them off. But stay tuned, because you never know what tomorrow’s gonna bring.”

More to the point, Trump now has American businessmen trooping to the White House or to Mar-a-Lago to ask for special carve-outs and exemptions for their businesses and industries. A typical example is Apple CEO Tim Cook supplicating Trump in the Oval Office and presenting him with a glass trophy with a 24-karat gold base—Cook made sure to mention the gold—after Trump granted Apple exemptions from tariffs on electronics imported from China.

Granting special exemptions from tariffs for specific products and industries—thousands of them so far—allows Trump to assert arbitrary power over a large portion of our economy. The only reason this is not recognized as “socialism” is because he maintains the fiction of private ownership. Vladimir Putin imposes a similar system in Russia, and so, for the most part, does Xi Jinping, even in supposedly communist China. The contemporary strongman recognizes that it is unnecessary and counterproductive to nationalize industries, so long as he retains the power to make or break individual businesses—and so long as the businessmen know it.

Yet occasionally Trump can’t help letting the mask slip. In an interview with Time Magazine, he explained his tariffs by comparing the U.S. economy to a department store:

We’re a department store, a giant department store, the biggest department store in history.... It’s a giant, beautiful store, and everybody wants to go shopping there. And on behalf of the American people, I own the store, and I set prices, and I’ll say, if you want to shop here, this is what you have to pay.

This is where Trump’s attempt to assert control over the economy begins, but it’s not where it ends.

In seizing the power of the purse from Congress, Trump has asserted an autocratic theory of the “unitary executive” that gives him direct control over agencies like the Federal Communications Commission and the Federal Trade Commission. He has denied the power of Congress to give agencies specific tasks to perform in a way that is insulated from his direct, day-to-day control. To exert this control, he has claimed the power to fire and replace the heads of these agencies, ensuring they will be dependent on him.

The most important of these agencies, from an economic standpoint, is the Federal Reserve, which sets interest rates and monetary policy. The stability and professionalism of the Fed is a key assurance to American businessmen and investors that they can predict the future and that their capital will not be eroded by runaway inflation.

Yet this is precisely what Trump is now threatening. He has floated the idea of firing Federal Reserve chairman Jerome Powell, one year before his term expires, and Trump has declared that he would do a much better job of setting interest rates: “I made a lot of money. I was very successful. And I think I have a better instinct than, in many cases, people that would be on the Federal Reserve—or the chairman.”

This is a typical pattern for an authoritarian strongman. Having seized power, he claims that he will deliver a golden age of growth and prosperity. To make good on that claim, he demands a “loose money” policy, lowering interest rates and increasing the supply of money to get a short-term boost in growth. Then the bill comes due in the form of high inflation.

This pattern was enacted most recently in Turkey under Recep Tayyip Erdoğan. In 2018, he complained that “the central bank can’t take this independence and set aside the signals given by the president” and thundered that its refusal to lower interest rates was the “mother and father of all evil”—essentially the same complaints Donald Trump is making now. The result of Erdoğan’s takeover of monetary policy was an immediate doubling of the inflation rate in Turkey, from about 11% to nearly 25%. Inflation has gotten even worse recently, hitting a high of 85% in 2022.

This is what happens when a strongman sets interest rates according to his “instinct” and for the purpose of consolidating power.

Trump is attempting to exert a similar level of power against big corporations and their CEOs. He has demanded that the CEO of Goldman Sachs fire the investment bank’s chief economist because he predicted—as virtually every economist would do—that Trump’s tariffs will raise the prices of goods. He targeted the CEO of Intel, Lip-Bu Tan, demanding he resign because Tan’s personal investments in China supposedly make him “conflicted.” Tan did not resign, but the threats had their intended effect. Intel agreed to sell the U.S. government a 10% share in the microchip manufacturer at a discounted price.

Then there is the agreement the Trump administration made last month with chipmaker Nvidia, which promised to pay the U.S. government 15% of all AI chip sales to China “as a prerequisite to obtaining export licenses for China.” There is, needless to say, no legal or constitutional authority for this arrangement. Export licenses are supposed to be granted when the government certifies that objective conditions have been met—not when it gets a kickback.

Partial state ownership is a hallmark of the so-called “state capitalism” model of the Chinese government. To make our transition to the Chinese model complete, all we need is state ownership of military contractors—and this is, in fact, the very next step. When he announced the 10% buyout of Intel, Trump indicated that he was interested in more such deals, and the next day his Secretary of Commerce floated the idea of the government taking ownership stakes in the big defense contractors.

We are used to thinking of free markets and capitalism as the established economic system, the status quo protected by conservatives and vested interests. But it is worth remembering that capitalism was once a radical new system that swept away the vested interests that came before it, replacing feudalism and aristocracy. Those are the older and more primitive economic systems Trump is attempting to revive.

Trump’s conservatism is not an ideological conservatism, but rather a reactionary rejection of the entire modern world. In its place, he wants to return to a pre-modern system centered around a king or chieftain, where anyone who wants to start a business or trade goods has to show the local boss their obedience—and pay him a bribe. The most extreme version of this system is patrimonialism, in which an entire country, and everyone in it, is regarded as the personal property of the ruler. He literally owns the store.

Donald Trump is pushing us back, one step at a time, toward that kind of system.

#### No alt causes. Control of the civil service is determinative.

Cohen 25 [Jean L. Cohen, Professor of Political Theory and Contemporary Civilization in the Department of Political Science at Columbia University, PhD New School for Social Research, “Eviscerating the State: The New Oligarchic and Authoritarian Project to Undermine American Constitutional Democracy,” Emancipations: A Journal of Critical Social Analysis, 4(2), 2025, DOI 10.55533/2765-8414.1136]

That capitalist class interests and the oligarchic power of the very rich at the founding was secured by the Constitution and prevailed again after the upheavals of the civil war has been a charge asserted not only during the founding but repeatedly ever since Charles Beard’s Economic Interpretation of the Constitution, written at a time (1913) when corporate capital had gained enormous economic power, political influence, and constitutional rights (of legal personhood).23 This enabled them to use private law and Supreme Court rulings to overturn state level regulations of the economy (wages, hours, rules for workers and restrictions on the power and mobility of corporate capital generally). They were able to generate such extremes of concentrated wealth and monopoly power at one end and poverty at the other that the epoch was dubbed the gilded age.24 In short, what is now happening is not entirely new, and I fully agree that democracy and capitalism have always been in tension in the U.S. as elsewhere, and the oligarchic dynamics within capitalism is one of the main culprits. By this I mean the tendency of capital to accumulate in ever fewer hands, (what Marx called the centralization and concentration of capital), generating monopolistic market positions, and inequality of wealth and (economic) power. This tension and the frequent failure to control for the rise of oligarchic power not only in the economic system but also its influence in the political system, is antithetical to the egalitarian principles undergirding democracy and thereby perforce restricts democratic quality. But to jump to the conclusion that the essence of the political form of a representative liberal constitutional republic is essentially oligarchic, or that liberal constitutional democracy despite severing the link between citizenship and property only ends the formal and overt but not the real rule of oligarchic power is triply misleading.25 First, because it underestimates the successes of anti-oligarchic and democratizing struggles not only in the U.S. but elsewhere; second because it diverts us from examining how (through which mechanisms) capitalist oligarchs manage to influence or gain real political power, how this changes, and why capitalist oligarchs periodically turn away from liberal constitutional democracy to endorse authoritarian rule. Third, by depriving democrats and anti-oligarchs of key concepts such as ruling in the public good, or in the common interest, concepts denounced as rhetorical smokescreens deployed by oligarchs to conceal the occupation of Lefort’s famous ‘empty place of power’ by wealth, this approach loses the tools needed to denounce political corruption which I define here as the use of public power for private particular class purposes. 26 Supposedly such ‘depoliticized’ concepts are deployed by oligarchs to distract from the class nature of their de facto rule in liberal constitutional democracies (republics). But concepts like the use of public power for public purposes, tied to accountability mechanisms, are indispensable for countering rule in the interest of a particular class or group.

It is not my task here to retrace the dynamics of oligarchic and antioligarchic struggles in the U.S. or to defend existing liberal constitutional democracies against the charge of oligarchy. Indeed, I argue that the U.S. political institutions are and have always been deeply flawed from the dual perspective of the dynamics and inordinate influence of capitalist forces (and powerful oligarchs emerging within that system), and from the perspective of institutionalized constitutional mechanisms that have never been democratic enough, inclusive enough or sufficiently committed to political equality so as to block autocratic rule, related to but not identical with capitalist or oligarchic power. I thus also disagree with the recent claims by Sinanoglu, Way, and Levitsky that capitalism can “save democracy” insofar as private capital and free markets foster the liberal pluralism and political competition (a variety of veto points and countervailing powers) that democracy needs to thrive. For them, in short, autonomous private power – i.e. a free capitalist economy independent of political interference – is crucial not only to a free plural civil society but also to political democracy. Accordingly, it is state capture of business rather than business capture of the state that represents the most direct threat to democracy.27 To be sure, the alternative they present and rightly reject: corrupt state control of capital, finance and investment exemplified today by Putin’s Russia, Orban’s Hungary, and Erdogan’s Turkey, are decidedly not compatible with democracy or social justice – and lead to a shift from flawed democratic to competitive authoritarian regimes. But that is hardly the only alternative to libertarian models of capitalism or the only threat to democracy. The threat posed by oligarchic economic and political influence to liberal democracy is real and should be analyzed, not ignored.28 Indeed, unless we also grasp the dangers that unaccountable private economic power poses to democracy (state and popular sovereignty and justice) we will be hard put to understand the resentments, rage and risks the most recent neo-liberal version of deregulated and deeply inegalitarian and oligarchic capitalism has generated that fuels the mass movements behind authoritarian populist projects sweeping long established western democracies today. Nor will we be able to see what is distinctive about the ways in which unaccountable private power (of capital/oligarchs) challenges constitutional democracy today and how this intersects with the projects of aspiring autocrats seeking unaccountable public political power. Clearly both dynamics--business or capitalist capture of the state and state capture of business--pose serious threats to democracy and the principles of political equality undergirding it, especially when these projects merge.

Indeed, the issue facing us now is how to ward off the contemporary dual threat of autocracy and a new form of oligarchy emerging within (but not only there) the quintessential liberal democracy—the U.S.— in which a key and powerful oligarchic faction has explicitly abandoned democracy in favor of strong man rule. What prompts capitalist oligarchs to rhetorically and de facto support Trump’s authoritarian project and what is new with respect to the old model of oligarchic capture of policy making in liberal constitutional democracy? (I will address what is distinctive in the autocratic project of the pretend populist president in the next section.)

For there is something new going on today. It is not just that autonomous oligarchs with enormous global private economic power radically undermine equality, push the ever-greater concentration of capital in ever fewer monopolistic hands and subtly capture key governmental regulatory agencies, seeking privatization of public services while attacking labor organizations. Rather, according to Kuttner and Stone we are witnessing a ‘‘re-feudalization’’ of the commons: whereby a new privatization of jurisprudence overlaps with, but is more sinister than, the earlier privatization of public services such as prisons, schools etc.29 At issue is the bypassing of public common law and the evisceration especially of ‘pre-distributive’ labor and consumer rights through a wholesale shift of key areas of rule-making and ‘adjudication’ to private law and decision making involving such mechanisms as compulsory arbitration instead of use of the courts.30 They cite the emergence of entire fiefdoms of private law in, e.g. Silicon Valley. As they put it: Western democracies today do not simply deregulate the economy in reaction to ‘overregulation’ and the liberal consensus that prevailed from the New Deal to 1980. In addition, corporate elites are now pursuing a project in which entire realms of public law, public property, due process, and citizen rights revert to unaccountable control by private business. This is tantamount to a direct attack on the democratic commons i.e. on the democratic state’s ability to serve as a counterweight to the concentrated power that flowed to concentrated wealth in the capitalist economy and to use public power for public purposes. They pinpoint what is distinctive in the current oligarchic project quite succinctly:

The age-old elements of private law, such as contracts and torts, have long coexisted with public law and regulation. Contention between public law and private power is a very old story. What is new and alarming is the displacement of entire areas of public law by private commercial interests and the resurrection of abusive forms of private law. This is a reaction against earlier developments of the commons. Not only did the 20th-century state expand democratic public law. Acting through the courts, the state intervened to police private contracts and protect weaker parties from abuse by the powerful…20th-century judicial interpretation and enforcement of contracts emphasized fairness between the parties…courts in the 20th century refused to enforce contracts between parties with vastly unequal resources, knowledge, or bargaining power when they found agreements to be oppressive, coercive, grossly one-sided, misleading, or blatantly unfair.31

Accordingly, the carving up of public law and property into proprietary domains is the new tragedy of the commons. Thus, the capture of public law and the reversion to one-sided private law reinforce each other, creating vast pools of proprietary power. Indeed, one of the startling trends of recent decades has been the success of the giant tech monopolies at creating their own proprietary systems of law and insulating themselves from public regulation. Companies such as Google, Apple, and Amazon have invented their own jurisprudence, hidden in obscure terms of service, to govern the consent of users to the commercial use of personal data. Amazon requires all its independent sellers to sign the now-familiar arbitration clause, requiring submission of disputes to an arbitrator selected by Amazon.32 Most of this ought to be illegal, but it isn’t. Accordingly, the authors note that American democracy is under assault on multiple fronts. While the autocratic incursions of the Trump administration are only the most urgent and immediate, they maintain that the private capture of public regulatory law is more long-term and more insidious.

Another distinctive feature of today’s new oligarchs (in tech, finance) is that they have come out into the open and accepted appointments as heads of key governmental agencies and departments or created and steered powerful unofficial ones like DOGE, (the ‘department’ of Government Efficiency) gaining public state power, their anarchotechnocratic impulses notwithstanding. 33 We seem to be witnessing a partial shift from indirect to direct oligarchic political power (especially if we count Trump among the oligarchs)—a form that is increasingly incompatible with formal democracy and the rule of law despite the appearance of working within the law and reliance on the democratic legitimacy of the elected populist president. But the project isn’t simply state capture. It is to eviscerate depth in the state (what they, like Trump, call the deep state) – i.e. the autonomy, expertise, and authority of the civil service and of independent agencies--so as to escape regulation, taxation, oversight, and to use public power unhindered, for private purposes. Today’s American tech, finance and some other types of super rich actors and managers fit the concept of oligarch if by that we understand monopoly market power; excessive media influence; fortunes greater than a million times the living wage, and now rather open participation in political life.34 Oligarchs in the U.S. are autonomous of the state unlike in the USSR, or China and many post-communist regimes, and they involve new forms of capital (tech, crypto, finance) but also some old ones (oil, pharmaceuticals).

#### Flipping the U.S. model to state capitalism catalyzes global emulation, fragments value chains, and escalates cold trade wars into hot great power wars.

Ozturk 25 [Ibrahim Ozturk, PhD, Director and Resident Senior Research Fellow at the European Center for Populism Studies, visiting fellow at the University of Duisburg-Essen, “Trump and The New Capitalism: Old Wine in New Bottle,” European Center for Populism Studies, 2-21-2025, https://www.populismstudies.org/trump-and-the-new-capitalism-old-wine-in-new-bottle/]

Introduction

Despite its apparent economic, political, and social challenges, the US remains a global powerhouse that can profoundly impact the world with even the slightest changes, whether progressive or regressive. Therefore, it is essential to understand and analyze the unpredictability and uncertainties upcoming with Trump’s (dis)order.

To grasp what Trump is trying to achieve, one should step back and take a bird’s-eye view to avoid the chaos and noise generated by him and his team. What do the iconic skyscrapers of Manhattan, such as the Empire State Building and the Chrysler Building, towering above the clouds, tell us?

When one listens to the sounds beneath the clouds, the shining progress emanating from Silicon Valley in northern California—the focal point of American entrepreneurship—whispers of groundbreaking discoveries and a bright future for the US and humanity in general. In Schumpeterian terminology, America’s "creative destruction" is ongoing. The share of the US GDP has reached 27% of global GDP. Although this is just below the 30% recorded in 2000, it is significant compared to the 23% in 2023, marking the United States’ rebound from its trough, driven by the forces of creative destruction. This pace of change in the structure of the US economy also transforms the financial architecture of the powerhouses on Wall Street, including the New York Stock Exchange.

However, the ongoing global competition indicates that this alone is not enough for America to maintain its competitiveness and status as a global empire. China’s rapid advancements in strategic high-tech industries—such as artificial intelligence (AI), quantum computing, semiconductors, 5G, and renewable energy technologies—along with heavy investments in R&D and talent acquisition to close the gap with the US, have reached a critical stage with far-reaching implications.

Moreover, the competition extends beyond the US and China, as Europe, Japan, and South Korea also play vital roles in niche technologies such as EV batteries, advanced robotics, and biotech. The outcome of this race will shape global supply chains, security policies, and economic leadership, ultimately defining the nature of the ongoing global power transition in the coming decades.

Trump Is Emulating Xi Jinping

As Graham Allison has analyzed in historical cases, the key concern now is how the US will respond to this precarious situation. Signals from Trump’s first term and early indications from his newly started second term suggest that the US political economy may be shifting toward a model resembling China under Xi Jinping. In other words, despite its significant economic superiority, America appears to be emulating its rival to defend its interests and contain China’s rise.

This shift toward unilateralism disregards international norms and values, undermines the post-World War II order it once championed, and abandons the institutions and stakeholders that upheld this system. As a result, the US is embarking on a perilous path that extends far beyond China. Increasingly, it is drifting away from the principles of law, rules, and values, instead embracing arbitrariness and raw power—posing a global threat that contradicts its raison d’être.

Meanwhile, the Statue of Liberty, a powerful symbol of American ideals such as freedom, democracy, and opportunity, is slowly disappearing beneath the clouds. As it fades into the distance, so does the American Dream—the long-standing promise of opportunity, prosperity, and success—becoming an increasingly unattainable illusion.These symbols, once synonymous with American greatness, now represent the triumphs of a bygone era.

Accordingly, the country’s status as a world leader in finance, technology, and industry is being redefined, and the old certainties are giving way to a new, uncertain reality.

Having sought to maintain its position by rejecting its past hegemonic sacrifices or leadership and putting a unilateral emphasis on the rhetoric of “America First,” “Making America Great Again” (MAGA) to protect its "greatness" will also reshape the nature of capitalism and globalization. Several questions need to be addressed and examined in this context. This commentary focuses on the new capitalism the United States has adopted to respond to ongoing global power pressures, changing competitive conditions, and potential consequences.

Three Models of Capitalism

Economic systems (such as capitalism, socialism, and mixed economies) are compared based on several key pillars. These include the right for ownership, the role of government, central planning vs competition, the workings of prices and the production mechanism, income distribution, equity, efficiency, and productivity, economic stability and growth, innovation and entrepreneurship, social welfare and public goods, flexibility and adaptability, approach to free trade vs. protectionism or autarky. There are also various hybrid models combining different system elements at different doses. Each economic system has strengths and weaknesses, depending on societal goals such as growth, equity, efficiency, and stability.

In addition to these differences between economic systems, as J. H. Dunning, D. Rodrik, and J. E. Stiglitz published terrific works on, the world economy has also been characterized by different stages of globalization or deglobalization. These range from mercantilism, a potent form of protectionism, to the extreme form of neoliberal globalization, which went beyond control with severe negative repercussions, and now to new protectionism and civilizational nationalism, along with rising multipolarity and power shift.

[Box 1 OMITTED]

Several questions need to be addressed and examined in this context. This commentary focuses on the "new capitalism" that the United States appears to have adopted to respond to ongoing global power shifts, changing competitive conditions, and potential consequences. Whatever form capitalism takes, the debate will always revolve around the market economy, capitalists, big corporations, property rights, and how the state controls and regulates all of this.

Two eminent thinkers, economic historian Fernand Braudel, who focused on long-term structures, and Karl Polanyi, a political economist, who analyzed economic transformations, and anthropologist, provided fundamental critiques of capitalism concerning the state, power, and institutions. Braudel and Polanyi view capitalism as an evolving historical system rather than a static or natural economic order. Through his longue durée approach, Braudel analyzes how capitalism has developed over centuries within specific historical contexts, while Polanyi’s “Great Transformation” illustrates the shift from embedded economies to market-driven societies.

Both scholars differentiate between market economies based on local trade and reciprocity and capitalism, which operates on a larger scale and inherently tends toward monopolization. Braudel views capitalism as an upper layer of economic activity that never functions under pure free-market conditions, exploiting markets rather than being synonymous with them. Capitalism always seeks privileged access to resources, political power, and monopolies. Thus, Braudel and Polanyi converge in their critiques, exposing capitalism’s reliance on state power and monopolistic control and its disruptive effects on society. Braudel emphasizes capitalism’s exploitative nature, whereas Polanyi underscores the commodification of key economic factors, particularly labor.

In short, both view capitalism as a threat to market economies and open societies when left unchecked. Capitalism often operates at the expense of broader societal well-being, benefiting elites while fostering instability and social resistance. Most notably, when the economy becomes "dis-embedded" from society and socially disruptive, the adverse effects of non-market processes, such as externalities and monopolization, become apparent. These circumstances call for state intervention to sustain markets.

However, these two scholars not only explored the state’s crucial role in developing and shaping markets, as D. North demonstrated as an instituted process, but they also showed how state intervention is a double-edged sword and a hazardous process. Given the different allocations of power dynamics, the state’s role cannot be taken for granted.

As shown historically by M. Olson, in the context of development theory by Theda Skocpol, and more recently by C. Jonson during Japan’s rapid post-war development, effective state intervention depends on several restrictive conditions, such as state autonomy and capacity, free from the influence of interest-seeking coalitions. Most notably, Olson explores how special interest groups and coalitions gradually capture state power, leading to economic stagnation. This is also relevant in relatively stable societies, where entrenched interest groups gain influence, creating rigidities that slow economic growth and hinder necessary reforms.

To explore these developments further, I will delineate three evolving variants of capitalism based on ownership structures and governance mechanisms.

State-Controlled Oligarchic Capitalism (Turkey – Erdogan Model)

👉🏿 The private sector’s independence diminishes as the government integrates strategic industries into political control.

👉🏿 State-backed business elites thrive through public contracts, incentives, and preferential credit.

👉🏿 Bureaucrats and politicians hold executive roles in private firms, aligning private enterprise with state agendas.

👉🏿 This model merges authoritarian populism with capitalist oligarchy.

State Capitalism with Strategic Planning (China – Xi Model)

👉🏿 State ownership dominates, yet specific industries operate with market-driven efficiency.

👉🏿 Despite their semi-independent façade, companies like Huawei and Alibaba align with national economic strategies.

👉🏿 The government employs market forces for efficiency while maintaining overarching economic control.

👉🏿 This hybrid model blends centralized planning with capitalist dynamics.

Techno-Feudal and Oligopolistic Capitalism (US–Trump Model)

👉🏿 Traditional neoliberalism is evolving into a state-elite partnership.

👉🏿 Billionaire elites increasingly influence governance, making the state an agent of corporate interests.

Tech giants like Tesla, SpaceX, Facebook-Meta, and major media conglomerates serve as political tools for mass influence. For instance, in a clear transactional or win-win approach, President Trump appointed Elon Musk to lead the Department of Government Efficiency (DOGE). However, the court blocked his attempt to intervene in the US Treasury and access private data, a case that fueled Trump’s anti-law aggression. Stephen Schwarzman, the chairman and CEO of Blackstone, Ana Botín, the executive chair of Banco Santander, Patrick Pouyanné, chairman and CEO of Total Energies, and Brian Moynihan, chair of the board and CEO of Bank of America, participated in a public dialogue with President Trump at the World Economic Forum‘s 2025 Annual Meeting, indicating a collaborative relationship. Additionally, US business leaders have significantly increased their financial support for President Trump’s second inaugural fund, with contributions expected to surpass previous records. Major corporations such as BP, Chevron, Shell, Google, Microsoft, and Apple have adopted the term "Gulf of America" in their communications following President Trump’s executive order renaming the Gulf of Mexico. This move signifies corporate alignment with the administration’s directives.

Whatever hybrid forms of capitalist models evolve, they underline the rise of Strategic Capitalism, diminishing market competition, increasing state-business convergence, and greater government control over economic participants. In other words, "state capture by entrenched interest-seeking coalitions" is becoming increasingly widespread and pervasive. Most notably, when capital infiltrates the state—through so-called "legitimate lobbying," as seen in the US—and effectively merges with the government, a fundamental question arises: On whose behalf does the state intervene in the market? How can the criterion of rationality be upheld?

Besides such domestic political-economy implications of the evolving forms of capitalism, their various configurations are also catalysts for conflict when they attempt to externalize emerging problems and challenges. The main dimensions of problem externalization might take several forms:

Globalization’s Externalities and National-Level Risks: While globalization promotes economic interdependence, it has also resulted in significant negative externalities, such as income inequality, industrial decline, job displacement, and financial volatility. Traditional economic governance models suggest addressing these risks at the national level through various mechanisms:

👉🏿 Wealth redistribution via progressive taxation (such as wealth taxes) to fund social welfare and infrastructure.

👉🏿 Regulatory adjustments through stronger labor protections, improved financial oversight, and enhanced corporate accountability mechanisms.

👉🏿 Fair wage policies to ensure that productivity gains translate into equitable income distribution for the working class.

However, instead of internalizing these costs within their economies, some nations are now externalizing them—shifting economic grievances onto foreign entities, often framed within a civilizational nationalist discourse. This trend has been particularly evident under the Trump administration.

The Shift from National Economic Regulation to External Blame: Historically, economic nationalism has been used as a policy tool to protect domestic industries. However, the new wave of civilizational nationalism reframes economic struggles as existential conflicts between distinct cultural or civilizational blocs. This shift is evident in several key areas:

👉🏿 Trade protectionism and economic sanctions through tariffs and trade restrictions on perceived economic competitors (e.g., the U.S.-China trade war).

👉🏿 Industrial policy disguised as strategic autonomy, supporting vital domestic industries for national security purposes (e.g., the EU’s strategic autonomy, the U.S. CHIPS Act).

👉🏿 Resource and financial weaponization, using energy supplies, commodities, or economic systems as geopolitical leverage (e.g., U.S. dollar-based sanctions, Russia’s energy policy).

👉🏿 Anti-globalization narratives rooted in identity politics, portraying globalization as an elite conspiracy that threatens national sovereignty, thus justifying exclusionary economic policies.

The motivation behind these strategies is to "externalize" the burden of globalization’s side effects—shifting responsibility away from corporations and national policymakers onto foreign nations or civilizational "rivals"—ultimately deepening global fragmentation.

Civilizational Nationalism Increases the Likelihood of Conflict: Economic nationalism has historically led to trade wars and economic decoupling. However, civilizational nationalism extends beyond economics, intertwining identity, culture, and geopolitics into economic policy, making conflicts more intense and less negotiable.

In this context:

👉🏿 The West perceives China as both an economic competitor and a cultural and ideological challenger.

👉🏿 Russia is pivoting away from global capitalism, crafting its own "civilizational" economic model centered on Eurasianism.

👉🏿 The European Union, recognizing the limitations of globalization, is adopting industrial policies emphasizing strategic autonomy.

👉🏿 South Asia and the Middle East are developing distinct regional capitalist models.

👉🏿 Meanwhile, the US, under Trumpism, appears to oppose the "rest" of the world.

In conclusion, by replacing domestic policy reform agendas, such as corporate taxation and labor protections, with blame-driven economic nationalism, governments avoid addressing the root causes of economic discontent and fuel long-term geopolitical instability. If this ongoing trend persists, the world may experience an era of intensified trade wars, economic decoupling, and heightened geopolitical tensions, reminiscent of the 1930s, increasing the risk of large-scale conflicts.

Trump’s Presidency and the Shift Toward Authoritarian Capitalism

Obviously, Trump’s populist authoritarian and pragmatist rhetoric lacks a coherent theoretical foundation. It can be seen as a contradictory fusion of economic nationalism, protectionism, and populism, driven more by emotional appeal than analytical rigor. Unlike traditional neoliberalism, which has grown in the US and promotes minimal state intervention, Trump’s era witnessed the convergence of state power with elite economic interests. As Antara Haltar observes, Trump’s policies – tariffs, tax cuts, de/regulation, and re/industrialization- to “Make America Great” again (MAGAnomics) reject core tenets of neoclassical economics, notably free trade, and efficiency. As M. Mazzucato puts it, this aligns with techno-feudalism, in which large technology firms exert immense economic and social control.

What is idiosyncratic and hypocritical is that Trump rose to power by appealing to those experiencing poverty, feeling left behind, and abandoned. However, he has ultimately shaped his policies to further enrich giant capital owners. He not only serves the interests of capital but has gone a step further by directly placing capitalists in key government positions. Even though his protectionist trade wars were framed to protect American jobs and boost employment and income, there is broad consensus among economists that these policies may primarily benefit select corporations at the expense of consumers and citizens. As J. Stiglitz correctly noted, there is already a high degree of market concentration in the US.

While it remains unclear how he will deliver on his political promises amid the growing challenges of techno-feudalism, these features suggest that Trump’s evolving capitalism, which carries significant global implications, will emerge as a hybrid model combining the following aspects.

👉🏿 Nationalist Protectionism: A more aggressive form of protectionism where the government prioritizes domestic industries and restricts foreign competition. For instance, Trump’s decision to block the acquisition of United States Steel by the Japanese company Nippon Steel created tensions with Japan. Prime Minister Ishiba responded by saying that "the president blocking a takeover is a significant ‘political interference’ and difficult to understand." This could lead to a more insular, self-sufficient economy, with tariffs and trade barriers becoming more prevalent.

👉🏿 State capitalism: A blend of state control and private enterprise, where the government is more active in guiding the economy. This could involve increased government ownership of key industries like energy, finance, or infrastructure.

👉🏿 Authoritarian Capitalism: A system where the government exercises significant control over the economy, often through a combination of state-owned enterprises, regulations, and repression of dissent. This could lead to a more rigid, hierarchical economy with limited opportunities for entrepreneurship and innovation.

👉🏿 Neoliberalism 2.0: A revised version of the neoliberal ideology that dominated the 1980s and 1990s. This could involve a renewed emphasis on deregulation, privatization, and free trade but with a more aggressive approach to suppressing labor unions and social welfare programs.

👉🏿 Corporate-Friendly Populism: A system where the government prioritizes the interests of large corporations and wealthy elites while using populist rhetoric to appeal to working-class voters. This could lead to a more unequal economy, with greater concentrations of wealth and power.

👉🏿 Hybrid Capitalism: A system that combines elements of different economic models, such as state-led development, private enterprise, and social welfare programs. This could involve a more nuanced approach to monetary policy, focusing on balancing competing interests and promoting sustainable growth.

The actual outcome would depend on a complex interplay of factors, including policy decisions, economic conditions, and societal responses. The impact-response paradigm will also reflect the nature of (i) the state-corporate symbiosis, in which even if Trump does not formally integrate capitalist figures like Elon Musk or Mark Zuckerberg into the government, he might pursue policies favoring elite interests, such as corporate tax cuts. (ii) Media and technology manipulation. Trump weaponizes social media platforms like Twitter (now X) while simultaneously attacking tech giants that challenge his influence. (iii) Regulatory favoritism. Despite public criticism of Silicon Valley, Trump’s administration provided regulatory and tax advantages to major corporations. (iv) Preferential treatment for loyal capitalists. Trump’s government allocated state contracts, tax breaks, and industry protections to politically aligned business figures.

To the extent that corporate feudalism is costly to the economy and society’s well-being, the US will likely turn to asymmetric power, military force, and destructive nationalist and civilizational rhetoric to balance, conceal, legitimize, and make it acceptable to the public.

Strategic Implications of Trumpism Globally

As Nancy Quian emphasizes, while initially seen as just a "trade war" with China, it quickly became clear that Trump’s ambitions were far more extensive. He started imposing tariffs on Mexico, Canada, and the EU, which were promptly met with retaliatory actions. Although it’s still uncertain whether Trump’s actions will dissuade his "strategic competitors," they have already raised alarm among many European nations—long-standing strategic allies of the US since World War II and throughout the Cold War—along with NATO members and most OECD countries.

Had he pursued his policies under the banner of democracy, human rights, the rule of law, multiparty free elections, separation of powers, checks and balances, and transparent governance, most of the OECD nations—controlling nearly 50% of the global GDP—might have been more open to closer cooperation with the US. However, Trump’s broad and aggressive stance and his confrontational rhetoric extending beyond trade wars are likely to leave the US deprived mainly of the allies it seeks.

[Box 2 OMITTED]

One reason for this maximalist stance may be Trump’s realization that gaining an economic advantage over China solely through trade wars is impossible. As a result, he has sought to incorporate military, political, technological, and other strategic means to secure a stronger position for the US. However, in doing so, he may have overestimated America’s strength—much like an empire already losing its hegemonic power. Instead of consolidating US influence, this overreach could accelerate America’s decline on the global stage.

Additionally, should global resistance and retaliatory measures against Trump’s America gain momentum, two key consequences could emerge? First, competitors like China may grow even more potent. Trump’s disregard for international norms and values, his habit of barking orders at partners, and his use of political pressure like a small-town thug could alienate his allies and drive them closer to rising powers like China. Second, increasing costs for US consumers and damage to America’s strategic interests could weaken domestic support for Trump, potentially leading to a loss of the congressional majority in the 2026 midterm elections.

Conclusion

In our age of multipolarity, global capitalism is no longer a cohesive system under US hegemony. There are now competing forms of capitalism with different norms and values. There are three notable issues to underline here in terms of understanding the nature of rising capitalism under Trump 2.0.

First, despite its contradictions, Trumpism exposes fundamental flaws in post-WWII economic orthodoxy—particularly its failures to address inequality, identity, and the unintended consequences of globalization. Therefore, the strength of Trump’s approach lies in its emotional resonance with voters who feel marginalized by globalization. Trumpism thrives not on traditional economic logic but on perceptions of cultural and economic displacement.

Second, the fact that politicians come to power using right-wing populist rhetoric and then cede substantial control to capital rather than monitoring, directing, and engaging it in government for the benefit of the people underscores the volatile, elusive, and inherently dangerous nature of populist discourse. Trump’s apparent shift toward oligarchic capitalism (techno-feudalism) through his explicit favoritism toward specific billionaires signals a transition from "neutral" state capitalism to a system where the government actively serves dominant private entities. This shift undermines market competition, reduces economic democracy, and fosters monopolistic tendencies.

Third, rather than adhering to the principle of reforming the existing US system and global multilateral organizations, as Yuen Yuen Ang argues, Trump intends to export or externalize significant problems of the US economy, such as the ever-rising income inequality, chronic and systemic corruption caused by the rise of robber barons, and financial risks, to the “rest” of the world via “beggar thy neighbor policies.”

In this emerging conflict, the digital economy, technology wars, and financial sanctions have become key instruments. However, under Trump’s approach, the current global fragmentation and the new Cold War environment have evolved beyond a simple polarization between the West and the China-Russia axis. The struggle is no longer just between the center (West) and the periphery (Global South) but also within the Global South and the West.

That fragmentation might also lead to: (i) The breakdown of global supply chains as the West tries to reduce its dependence on China, shifting toward a "friendshoring" trade model. As a reaction, expanding BRICS nations are advancing de-dollarization and constructing alternatives to the Western financial system. (ii) A possible economic bloc formation against Western dominance reminiscent of the 1930s increases the risk of economic stagnation and geopolitical conflict. The US and the EU are implementing "Green Protectionism" via carbon tariffs. If these trends persist, the global economy may enter an era of trade wars, financial decoupling, and economic fragmentation.

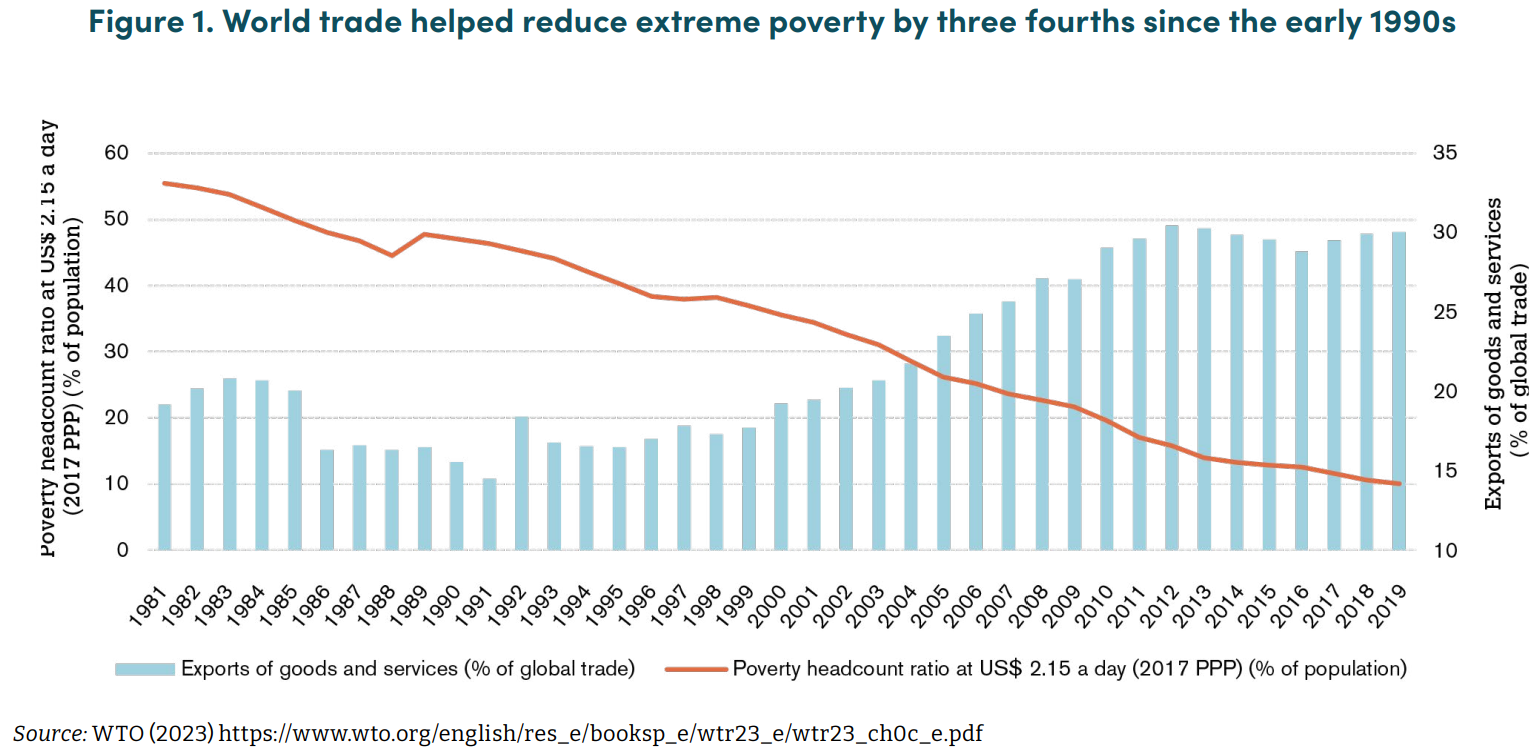
#### Globalization drove a century of gains across all indicators. Value chain fragmentation strips resilience to existential hazards, whether environmental, biological or political, and dooms collective action.

Yusuf 24 [Shahid Yusuf, Chief Economist of The Growth Dialogue at the George Washington University School of Business, Adjunct Professor at Johns Hopkins University School of Advanced International Studies, Non-Resident Fellow at the Center for Global Development, PhD Economics, Harvard University, “The Case for Globalization and Robust Global Value Chains Grows Stronger,” CGD Working Paper 680, February 2024, https://www.cgdev.org/sites/default/files/case-globalization-and-robust-global-value-chains-grows-stronger.pdf]

A new normal is coming into focus. A normal in which destructive extreme weather events will recur throughout the world with greater frequency, the likelihood of pandemics will increase, geopolitical tensions are causing policy uncertainty and could lead to periodic outbreaks of violence on a regional—or broader—scale,1 migration caused by climate change or a collapse of the socio-political order in societies, could prove to be highly stressful for countries especially those at the receiving end, misinformation and deepfakes (with AI serving as an accelerator) could exacerbate political polarization and a snowballing of the “democratic recession,”2 and the upward trend in private and public debt, which was 238 percent of global GDP in 2023,3 will hamstring macroeconomic and development policies.4 Rising populations in some of the most climatically vulnerable regions, depletion of natural capital and the ongoing environmental degradation, will compound the pressures on the global system (Dasgupta 2021; Helm 2023). The 10-year forecast by the Global Risks Report for 2024 (WEF 2024) spells out these risks and it shows how they can become intertwined triggering potentially devastating polycrises.5

1. Globalization: Rumors of its impending demise have been exaggerated but survival requires collective effort

In this dire new normal, maintaining or improving the material welfare of people worldwide will demand the efficient and sustainable harnessing of resources from across the globe. Countries will need to hang together, or they will hang separately. Moreover, for most countries, welfare enhancing GDP growth6 will depend in part on export performance and openness to trade.7 Between 1950 and 2022, gains from trade for the US amounted to $2.6 trillion a 10 percent increase in GDP (Hufbauer and Hogan 2023). For developing economies, trade has had a large hand in reducing poverty since the early 1980s (Figure 1). In fact, no country has scaled the income ladder without policy actions promoting trade.8 Moreover, growth that is export-led remains the only viable option for smaller economies.9 Looking ahead, a retreat from globalization, which has promoted trade and FDI would be counterproductive for all. No country however large, will benefit from the pursuit of greater autarky and for the majority, even a moderate degree of self-sufficiency would entail sacrificing decades of material progress.10 A fracturing of the trading system and a turning inward, would also redound against efforts to mitigate and/or adapt to climate change (Figure 2).11 As the grip of the new normal tightens, it will be to the advantage of all to work towards a more closely integrated global economy.12



[Figure 2 OMITTED]

[Figure 3 OMITTED]

The slowdown in the growth of the value of trade and its ratio to GDP following the Financial Crisis of 2009, led observers to believe that the period of the so-called hyper globalization was ending (Figure 3).13 Ever since, the determinants of globalization have been obsessively scrutinized to identify the emergence of a trend.14 Historians worry that the current globalization wave might suffer the fate of earlier episodes and precipitate a prolonged global economic downturn. Although the value of world trade as a percent of total GDP peaked in 2008 (61 percent) and has oscillated between 52 percent and 57 percent since, other indicators suggest that globalization albeit slowing,15 recovered from the Financial Crisis and has weathered the buffeting inflicted by the Covid 19 pandemic. The DHL Connectedness Index (2022)16 based on 4 million data points tracking the movement of trade, capital, information, and people, experienced a slight decline in 2020, but then rebounded strongly in 2021 and is projected to continue rising—barring the appearance of a highly disruptive event (Figure 4).

The DHL Index is rendered more credible by the findings of a recent study by Ganapati and Wong (2023). They show that when global trade is measured by tonnage—rather than by value—and by the distance goods are transported, globalization according to this metric has risen steadily. The tonnage shipped has remained close to 0.24 to 0.26 shipped tons per $1,000 of real-world GDP but the distances the goods travel has increased. In other words, growth in the normalized weight measure of trade continues to rise steadily from the turn of the century through 2020 (Figure 5). These findings suggest that trade globalization could continue albeit more slowly and in the process buoy global growth prospects.

[Figure 4 OMITTED]

[Figure 5 OMITTED]

The sinews of globalization: GVCs

Global value chains (GVCs) have become the machinery of globalization.18 They have proliferated since the 1980s and are largely responsible for many of the benefits bestowed by globalization. They have generated most of the 13 billion supply links that connect 300 million firms that participate in international trade (Pichler et al 2023).19 Initiated by the liberalization of trade,20 and accelerated by the declining cost of telecommunications and transport, globalization widened in the 1990s to encompass not just trade of intermediate and final products but also international flows of capital, technology, ideas, and people more fully (PIIE 2022). In this context, leading MNCs found it increasingly profitable to disintegrate the production process and to outsource some stages to other firms thereby reaping efficiency and productivity gains. As of 2021, GVCs intermediated up to 70 percent of trade-based movement of goods and services.21 They have served as conduits for FDI, innovation and the transfer of managerial and technical skills and tacit knowledge to their widely dispersed partners (Hauge 2019). By facilitating exports, GVCs have enabled developing countries to industrialize, achieve higher growth rates and to substantially reduce poverty. Undoubtedly, globalization has been disadvantageous for some in developed and developing countries alike. Arguably, the gainers outnumber the losers but the outcry from the losers is affecting the political calculus and must be reckoned with for global integration to be sustained (Bordo 2002; Ulgen and Inan 2022a).

The Covid 19 pandemic highlighted the key role of GVCs in expediting the production and dissemination of vaccines by marshaling scientific knowledge, intermediate inputs, production facilities, and logistics. But with economic policies taking a more nationalistic and protectionist turn over the past decade, trade conflicts between major economies sharpening, income inequality a rising concern, and sociocultural opposition to immigration becoming more acute, there is a perception in some quarters that going forward, ‘slowbalization’ if not deglobalization is in the cards (Walters 2021). This is evidenced by slackening rates of GVC participation rates and fragmentation of value chains.22

In this paper, I argue that a retreat from globalization broadly defined, and disruption of the GVC machinery would have negative sum outcomes for all participants. In the troubling new normal that is currently unfolding, global integration aided by more streamlined GVCs will safeguard the gains to date and allow the global system to adequately cope with both the known challenges and others that remain unknown—including through the provision of global public goods.23 Thus, the imperative for the leading economic powers is to minimize the threats to globalization and check the unraveling of GVCs. In this endeavor, the economic advantages of globalization will be pitted against strong political currents breeding distrust among nations and making it harder to agree on policies necessary for economic flourishing in a planetary environment the viability of which is no longer assured.

#### Regulatory autonomy directs the profitability of state investment toward global decarbonization. Otherwise, state capitalism’s vulnerability to economic nationalism entrenches carbon competition and extinction.

---NOCs = national oil companies

Babić 23 [Milan Babić, Associate Professor of Political Economy at the Political Science Department and the Amsterdam Institute for Social Science Research at the University of Amsterdam, Principal Investigator of the DECARB project, co-founder and organizer of the Geoeconomics Network at the Society for the Advancement of Socio-Economics, PhD University of Amsterdam, “Consequences: Covid-19, geoeconomics and climate change,” Chapter 6, *The Rise of State Capital: Transforming Markets and International Politics*, Agenda Publishing, 2023, ISBN 978-1-78821-572-5, p.118-131] \*[language modifications in brackets]

Global rivalries, but different this time

If my analysis of the coming geoeconomic decade is, at least in its broad lines, accurate, the question remains what this means for the future of the competing state and its possible demise. As I argue throughout this book, the rise of state capital is not so much a counter-movement to neoliberal globalization, but rather neoliberalism’s own creation. As such, it might very well be that the various maladies and the slow but final demise of neoliberal globalization also means writing the requiem for the competing state of the early twenty-first century. However, as Chapter 2 has demonstrated, different historical state forms transform rather than vanish entirely. The emergence of new state forms is closely tied to historical developments that either have an effect on state transformations or are themselves the product of these transformations. Either way, an entire replacement of the competing state is unlikely, given basic economic interdependencies and existing cross-border ties that will not disappear overnight.

One possible scenario of framing the future of the competing state could be the upcoming “new Cold War” between China and the USA. The fact that the various state-led geoeconomic dynamics involve more actors than those two superpowers does not mean that such a framing is entirely obsolete. From recent research into the emerging “infrastructure scramble” that accompanies the new Cold War, we know that many sites of competition and conflict are located outside of China and the USA, from Africa to Latin America and from Europe to Asia.15 By mobilizing state power through investment, regulation, diplomacy and other foreign policy and economic tools, the USA and China aim to position themselves in a “geopolitical-economic competition to integrate value chains anchored by their domestic lead firms through the financing and construction of transnational infrastructure” (Schindler et al. 2021: 1). The geoeconomic aspects of this infrastructure scramble are clear: the new global rivalries are not fought out in a classical geopolitical security sense, but by competing for transnational infrastructures. This new territorial logic also produces new forms and instruments of geoeconomic competition, of which one is state-led investment.

If we follow this analysis of the new Cold War, the competing state would not come to an abrupt end, but rather be instrumentalized in the course of the coming decade. The integration of state capital into existing structures of globalized capitalism during the neoliberal period could enable its weaponization in a geoeconomic world. This is especially the case for competition-prone sectors like global infrastructures that Schindler and colleagues identify as a crucial battleground of the new Cold War. We have seen in the above analysis that, next to manufacturing and energy production and distribution, infrastructures for logistics and transport are sectors where global state capital is highly concentrated. The global competition for the control of these physical as well as digital infrastructures is hence a major hotspot defining world politics for the 2020s. The involvement of states via direct investment and ownership in these sectors is an important asset and calculus for geoeconomic strategies. As with Covid-19, the consequences of a possible weaponization of state capital for geoeconomic ends differ per competing state strategy. Those at the financial end of the spectrum will be less involved in strategic disputes than more controlling strategies.

With all this being said, it is important to note that the “new” Cold War will indeed be new. The rise of the USA–China global rivalry out of the rubble of neoliberal globalization is in many ways hard to compare to the USA–Soviet standoff of the twentieth century. One difference is the varying territorial logics (geopolitical versus transnational). Another important distinction is that the globalized economy of the twenty-first century represents a profoundly different agency space from the twentieth-century world economy that was still mostly organized according to national borders. Within this space, different instruments and strategies are being employed rather than a simple geopolitical projection of state power abroad. Instead, as we have seen, geoeconomic instruments and strategies prevail, from capturing important global assets to controlling value chains across multiple states and jurisdictions. This different international or transnational environment in which the new global rivalries are being conducted also becomes a potential and real source of instability. While the “old” Cold War at times only avoided nuclear catastrophe by sheer chance, it was for the most part a geopolitical standoff between two relatively stable blocks of nation states with fairly predictable behaviour. The strategies and effects of geoeconomic competition in the new Cold War are, however, much less predictable. State capital is exemplary of this, as it first almost seamlessly integrated into global markets and corporate networks, only to be potentially weaponized within a few years of global turbulence. What seemed like a “good bargain” a few years ago might turn out to be problematic for many hosts of state capital as geoeconomic calculations change the rules of the game. Another at least as important source of potential instability going forward into the next decades is the interplay between states as owners and climate change, which is analysed in the remainder of this chapter.

The long game: state capital and climate change

For many developed economies, serious climate change mitigation policies have for a long time only played a role in so far as they were promises for the future. Targets like limiting global warming to 1.5°C in the Paris climate accords appeared to be concrete and quantifiable, but often turned out to not be followed by concrete steps to reach this goal. In recent years, partly because of the evident increase in catastrophic climate events, governments around the world are being pressured by civil society actors to finally take climate change seriously as the single overarching threat to human life on earth. Global climate movements like Fridays for Future or Extinction Rebellion gave this urgency a platform and voice, demanding immediate political action. States see themselves as confronted with two countercurrent forces. On the one side, decarbonization and getting to a low-or zero-carbon economy is in the objective interest of any government worldwide. The calculation here is simple: only an emissions-free world can create stable natural circumstances, which are the necessary conditions for the continued existence of socially organized forms like states. On the other side, a mixture of the psychological denial of the existence of an actual climate crisis, the short-termism of many domestic and international political horizons, vested “carbon interests” and capitalist path dependencies (e.g. in industrial organization) introduce obstacles and postponements to objectively necessary climate action. In order to realize an emissions-free world, a fundamental socio-economic transformation that reconciles the objectively necessary with the practically doable is the conditio sine qua non of avoiding climate catastrophe.

Research into the possibilities and limitations of such a fundamental transformation introduced the idea of the environmental state (Duit et al. 2016; Eckersley 2020). This is “a state that possesses a significant set of institutions and practices dedicated to the management of the environment and societal– environmental interactions” (Duit et al. 2016: 5). This state form is sometimes referred to as a normative goal of government action towards “greening” the state, society and the economy (Eckersley 2004). In other cases, the environmental state is used as a descriptive category to benchmark the ongoing transformation of states into “green” ones (Sommerer & Lim 2016). In both cases, however, the overarching motive is to better understand and enable green transitions by mobilizing statecraft. Within this discussion, scholars also importantly scrutinize the limitations and boundaries of the environmental state from a critical perspective. Studies about the “glass ceiling” (Hausknost 2020) of environmental states, or the discursive instrumentalization of the concept (Hatzisavvidou 2020), add important perspectives on how to critically engage with the problematic aspects of the environmental state.

From a state capital perspective, three questions arise regarding the role of the state in a global green transition. First, how can we conceptually think about the role of the state as an owner within the environmental state discussion? Second, what is the role and extent of state capital in global carbon and fossil fuel investment? Third, what are the pathways to decarbonize the state as an owner and how do competing states differ in this respect? The remainder of this chapter addresses these three questions. Despite the urgency of a global green transition, this aspect of state investment is the most long term as it concerns the fate of the global political economy until at least the end of this century.

Thinking differently about the environmental state

Following Andreas Duit, the environmental state perspective deals most explicitly with issues like regulating other (mostly corporate) actors, for example through law-making; redistributing environmental harm, for example through taxes; administrating environmental protection, for example through environmental agencies; and producing, supporting and distributing knowledge about environmental change, for example through university research funding (Duit 2016). These four aspects are a quite comprehensive description of the various tasks of the environmental state in the twenty-first century. At the same time, each of those aspects fall under a managerial understanding of the environmental state. This means that the state is portrayed as the prime actor coordinating, managing and if necessary intervening in the ongoing transformation processes in society and the economy.

This managerial understanding is useful, as it allows us to see [know] where states meet their obligations, for example regarding international agreements like the Paris goals. It also enables us to point out different areas where state action and regulation can go further and where civil society can press for more radical change. Finally, it also allows us to critique the potentials and limitations of state power in bringing about objectively necessary changes, as is already being done within the existing literature. From a state capital perspective, however, an important component is underrepresented in the discussions on the environmental state, namely the role of the state as carbon owner itself. While states do regulate other actors and manage socio-economic processes, they are in many cases themselves profiting from carbon-intensive business practices like fossil fuel extraction. In fact, today’s global oil and gas production is dominated strongly by NOCs, and states are still responsible for about 40 per cent of global investment in the fossil fuel sector.16 This is not much less than what NOCs produced and controlled almost a decade ago (Hults et al. 2012). This leads to a paradoxical situation: some of the very states that are supposed to manage the green transition are themselves carbon incumbents and profit from the production, sale and investment of and in fossil fuels. A prime example of this problematic dichotomy is Norway. While the Norwegian SWF pledges to continuously divest from fossil fuel-producing firms, the Norwegian government continues to expand its licensing for fossil fuel exploration in the Arctic (Arvin 2021a). The revenues from this business model are then partly used to fund its climate-conscious SWF investment strategy.

Such examples illustrate why it is important to consider both the managerial as well as the ownership aspects of the environmental state. Existing studies on the environmental state, however, pay less attention to how states as owners behave, what their investment strategies are and what meaningful decarbonization steps would look like. A state capital perspective can shed light on these questions by asking what states do, not as market regulators but as market participants. The benefit of introducing such a perspective is also a practical one. Changing environmental laws and aiming to induce behavioural changes through regulations and incentives is often a long-winded, steep process jeopardized by partisan divides, legal setbacks and uncertain implementation. Flanking these necessary societal negotiations with quick and effective measures like the disinvestment of state carbon capital is an important but often neglected aspect of environmental state discussions.

Conceptually, we can draw again on Gramscian state theory in order to think through the ownership or investment side of the environmental state. As proponents of the environmental state also emphasize, states are not unitary agents, but rather “fragmented, self-contradictory, and only partly coherent” (Duit et al. 2016: 4). Gramscian state theory finds the reasons for this fragmentation in the various state apparatuses and the respective contradictory logics, interests and power relations inscribed into them (Jessop 2007; Poulantzas 1969). Far from being unitary actors, state apparatuses hence often develop lives of their own, which can thus push forward or restrain state transformation.17 The vehicles and apparatuses that govern the state as an owner hence represent a specific aspect of the environmental state that needs to be analysed in different ways than its managerial counterparts. It is, for instance, relevant that SOE governance has, in most cases, a relative distance from other state apparatuses like environmental legislation. This is especially the case for transnational investment vehicles, which are often managed by professional elites and are not directly controlled by ministries, as they used to be in the twentieth century. Depending on the particular constellations of state and societal power inscribed into these apparatuses, this distance is greater or smaller and so is the relative autonomy of different apparatuses.

I argue that in order to understand the ownership role of the environmental state beyond its managerial aspects, we need to focus on how carbon state capital behaves in the global political economy. To provide a first step into this direction, I first scrutinize what we mean when we say “carbon state capital”, and then discuss the decarbonization potentials of different carbon state ownership strategies.

Oil, gas and other dirty assets: what is carbon state capital?

Speaking of carbon state capital necessitates a definition: if states are supposed to be carbon owners, what is “carbon” ownership exactly? One simple way of answering this is to look at fossil fuel industries exclusively. States that are directly invested in fossil fuels do not only receive profits from this investment, but often also directly control their invested firms. This gives them significant leverage over firm strategy, especially when it comes to decarbonization efforts. This approach is chosen by most studies on NOCs that aim to analyse the direct involvement of states into fossil fuel extraction and production. While fossil fuels represent the largest chunk of carbon state capital, they are not the only CO2 -intensive sector that is state-invested. Other industries like petrochemical production, pesticides and fertilizers, cement and steel production, air transport and mining are also relevant and represent investment targets for carbon state capital. In fact, each of those industries contributes a significant share to yearly total greenhouse gas emissions.18 If we take these investments on board, we get a more comprehensive picture of states as global carbon owners and investors.

Such a state capital perspective consequently takes not only particular vehicles (like NOCs) and their specific ties (into gas, oil and coal) seriously, but the state as an owner. This makes it possible to map the “real” carbon footprint of the environmental state by incorporating not only the investment ties of specific vehicles into specific industries, but of state ownership itself. This allows us also to critically scrutinize claims by states and state-owned investment vehicles of carbon “divestment”, especially when this type of divestment concerns only direct oil and gas exploration and production, but often not downstream businesses and other related industries like petrochemicals.

If we adopt such a state capital perspective, two questions emerge. First, what is the relation of the carbon footprint of cross-border state investment compared to domestic investment? Second, what is the scope of industries we should take into account to understand the carbon footprint of competing states? Both questions are relevant for understanding what state carbon capital is, and what the decarbonization potential of states as global carbon owners can be.

Regarding the first question, a comparison of the domestic and transnational volumes of carbon state investment shows that for most large owners the transnational dimension is less significant. As an estimate,19 direct ownership of carbon capital is, for owners like China, around less than 1 per cent of its total investment, while for the UAE or Russia it is below 3 per cent. While these numbers are fairly low, we need to take into account two caveats. The first is that the sample used here pertains only to the direct state ownership of carbon-producing firms and excludes subsidiaries that are not directly state owned. This automatically reduces the number of transnationally held carbon capital. Second, most carbon capital is naturally domestically owned, as large utility firms responsible for energy security have a long history of state ownership. The share of the competing state on national energy production is hence almost by definition lower.

However, despite its lower total share, transnationally owned carbon capital also contains a decarbonization advantage. States that own carbon capital outside their borders usually do not hold this for reasons of domestic energy security. Rather, they exploit the opportunities offered to them by the transnational agency space. This might in some cases – like the Gulf states – be a vital component for a competing state’s “business model”. It is, however, easier to divest from cross-border carbon assets and investments than to give up domestic energy security that is tied to fossil fuels in the most cases. On top of this, there are some competing states that indeed own a quite large share of their total carbon investment cross-border. Most prominent among them is Norway, which is estimated to own around three-quarters of its total carbon investment transnationally. Others like Singapore, Canada or Sweden also invest significant amounts of state carbon capital outside their own borders. This aspect increases the decarbonization potentials of some competing states compared to others that hold most of their carbon assets in domestic energy generation or other vital industries.

This leads us also to the second question regarding the scope of industries that should be taken into account when we speak of “carbon” state capital. A first criterion should be, as I argued above, a broadening of our understanding of this phenomenon beyond the direct extraction and production of fossil fuels. Related industries like cement production, petrochemicals or fertilizers are also carbon emitting and state ownership plays a significant role here. Second, we should introduce a caveat and not regard state ownership in industries like food production or infrastructure development as “carbon” state capital per the definition. Despite their significance for global emissions, food production and other vital industries should maybe even become more state-owned in an age of increasing climate change-induced food insecurity and global coordination and distribution problems. The strategy here would not be to seek to divest from these vital industries, but rather to transform them into green industries under public control. Third, and related to the first two points, we should take into account industries and sectors where decarbonization is straightforward and feasible from a state capital perspective. Not all sectors are as clearly and straightforwardly problematic as large national oil and gas producers. Take mobility and transportation as an example: while state ownership in airlines can be regarded as a sector which should be taken into account for decarbonizing state capital, national transportation and railway systems are less clear-cut. The transportation of vital goods like food and medicine are still dependent on fossil fuelled means like motorized trucks in most countries. Decarbonizing these sectors is difficult, not least because state capital is often interwoven with private investment, for example when states own roads and railways but the operators are private companies (see Liu & Dixon 2021). For an effective and rapid carbon state capital decarbonization and divestment, the more clear-cut cases of carbon state ownership should have priority.

By taking these differentiations seriously, I argue that we can develop a comprehensive and concrete approach to the decarbonization of states as owners. Such an approach echoes the recent call by Robyn Eckersley for a renewed critical strategy at decarbonization efforts which she describes as “critical problem-solving” (Eckersley 2020). Drawing on a critical Gramscian perspective enables us to disentangle the various aspects of the state as a carbon owner, while the (pragmatic) push for feasible and rapid transitions brings an important problem-solving angle to the issue at hand. This fusion of critical inquiry and pragmatic problem-solving aspects leads to the two differentiations made above. In sum, we need to distinguish competing state ownership from energy security and other domestically oriented ownership and acknowledge different decarbonization potentials in both spheres. In addition, we should be aware of the fact that “carbonized” industries are not all the same when it comes to state investment: there is more than fossil fuel ownership where states are involved in carbon-emitting industries; some industries and sectors are more vital for the functioning of economies and societies than others and should hence be treated differently; and some are more straightforward to disentangle and decarbonize than others.

With these provisions, I seek to add another crucial layer to the developed state capital perspective. So far, I have covered some of the general aspects that a state capital perspective can contribute to the study of environmental states and decarbonization potentials. However, one key topic of this book is the distinction between the ideal types of financial and controlling state strategies. This strategic distinction can add an important factor to the more general discussions of what state capital can and cannot achieve within the global energy transition.

Carbonized strategies

When referring to “decarbonization” in general, I mean the process of “getting rid” or eliminating a CO2 -producing asset (or the emitting parts of this asset). This can principally work in two ways: either the asset owner decides to redirect the investment in a carbon asset towards alternative, sustainable assets (divesting); or the owner lets the asset “strand”, meaning that the owner stops producing or exploiting the CO2 -emitting asset altogether. The first point does not mean that there will be an effective reduction of emissions, as other buyers can simply continue exploiting the sold asset (see, e.g., Christophers 2021). However, if states as the largest producers of fossil fuels decide to eliminate massive carbon assets from their ownership portfolio, they undoubtedly signal to global markets that CO2 -intensive assets will eventually be stranded and hence do not represent a viable long-term investment goal (Baron & Fischer 2015). A third option is to “green” the CO2 -emitting aspects of an asset, which is more a socio-technical question of making production processes and the like emissions-free. For states as owners, the first two options will be the most immediately relevant ones, and they reflect the different investment profiles (portfolio and majority) discussed below.

Decarbonizing states as owners requires us not only to think about the general aspects of carbon state capital, but also about the different decarbonization potentials of competing states. On the most basic level, this concerns the ability to rapidly divest from fossil fuels without running into either a devastating economic crisis or even bringing about serious political instability by this fast transformation. This dependence on state ownership of fossil fuels for economic and political stability, however, mainly concerns a group of states where political and economic power are intimately tied to the state (elite) control of the extraction, production and sale of fossil fuels like in many of today’s monarchies in the Gulf region. Large owners like Saudi Arabia or Kuwait have almost all (the former) or close to 90 per cent (the latter) of their carbon state capital invested in majority stakes. For most of the other competing states, the abandoning of carbon investment, beyond fossil fuels, will not lead to major crises, but will rather require a strategic reorientation of its investment. This is where a differentiation between more financialized and more controlling strategies becomes a useful guiding principle.

From a financialized strategy perspective, carbon investment is one among many asset classes that states as owners are involved in. Given the nature of these financial strategies, carbon capital is here on average invested via portfolio stakes. This means that states usually own small parts of firms that are counted as carbon intensive, for instance carbon multinationals like Shell or BP; or they are invested in global industrial emitters like cement or steel firms. The relevant point here is that most of this investment is usually not conducted because these are CO2 -intensive companies. States as the owners of vehicles with portfolios invested in carbonized assets usually do this as a means of gaining a return on investment [ROI]. Where this return on investment is being realized is most often a question of profits rather than of sector or industry. In other words, it is the profitability of these CO2 -intensive industries that decides about whether state capital is allocated there.20 With, for instance, rising carbon taxes or other regulatory moves that reduce the profitability of these sectors, an outflow of state capital is to be expected for most financial competing state strategies.

This circumstance is especially pertinent for owners with vehicles that “mimic” other private institutional investors, for example by closely aligning their investment strategy with well-known indices. Among the top clients of index provider firms like MSCI are state-owned vehicles like SWFs.21 By allocating a certain amount of their equity investment into the hands of major index providers, state-owned vehicles become partially passive surfers on global market dynamics. Although most SWFs still exert enough discretionary action when it comes to replicating indices, they in sum broadly follow global market trends.22 A future dwindling profitability and the lower market capitalization of carbon firms is hence likely to lead to disinvestment and to a shift of those funds into alternative assets. This almost “automatic” aspect of global financial investment dynamics also influences the investment decisions of states as owners with large pools of portfolio investment. In sum, the relative liquidity of portfolio investment increases the decarbonization potentials of this strategic profile drastically.

On the other side, more controlling strategies do not display similar levels of liquidity and flexibility. Competing states with a controlling strategy usually invest their capital in majority stakes of cross-border-owned firms. This means that on average they hold large and quite inflexible positions in these firms, which are often also direct subsidiaries of domestic SOEs. To divest from these assets would hence mean giving up on either large and expensive acquisitions or reducing the number of subsidiaries cross-border. This is a fundamentally different situation from that of financialized strategies: as I have argued, controlling strategies are often motivated by cross-border asset capture, the acquisition of specific know-how or the control of vital nodes of global value chains and infrastructures. This type of investment often targets particular firms and industries that help in realizing those goals. This means that it is not primarily the profitability of these investments that drives cross-border investment, but specific types of assets and industries. Consequently, controlling strategies are much less flexible in simply switching from carbon-intensive to low-carbon investment alternatives. Many of the controlling strategies even aim at controlling cross-border carbon capital, as is the case for the Russian or Gulf states’ strategies.

This lower flexibility and liquidity are thus potentially bad news for divestment and decarbonization efforts. Controlling strategies are from a theoretical standpoint much less likely to engage in rapid decarbonization if their investment strategy is not solely motivated by pure profitability aspects. In the worst case scenario, controlling strategies could even suffer disproportionally from falling profitability and shrinking market valuation of carbon assets in the future. Since these competing states are more or less “stuck” with their cross-border invested carbon capital, many of those investments could turn into so-called stranded assets. This asset type is broadly defined as an investment which is expected to stop returning a profit before the end of its life cycle. Stranded assets are thus leading to economic losses (see Caldecott 2017: 2). In the case of controlling strategies, these losses can amount to large sums. If states hold on to average majority positions in their (carbon) assets cross-border, the cumulative effect of a stranding in the future will be felt much more strongly than for financial strategies. Owners like Russia, India and Myanmar will have to rethink their strategic exposure to this issue. For another group of small countries where state carbon ownership makes up a significant share of their GDP (or total state assets), like Azerbaijan or Kuwait, these problems will be even more virulent in the coming years.

Decarbonizing through disinvestment? Towards concrete strategies

The debates about the potentials and “glass ceilings” of the environmental state show that it is necessary to flank these general discussions with a more granular look at different aspects of how the state relates to environmental degradation. Through a Gramscian state-theoretic lens, it is possible to focus on state ownership and state investment as being controlled by specific state apparatuses that are not always visible in more abstract discussions. The analysis above shows that such a perspective enables us to ask concrete questions that are crucial both for the future of competing states but also for the mitigation potential of environmental states: what is state carbon capital? How should we understand its transnational aspects? How does the divestment from carbonized state capital relate to economic and political stability? And which strategies are more or less likely to succeed with which possible reverberations? It is this series of analytical distinctions between various owners, strategies and decarbonization potentials that is crucial to building a good understanding of carbon state capital going forward.

As a bottom line, I argue that it is indeed possible to sketch ideal-typical decarbonization strategies for states as owners. These strategies then have to be implemented concretely on the ground and aligned with different local circumstances. This means that the above-mentioned catalogue of questions about industrial specificity, extent of transnational carbon investment, political stability, varying investment strategies and other issues can be put to work in case studies. Climate change and its mitigation attempts will be the single most existential political issue for the next decades, and the role of the state in these mitigation efforts is becoming more virulent again. Beyond the important general groundwork conducted in the environmental state literature, we also need to be able to grasp the socio-economic foundations and variation of carbon state investment as one major obstacle and potential for greening the state.

With these analytical provisions, the crucial question for the competing state is which role it will play in a “green” global political economy of the future. Two broad alternatives are thinkable: either competing states divest from their carbonized capital and reinvest this capital elsewhere (probably for financial strategies) or they withdraw, and in the worst case amortize this capital in the long run (probably for controlling strategies). Or these competing states find a way of decarbonizing large parts of their carbon investment without necessarily having to divest. While this scenario also depends on the type of investment – oil assets are harder to “decarbonize” than investment in transportation and logistics – it also involves the existence (or lack) of a long-term strategic vision. As we saw in Chapter 4, heavily carbonized owners like Russia and Saudi Arabia can have quite different views on the long-term viability of fossil fuel and carbon investment. While the latter is already engaging in longterm diversification of its investment, in order to avoid having to deal with a large amount of stranded assets among other things, the former seems to be more engaged in tactical rather than strategic thinking so far (Bradshaw et al. 2019). For competing state elites that do not engage in this sort of strategic thinking, decarbonization could happen involuntarily through global market shifts and stranded assets. Whether states as owners pick one of the other strategies of (conscious) divestment or decarbonization will also be determined by the various analytical questions formulated and explained in this section.

### 1AC---Plan

#### Plan:

#### The United States Federal Government should restore collective bargaining for federal career employees weakened by executive actions.

### 1AC---Solvency

#### Contention 3 is Solvency:

#### Collective bargaining is both necessary and sufficient:

#### First, enforcement. Workers only trust unions & their institutions---its why they chose it over alternatives

Handler 24 [Nicholas Handler, Thomas C. Grey Fellow and Lecturer in Law at Stanford Law School, former Associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP, clerked at the U.S. Court of Appeals for the Second Circuit, JD Yale Law School, MPhil University of Cambridge, “Separation of Powers by Contract: How Collective Bargaining Reshapes Presidential Power,” New York University Law Review, 99(1), April 2024, pp.45-127, HeinOnline] \*[language modifications in brackets]

This Article begins that task by making two primary contributions. First,the Article describes and empirically documents how employment-based challenges to top-down management reshape presidential power by reviewing and compiling data on nearly 1,000 FLRA adjudications from the past forty years. It then provides in-depth case studies of agencies in three policy areas-immigration, environmental protection, and tax-to demonstrate how federal labor rights can shape policy outcomes within the executive branch. The Article focuses on these agencies because they have been sites of recurring, high-salience policy changes by presidential directive over the past several decades. And by virtue of the President's focus on these agencies as vehicles for executive policymaking, they have also been at the center of several high-profile disputes over agency policy between tenured staff and politically appointed heads.26 These case studies show that, at least in these critical areas of presidential policymaking, contractual rights play an important and underappreciated role in shaping presidential discretion over executive branch policy.

Second, this Article illuminates the ideological underpinnings of the modern federal labor regime and its implications for administrative law. It challenges the assumption, prevalent in the academic literature and central to debates about the legitimacy of the administrative state, that executive branch bureaucracy is a top-down hierarchy insulated from political influence. Both bureaucracy's critics and its defenders presume it suffers from a profound democratic deficit. Unitarists believe bureaucracy usurps presidential power, while defenders believe that, despite its salutary role in restraining presidential abuses, bureaucracy sits largely outside the legitimizing force of American law.27 But labor rights complicate these critiques. The federal labor regime is a more mutualistic and legalistic model of presidential-bureaucratic relations than contemporary observers appreciate.

While labor rights restrain the President's managerial authority in some respects, they also enhance presidential power and expand executive branch capacity in other ways, thereby complicating the unitarist critique. One surprising insight from the history of federal sector bargaining reveals that neither Congress nor the courts imposed such bargaining on the President.28 Instead, the President urged its adoption for two reasons. First, bargaining allowed the President to recruit skilled workers to join rapidly expanding executive agencies.29 Although the federal government could not compete with the private sector in terms of salary or perquisites, it could offer workers greater workplace autonomy and enable them to serve the public interest free from political interference.30 Second, bargaining tightened the President's control over the federal workforce. Since the late nineteenth century, most federal personnel administration had fallen under the control of the Civil Service Commission (CSC), an immensely powerful independent agency that oversaw everything from employee classification and hiring to disciplinary proceedings.31 Collective bargaining allowed the President to bypass the CSC and take a more active role in shaping federal workforce policies through negotiations and contract.32 In short, while worker protections are often cast as improper limits on presidential power, history shows that presidents themselves view labor rights in precisely the opposite terms, as a means of expanding presidential power through strategic concessions.

Labor rights also respond to concerns that bureaucratic resistance, however valuable in other ways, subverts democratic governance by permitting an unelected cohort of civil servants to shape executive policymaking.33 Labor rights are susceptible to formal, legal resolution and democratic oversight. Many of the disputes over bureaucratic power and managerial control that might otherwise be fought through inchoate "resistance," or opaque attempts to subvert managerial initiatives, are instead channeled into a highly formalized system of negotiation, contracting, arbitration, and appeal. The power arrangements between the bureaucracy and presidentially appointed agency heads are reduced to writings, and disputes are resolved by contract and statutory law, rather than through the exercise of raw institutional power. This arrangement not only makes bureaucratic power struggles more transparent and legalistic, it also enables each of the coordinate branches to supervise and regulate presidential-bureaucratic relations. By directing negotiations with unions, the President actively shapes workplace policy. Congress can shape civil servants' legal rights through statutory enactments. And courts can supervise the enforcement of these rights, reviewing important questions of statutory interpretation and ensuring that both labor and management bargain in good faith.

Nonetheless, civil servant labor rights do present a different set of challenges for the administrative state. While collective bargaining imports some of the legitimizing aspects of American political and legal culture into the federal bureaucracy, it may import some of those cultures' pathologies as well, for instance by providing new avenues to manipulate civil service rights for partisan advantage or to entrench ideological preferences.

This Article proceeds in four Parts. Part I draws on an array of primary and secondary sources to describe the historical origins and ideological underpinnings of federal sector bargaining. Part II sets forth the legal contours of modern federal sector labor rights and analyzes how they reshape presidential power and permit entry points for the coordinate branches to participate in shaping bureaucratic relations. Part III offers case studies on how bargaining can reshape agency dynamics in specific policy areas; it begins with descriptive data on FLRA adjudications, including how frequently labor and management prevail on their contract claims and how that success varies over time. It then provides descriptive accounts of how bargaining has impacted the operation of immigration, environmental, and tax policy. Finally, Part IV concludes with some reflections on the doctrinal and theoretical implications of bargaining's underappreciated influence on the administrative state.

I

THE HISTORY OF FEDERAL SECTOR BARGAINING

This Part draws on an array of primary sources and legislative history to document the history of federal sector bargaining and the reasons for its emergence. This story, while critical to understanding the modern executive branch, has never been told in the legal scholarship and has been presented only sparingly in other literatures. The proceeding sections argue that bargaining rights emerged as a way to expand the executive branch and to retain the professional integrity of skilled bureaucrats, while rendering bureaucratic relationships more transparent and susceptible to legal supervision. This made the federal bureaucracy more legitimate to an American political culture that by the 1970s was increasingly skeptical of centralized federal power.34 Unions were seen by both the President and Congress as a way of preserving civil servant independence while also rendering the civil service more responsive to democratic forces.

Section I.A provides an overview of the Civil Service Reform Act (CSRA) and the structural changes it imposed on the modern federal bureaucracy. Sections I.B and I.C document the reasons for the CSRA's passage, detailing the incentives that both the President and Congress, respectively, had for granting civil servants extensive rights to bargain over the contours of agency management.

A. The Civil Service Reform Act of1978

In 1978, President Carter signed the Civil Service Reform Act into law.35 Although now largely forgotten, the law was the most significant civil service reform in nearly a century: the "centerpiece" of President Carter's efforts at government reorganization.36 The Act's goal was to loosen the power of traditional, Progressive Era merit protections, allowing the President to steer executive branch policy over the resistance of "dug-in establishmentarians" within the federal bureaucracy.37

The CSRA "comprehensively overhauled the civil service system" of the New Deal era.38 As relevant here, the CSRA made two key changes to federal personnel management. One was structural. Prior to the enactment of the CSRA, nearly every aspect of the federal civil service was overseen by the Civil Service Commission (CSC), an enormously powerful independent agency. The CSC had been created by the Pendleton Act of 188339 and had grown over successive generations from a mostly advisory body to one tasked with administering a wide variety of things, such as hiring and classifying federal workers, adjudicating employment disputes and appeals, and formulating government-wide management policy.0 The CSRA abolished the CSC and distributed its functions across an array of new agencies. The Merits Systems Protection Board (MSPB) would oversee employee challenges to adverse personnel actions such as suspensions, demotions, and terminations; the Office of Personnel Management (OPM) would formulate management policy; and the Office of Special Counsel (OSC) would investigate certain violations of federal law, such as improper political activities in contravention of the Hatch Act.41 While still politically independent, these agencies were smaller and more specialized than the CSC, exerting a less concentrated influence over the bureaucratic organization of the executive branch and leaving more space for the President to influence personnel policy.

The second key change was substantive. The CSRA fundamentally altered the array of employment rights available to federal civil servants. Some rights were weakened. For instance, a number of procedural rights that had been developed by the CSC over the middle of the twentieth century and afforded to individual civil servants challenging adverse employment actions were eliminated or significantly curtailed.42 At the same time, however, the CSRA also granted federal workers an array of new labor and contractual rights. For the first time, federal workers were given the legal right to join a union, to collectively bargain over nearly any issue affecting the "conditions" of their employment, and to sue their employing agencies for violations of those contractual provisions.43 These contractual rights were to 'be enforced by a new independent agency, the Federal Labor Relations Authority (FLRA). The FLRA had a number of component parts, but at its core was a system of semi-private arbitration: In the event of an alleged breach of a CBA, the agency and the union would bring their dispute before a mutually selected, third-party arbitrator. Arbitrations could be appealed, or "except[ed]" in labor parlance, to the FLRA itself, which was composed of three bipartisan members serving fixed, five-year terms.44

The CSRA's establishment of labor rights was a dramatic departure from historical practice. Prior to 1978, federal law provided no formal statutory mechanism for employees to shape the ways in which the federal workplace was managed through contract or union organizing.45 While civil servants did attempt to unionize and bargain, they were afforded no formal legal status and their agreements were unenforceable against the federal government.46 Many commentators through the early 1970s believed that public sector unionism was fundamentally incompatible with democratic principles.47 In a widely cited article, then-professor Ralph K. Winter argued that a unionized public sector would "radically alter[]" the political process through the exercise of its extensive bargaining power.48 Indeed, prior to the 1960s, many viewed public sector bargaining as an unconstitutional delegation of executive power to private citizens.49

The CSRA's establishment of muscular federal labor rights thus poses a historical riddle. Why, if greater presidential control of the bureaucracy was the ultimate goal, did the CSRA create for the first time an extensive right for labor to bargain collectively? Why cede so much managerial authority to unions, particularly at a time when private sector labor power was declining precipitously?50 And why restructure bureaucratic relationships-a paradigmatic component of public law-through bargaining and contracts, a form of private ordering that historically had played no role in executive branch management?

As described in Sections I.B and I.C, a central claim of this Article is that the private law model of contract and bargaining provided a vehicle for dramatically expanding the scope of public administration from the mid-twentieth century forward, while presenting that expansion as both legally and democratically legitimate. The rise of federal sector collective bargaining can be understood as the product of two concurrent trends. One was internal to the executive branch, driven by the desire of the President to assert greater political control over the terms of federal employment.The other was external, driven by Congress's desire to exert greater control over executive branch operations and management. Both trends responded to a need to expand state capacity while shoring up its legitimacy, reining in both real and perceived abuses of a bureaucracy insulated from democratic control.

B. Labor Rights as an Enhancement of Presidential Power

President Kennedy first established federal sector bargaining by Executive Order in 1962,51 and it was subsequently expanded by presidents of both parties.52 The move reflected two strategic considerations. One responded to changes in the labor market. The President encouraged collective bargaining to entice skilled labor to join the executive branch. By offering workers autonomy and protection from managerial abuses, the federal bureaucracy could compete with the private sector. Politically, contracting also offered the President an opportunity to sidestep the long-standing managerial power of CSC. In both cases, contrary to depictions of unions and bureaucracies as illegitimate drags on presidential power, the executive branch itself initiated bargaining, primarily as a means of politically empowering the President and building state capacity.

1. Labor Market

Government from the 1950s to the 1970s was a "growth industry."53 The postwar era saw a major expansion in social service provision and a rapid expansion in the federal government's regulatory and national security remits.54 The growing need for skilled personnel created a recruiting crisis for government. There was a general perception that despite multiplying needs, the quality and efficiency of regulation and federal service provision had declined badly in the decades since the New Deal.55

The executive branch identified several recruiting challenges. One was a general inability to keep pace with private sector wages. In a 1953 report, the House Committee on the Post Office and Civil Service identified a number of "common deterrents in obtaining sufficient applicant supply," including pay "significantly below comparable jobs in industry" and "insecurity of tenure," which had a "marked adverse influence on the attraction of high caliber scientific and professional personnel, as well as key administrative personnel," as it was "generally felt that industry offers a better opportunity than Government for advancement in position and salary if an individual merits such advancement."56 The CSC reached similar conclusions about "[t]he problem of attracting highly qualified people-scientists, engineers, [and] administrators" in 1959.57

Low wages were exacerbated by widespread managerial abuses in federal employment. Despite extensive formal protections from major adverse actions such as firing and demotion, civil servants were susceptible to an array of lower-grade abuses that, in practice, gave managers wide range to harass or demoralize them. As a comprehensive study of the civil service concluded in1975,"[t]he work environment may be made friendly or hostile, open or repressive, tolerable or intolerable by the superior, who is equipped with a finely honed and calibrated set of sanctions to be used against subordinates."58 The CSC, which had a close relationship with the management at many agencies, was often accused of looking the other way when abuses occurred. By the 1970s, this reality had become widely known. As The Washington Post summarized, under the civil service system managers could "dispatch any civil servant" when their "prerogatives" are "attack[ed]."59 The practice was epitomized by the so-called Malek Manual (drafted by Fred Malek, President Nixon's director of personnel), a memorandum that expansively outlined the strategies managers could employ to sideline or harass disfavored workers without running afoul of civil service laws.60 The memo, which became notorious during the Senate's Watergate investigation, was considered to be "to personnel administration what Machiavelli's The Prince is [to] the broader field of political science."61

More generally, there was a growing belief that America, as the world's most powerful democracy, should subject its own government apparatus to "industrial democracy," promoting "consultative management by its own good example."62The 1949 Hoover Commission on government reorganization observed that employees "were 'not provided a positive opportunity to participate in the formulation of policies and practices which affect their welfare"'and"that'the President should require the heads of departments and agencies to provide for employee participation in the formulation and improvement of Federal personnel policies and practices."'63 By the 1950s, many labor organizers and public administrators questioned why robust unionization was permitted in the private sector but forbidden for similar roles in the public sector. The Second Hoover Commission concluded in 1955 that "[t]he Federal Government ha[d] lagged behind other organizations in recognizing the value of providing formal means for employee- management consultation."64

These challenges-the growing need for federal manpower, competition from the private sector, and the executive branch's particular need for skilled knowledge workers-required new models for recruitment and management. In exchange for lower wages than those in the private sector, collective bargaining could offer workers greater autonomy and a sense of professional purpose.65 As one expert in public administration testified in 1978, the "increasing professionalization of skills and bodies of knowledge" in social science and technical fields required management strategies for attracting skilled labor and for maximizing its creative output.66 This led to "an increasing reliance on public sector collective bargaining," a "decreasing reliance on authority/control strategies," and "a greater reliance on rational analysis, negotiation, and incentives."67

As early as the 1940s, the CSC and other commissions studying the civil service began insisting that federal employees' labor rights should be in parity with private sector ones.68 Others, including the Hoover Commission and National Civil Service League, similarly encouraged dealing.69 Increasingly, major private sector unions began to organize public sector workers.70 The executive branch began responding to these pressures even before any formal legal authorization.71 Informal bargaining with growing unions and trade associations in the executive branch expanded throughout the 1940s and 1950s.72 A 1961 Task Force commissioned by President Kennedy recognized that "[f]ederal employees very much want to participate in the formulation and implementation of personnel policies and have established large and stable organizations for this specific purpose."73 Executive Order 11,491 formalized this understanding, creating a centralized process for civil servants to bargain over employment conditions with agency heads.74

2. Disputes Over Presidential Administration

In addition to recruiting and labor pressures, the President also had a concrete political interest in pursuing more expansive bargaining. The CSC, as an independent Progressive Era agency, was highly insulated from presidential influence.75 Bargaining between unions and presidentially appointed agency heads gave the President greater direct control over the contours of bureaucratic power and cut a powerful intermediary out of his relationship with the federal workforce.

Moreover, presidents had long been hostile to the CSC. Since the Wilson administration, presidents had sought to exercise greater control over executive branch operations.76 The Brownlow and Hoover commissions on government reorganization had both wanted to bring personnel management under direct presidential control but had failed, even as they had succeeded in restructuring other previously independent branches of the executive branch such as the Budget Bureau.77 The independent CSC proved sticky: It had extensive formal legal power, management expertise, and was adept at building both bureaucratic and legislative constituencies.78It managed everything from hiring and classification of employees, to investigating and adjudicating disciplinary disputes, to generating high-level management policy. Serving "simultaneously both as the protector of employee rights and as the promoter of efficient personnel management policy,"it had become "manager, rulemaker, prosecutor and judge" of personnel matters.79 The CSC's extraordinary and very opaque power led to concern that the "federal personnel system" had become "too immune from political directives of any kind," and thus was "isolated, and resistant to carrying out new policy directives."80 This "lack of responsiveness to elected political leaders," in turn, revived longstanding concerns about the democratic legitimacy of the tenured civil service, as it "indicated a general lack of bureaucratic responsiveness to the citizenry."81

Labor agreements offered the President an opportunity to bypass the CSC, and thus the contours of bureaucratic power, and to negotiate terms of employment directly with the federal workforce. Moreover, these arrangements could be reduced to written and legally enforceable contracts, rather than entrusted to the rulemaking and enforcement discretion of the CSC. Bernard Rosen, chair of the CSC, expressed his view in 1975 that the CSC's position as sole arbiter of personnel disputes had become untenable: "With the growing power of Federal employee unions, and as general government-wide personnel policies have become a matter of increasing concern to them and to other organizations in our society," Rosen wrote, the "complexity of Federal personnel administration" and the "increasingly adversary relations developing between unions and agency management" necessitated "a central personnel agency that enjoys the confidence of the Congress, the President, and the unions ...."82

With the neoliberal policy turn of the late 1970s,83 President Carter had the opportunity to codify federal bargaining rights into law. Several factors produced the conditions for bureaucratic reform, including a loss of political support for bureaucracy, an economic slowdown, and resulting fiscal constraints. In the 1950s and 1960s, there had been an emphasis on expanding services, with less concern for fiscal discipline. By the 1970s, however, large outlays for bureaucratic programs, and the tenured civil servants that administered them, were increasingly seen as fiscally irresponsible and wasteful of taxpayer dollars.84 Carter had campaigned on the promise to clean up the "horrible bureaucratic mess in Washington" and to institute "tight, businesslike management and planning techniques" in government.85 But beyond cost-cutting, the CSRA also reflected a deeper ideological evolution in public administration. Throughout the 1960s and 1970s, economists and policy consultants had been reframing public policy in terms of economic efficiency, arguing that government programs modeled on private enterprise would be not only more socially productive but also, like private enterprises, more responsive to the demands of the public and the market and thus more legitimate.86 The CSRA extended this logic to the management of the civil service itself. While the bureaucracy of the New Deal legitimized its power through subject matter expertise and insulation from politics, the bureaucracy of the post-New Deal era would legitimize its power by bargaining for it. Contracts would reflect the social and economic value of civil servants by granting them only those labor rights to which the President and his appointees, under electoral pressure to deliver useful services, would agree.

C. Labor Rights as a Restraint on Presidential Power

The President thus leveraged bargaining rights to recruit talent to the executive branch and to consolidate presidential control over the bureaucracy. Congress, by contrast, viewed those same labor rights as tools for exercising greatersupervisionover presidentialadministration.Thesame attributes that made contract and bargaining effective tools for recruiting and negotiating with labor-their transparency, their enforceability against the President, their capacity to change in response to shifting political and economic conditions, and their ability to cover conditions of employment not captured by civil service laws-also made them effective tools for supervising presidential control of the executive branch.

In the 1970s, Congress and the judiciary established new checks on presidential power in response to the Watergate and Vietnam crises, as well as the revelation of longstanding abuses by the FBI, CIA, and other executive agencies.87 These checks included statutory reforms and commissions,such as the Freedom of InformationAct (FOIA),the Foreign Intelligence Surveillance Act (FISA), and the Church Commission, to limit executive discretion in law enforcement.88 They also included more general limitations on the power of the administrative state to make and enforce regulations, through judicial innovations such as "hard look" review of agency action.89 The CSRA presented a vehicle for extending similar interbranch checks to executive branch personnel management and was supported enthusiastically by congressional Democrats. In a 1977 report, the House Committee on the Post Office and Civil Service emphasized the need for alabor rights "system based on... statute,"rather than executive order, and with meaningful access to judicial review.90 The American Bar Association likewise testified that "[c]onsistent with a fundamental precept of our constitutional law system," statutory labor rights would provide civil service with "a source of authority outside the executive branch and beyond the control of. the executive as the primary employer of Federal civil servants," allowing for "access to the judicial branch for redress of grievances with the executive branch" and "meaningful bilateralism in the collective bargaining relationship."91

Like the President, Congress relied on the language of efficiency to justify the enlargement of labor rights. Here, it was the efficiency of management, rather than the bureaucracy, that Congress claimed to be advancing. In a committee report in support of draft labor legislation from 1977, the House Committee on the Post Office and Civil Service opined that "collective bargaining rights for Federal employees," including "[e]ffective labor unions," would "play a positive role in improving productivity in public service."92

Federal workers also lobbied for collective bargaining to play a greater role in civil service independence. Labor had historically been suspicious of the CSC and viewed it as hostile to their interests. A comprehensive 1975 study of civil service and the CSC observed that, despite statutory protections against firing and other major adverse actions, civil servants found themselves with "a lack of substantive rights" in a relationship "in which the superior has many opportunities to make discretionary judgments of considerable importance to the subordinate."93 Workers'"exercise of legal rights in such a relationship" was "often difficult and restrained."94 By the 1960s and 1970s, federal workers had come to view the merit system as a "euphemism for favoritism"and saw collective bargaining as an alternative that advanced stricter application of employment rules, based on uniform application of CBAs rather than managerial discretion.95

For labor and its allies in Congress, however, a weakening of the CSC's traditional power over federal personnel (which, however flawed, did restrain at least some managerial abuses by the President and his appointees) had to be accompanied by more robust labor and bargaining rights. As a legislative representative for AFL-CIO, which represented many federal workers, put it, labor's "support for the President's civil service reform plan is not unconditional," but was contingent on a robust "system of labor-management relations" codified "into statutory law."96 Labor's goal was not just to codify specific substantive labor rights, but to establish a statutory framework for collective organizing, bargaining, and adjudication to ensure that those rights were meaningfully enforced in practice. As a chapter president of the National Treasury Employees Union (NTEU) testified, "[i]f this reorganization effort is to improve the efficiency of government, and to protect the public interest in a merit-based civil service system, expanded collective bargaining must be a central factor."97 The CSRA would invest large, well-resourced unions, not individual employees or an independent agency with doubtful allegiances, with the legal power to bargain, litigate, and lobby on behalf of workers, granting labor's "countervailing power" against the President a foothold in law.98 The weaker position of the labor movement in the 1970s helped supporters of the CSRA frame unions as cooperative partners in government, rather than an adversarial interest group.99 Historical concerns that federal worker unions would be too powerful to be held democratically accountable-concerns prevalent through the bullish labor markets of the 1960s-had significantly diminished.

As enacted, the CSRA formalized and expanded existing bargain- ing relationships and provided for independent agency enforcement and judicial review of labor disputes. In addition to abolishing the CSC, the CSRA moved many traditional civil service functions into separate, presidentially controlled agencies, shifting the center of bureaucratic power from statutory to contractual protections.100 In doing so, the Act adopted the rationales of efficiency and amicable labor relations deployed by both labor and the President. As articulated in its statutory purpose, the Act's goal was to protect "the right of employees to organize" and "bargain collectively," which would "safeguard[] the public interest," by promoting "the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government."101

II

HOW BARGAINING RIGHTS SHAPE BUREAUCRATIC POWER

The goal of the CSRA was to provide a framework that could mediate employment disputes, empowering both labor and the President to reshape bureaucratic relationships, while at the same time allowing for legal and democratic supervision by the coordinate branches. This Part provides a typology of the methods by which unionized labor reshapes presidential administration in contemporary practice.

Descriptively, this Part aims to show how labor rights, while largely unnoticed and unstudied, reshape executive branch relations in profound ways. Across a wide variety of policy areas-from federal prisons to the adjudication of asylum applications-collective bargaining changes how agencies (and the millions of bureaucrats who staff them) carry out their missions. What enforcement guidelines border patrol agents follow, how claims processors assess benefits applications, how guards staff prisons-all of these decisions are shaped by labor agreements, with profound consequences for federal policy.

Normatively, this Part aims to upend a core assumption about bureaucratic power in the contemporary executive branch. There are many tools that the President uses to structure the incentives and behavior of civil servants, and thereby to influence how they implement federal policy: the power to discipline employees for disobedience; the power to allocate an agency's budget and resources, thereby setting the agency's enforcement priorities; the power to set performance standards and productivity quotas, determining what types of bureaucratic decisions merit reward or punishment; and many more. Most scholarship on administrative law and presidential power presume these tools to operate in a top-down manner: The President implements new management directives, and bureaucrats either obediently follow or illicitly resist them.10

But, as set forth below, this model of top-down implementation and bottom-up resistance is critically incomplete. More often, the President and the unionized civil service bargain over questions of management, rather than fight out their differences through the exercise of raw institutional power. Indeed, in a sharp deviation from the Progressive Era model of a politically insulated civil service, the CSRA explicitly empowered unions to act in a political capacity, including by lobbying Congress, litigating management disputes before Article III courts, endorsing political candidates, and speaking out publicly on questions of executive branch management and policy. Unions thus engage directly in democratic politics and serve as a key mechanism for bringing other democratic stakeholders, such as Congress and the judiciary, into disputes over the President's managerial power. In short, modern bureaucratic management is far more mutualistic, legalistic, and democratically engaged than administrative law scholarship generally presumes.

Section II.A below examines the substantive rights that labor law confers on civil servants, and the ways in which those rights can reshape presidential administration. Section II.B discusses unionization rights, including the boundaries and limitations of civil servant unionization and the role that federal sector unions play in promoting democratic oversight of the executive branch.

A. How Substantive Rights Mediate Bureaucratic Relations

Substantive labor rights, particularly those memorialized in collective bargaining agreements, are at the heart of how labor rebalances executive branch power. The CSRA grants extensive rights to labor. With certain important exceptions, particularly for salary and benefits which cannot be altered by contract,103 unions are permitted to bargain over nearly any issue affecting "conditions of employment."104 The main limitation on civil servant bargaining, and thus the primary battleground in litigation between agencies and labor, are certain statutorily defined "management rights," which are enumerated in sub- provisions of 5 U.S.C. § 7106.105

Through contractual provisions, the President and the civil service can agree to modify any number of key management tools, from employee discipline to performance evaluation metrics to merit pay. For the purpose of analyzing their impact on presidential power, contractual rights can be sorted into three categories. First are rights that act as a check on structural deregulation, or the use of abusive working conditions to demoralize or sideline bureaucrats in order to undermine an agency's substantive policy mission. Second, labor rights can act as indirect constraints on policy by shaping management tools, such as performance reviews and productivity requirements, that are well known to nudge civil servants' decisionmaking in certain ways. Finally, in certain circumstances labor can act as a direct constraint on policy by seriously limiting the types of enforcement directives management can issue to employees.

1. Check on Structural Deregulation

A major method of undermining regulatory effectiveness is to defund agencies, undermine the morale of agency personnel, and obstruct agency operations. Jody Freeman and Sharon Jacobs have identified many of the strategies that the President may use to cripple [incapacitate] agencies while evading civil service protections, including imposing burdensome working conditions, reassigning staff to undesirable roles, "demoralizing" staff through denigration and abuse, and cutting funding, resources, and pay.106 These are not direct attacks on an agency's legal authority, but a "structural" attack on an agency's ability to function.107 President Trump's unusually aggressive posture towards administrative agencies has put structural deregulation back in public focus, but it has long been a feature of presidential management, as the controversy surrounding the Malek memo in the 1970s illustrates.108

Here, many of the seemingly prosaic aspects of federal labor law are important. The terms and conditions of employment that govern the quotidian existence of civil servants are precisely the sorts of areas that structural deregulation targets. Changes to remote work policies, scheduling, and other routine workplace concerns can be used to demoralize or undermine an agency's staff.109 Unions routinely leverage contract rights to prevent deterioration in working conditions, litigating issues such as increases in workloads,110 compensation for travel and other overtime expenses,111 backpay for wrongful personnel actions,112 and how and when to award bonuses or special compensation required by contract or statute.113 Agencies can also be required to bargain over reductions in staffing levels or reorganization of duties.114

There are numerous examples in which fights over working conditions reflect larger political struggles over the ability of an agency to properly carry out its statutory mission. The infamous nationwide strike in 1981 by the Professional Air Traffic Controllers Organization (PATCO), representing federal air traffic controllers, is a useful example. The PATCO strike flouted the federal prohibition on civil servant strikes, in a bid by the union for higher pay and improved working conditions.115 Instead of negotiating, President Reagan broke the strike by calling up military service members and retired controllers to manage the nation's air traffic and firing the strikers (who made up nearly seventy- five percent of federal controllers).116 While PATCO is remembered today for its catastrophic collapse, the union's founding in the 1960s was driven by a decline in conditions of employment that related directly to the substantive mission of the Federal Aviation Administration: Flight speeds for jet planes reduced the margin of error for air traffic controllers, while understaffing and aging equipment made working conditions for controllers increasingly difficult and airport conditions less safe, leading to crashes. It was the FAA's failure to respond to these worker complaints, and its attempt to cover up safety risks, that first inspired the formation of the PATCO union.117

Contemporary examples abound as well. During the Trump Administration, the Department of Education was a frequent target of structural deregulation. In 2018, the agency purported to impose a new labor contract on employees without bargaining that, among other things, removed protections regarding pay raises, altered performance evaluations, and reduced rights regarding overtime, childcare, and work schedules.118 The FLRA subsequently ruled the unilateral contract illegal, forcing the agency to enter into an extensive settlement covering disputed labor issues.119 Federal prisons were another key site of disputes over labor rights. The Trump Administration sought to cut budgets, weaken unions, and worsen conditions at federal facilities at the Bureau of Prisons (BOP), as a prelude to privatization of many key functions. The agency would, for instance, cut shifts for guards and replace them with untrained, non-custody employees to guard prisons.120 These policies were enacted despite Congress allocating money for staffing, which the Administration refused to spend.121 At the same time, federal facilities experienced a significant influx of prisoners, including very large numbers of immigrants detained by ICE.122 BOP saw a major decline in prison conditions, leading to increases in assaults, health risks,123 overcrowding,124 and declining staff morale.125 The primary means for resisting these deregulatory policies was labor litigation. Many of these labor disputes concerned the precise tactics-shifting schedules, using untrained and unauthorized workers to staff dangerous prisons, understaffing, overcrowding, removing posts from union positions-that the Administration was deploying to defy Congress and pave the way for privatization.126 Workplace disputes thus dovetailed closely with a broader agenda of weakening prison standards and asserting greater political control over prisons.

2. Indirect Constraints on Policy

Labor can also serve to constrain substantive executive branch policy in many indirect but significant ways. It has long been recognized that certain presidential management techniques, while they putatively concern the internal business of overseeing executive branch resources and personnel, can impact substantive enforcement outcomes. As Jerry Mashaw canonically articulated, the administration of many large- scale federal welfare and regulatory programs requires a species of "bureaucratic justice," where fairness and efficiency are achieved through quality assurance, performance metrics, productivity quotas and other general, organization-wide management tools.127 Labor can reshape how many of these tools are used, in turn reshaping agency outcomes.

One important example is productivity requirements. Determining how much work employees are required to perform, and how they are to perform it, is a well-recognized management tool. These management tools have particularly important impacts on adjudicatory bodies and other discretionary decision-makers: Rules governing decisionmaking processes limit adjudicators' flexibility, while increased productivity requirements reduce the amount of time and effort adjudicators can spend on any one case, making it difficult to rule in favor of poorly represented or under- resourced parties.128 The FLRA routinely enforces contractual limitations on the types of productivity quotas agency management imposes, intervening for instance in disputes over quotas for claims processing for veterans' benefits,129 screening of passport applications by the Department of State,130 and caseload requirements for Taxpayer Advocates employed by the IRS.131

The Trump Administration engaged in particularly hard-fought disputes over productivity and process rules. The Social Security Administration (SSA) extensively litigated proposed productivity requirements for its unionized administrative law judges (ALJs), which would have sped up case timelines, potentially impacting the quality of decisionmaking and the amount of benefits awarded. An arbitrator repeatedly found that the agency's requirements violated the parties' CBA. A two-member majority on the FLRA, appointed by President Trump, however, consistently reversed these rulings,132 over the dissent of Member DuBester, the sole Democratic appointee, who found the policy to be a "straightforward" violation of the parties' agreement.133 Immigration law judges (IJs), likewise, have used bargaining and litigation to resist increased efficiency requirements during the Trump Administration, which would have limited IJs' ability to assist asylum seekers during removal hearings.134 Similarly, the United States Customs and Immigration Service (USCIS), under de facto head Ken Cuccinelli,135 pressured asylum officers to reduce grants of asylum, citing statistics showing high grant rates, urging officers to use tools to combat "frivolous claims" and make only "positive credible fear determinations."136 The union resisted these initiatives, which it characterized as pressure to "misapply laws" and "politicize" the asylum process.137 The USCIS union likewise challenged administration guidance to exclude large categories of migrants from asylum consideration and to divert considerable numbers to Honduras and Guatemala, calling the policies "unlawful" and even filing an amicus brief in support of a lawsuit challenging them.138

Negotiated provisions governing selection and promotion likewise can yield "significant" divergences from management's preferences.139 Federally unionized technicians with the Ohio National Guard, for instance,negotiated extensive contractual requirements for promotions, including criteria used to evaluate candidates and differences in merit promotion procedures.140 Agencies can be required to honor promotions dictated by contract.141 The FLRA has required the SSA to bargain over promotion plans for adjudicatory employees.142 Union contracts can also prevent discrimination. Unions included clauses in contracts protecting gay employees in the 1990s, well before federal antidiscrimination protections for LGBTQ+ people existed.143

Labor can also substantially reshape employment-based discipline and the hierarchies and incentives that disciplinary power creates. While agencies are subject to formal disciplinary procedures under civil service statutes, they often discipline workers through negotiated grievance procedures, resulting in sanctions that can differ substantially from those that might otherwise apply.144 A prominent example of this phenomenon involved a group of CBP officers who were discovered to have exchanged racist and threatening messages through a private Facebook group in 2019. Even though the incident aroused public outrage and the CBP Discipline Review Board recommended harsh punishments-including termination for eighteen agents-following a negotiated grievance process, some of the officers received substantially lighter punishments, including letters of reprimand, paid suspensions, and only two terminations.145 Indeed, according to data recently released by the Office of Personnel Management, arbitrators who hear cases under labor grievance reinstate three-fifths of all dismissed employees, as compared with only one quarter of all MSPB appeals.146 These obstacles to firing and other forms of discipline are some of labor's most powerful tools, and are also among its most controversial: Many critics accuse union-backed limits on employee discipline of rendering government service less efficient, though the evidence on this question is hotly contested.147 **[FOOTNOTE 147]** 147 See id. at 1 (arguing that the grievance arbitration "makes removing unionized federal employees very difficult"); see also PHILLIP K. HOWARD, NOT ACCOUNTABLE: RETHINKING THE CONSTITUTIONALITY OF PUBLIC EMPLOYEE UNIONS 18 (2023) (arguing that, due to public sector unionization,"[e]lected executives," including the President, "no longer have effective authority over the operations of government"). **[\FOOTNOTE 147]**

Finally, labor rights condition the ability of civil servants to leak, criticize, or otherwise speak out publicly about agency policy. David Pozen and Jennifer Nou, among others, have described how unauthorized disclosures of critical information by civil servants can check agency abuses, inform policy debates, and shape agencies' agendas by shifting public opinion.148 Labor rights are a key guarantor of civil servants' ability to speak publicly about agency policy through testimony, statements to the press, and other means. The CSRA protects the right of employees, when speaking in their capacity as union representatives, to present the "views of the labor organization" to "appropriate authorities," which the FLRA interprets, in many circumstances, to include the press.149 Union officials can thus speak publicly about agency policy and management, even when line employees cannot. Union officials have leveraged their protected status to criticize executive branch policy in environmental regulation, education, immigration, and labor, among other policy areas.150 Unions also advocate for the right of other employees to speak out through litigation and labor agreements. Immigration judges, for example, have historically been protected by labor agreements in their right to critique removal policies, even if they are not union officials.151

#### FLRA is empirically the most effective, even under Trump

Handler 24 [Nicholas Handler, Thomas C. Grey Fellow and Lecturer in Law at Stanford Law School, former Associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP, clerked at the U.S. Court of Appeals for the Second Circuit, JD Yale Law School, MPhil University of Cambridge, “Separation of Powers by Contract: How Collective Bargaining Reshapes Presidential Power,” New York University Law Review, 99(1), April 2024, pp.45-127, HeinOnline]

This Part consists of four subparts. Section III.A examines a novel dataset of 986 FLRA cases involving immigration, tax, and environmental regulation over the past 40 years. A central claim of this Article is that labor rights exert an important influence on the executive branch. The data confirms that hypothesis: Labor often prevails in contract disputes with agency management, including under hostile presidential administrations and hostile FLRA majorities. Many of these cases carry important implications for presidential control of specific agencies. The data also demonstrate that as labor is increasingly weaponized to contend with more aggressive versions of presidential administration, it is becoming more controversial. As measured by the number of dissents filed in FLRA cases and the rate of reversals of putatively neutral arbitration awards, labor litigation has become more divisive and harder fought over the last decade. Sections III.B, III.C, and III.D then provide case studies of how labor rights have reshaped bureaucratic-presidential relations and policy outcomes in immigration, tax, and environmental regulation.

A. Data

This Section presents an analysis of 986 FLRA adjudications spanning more than forty years, from 1979 to V22, across seven agencies in three policy areas. Despite the importance of bargaining to modern bureaucracy, there exists very little empirical research on its implementation, including on fundamental questions such as how frequently labor and management prevail in labor disputes, how frequently litigations implicate particularly contested questions of managerial control, and how frequently disputes generate controversy. This Section seeks to fill that gap by providing a broad overview of how labor disputes play out over time across the immigration, tax, and environmental policy spaces. It first examines how frequently labor and management prevail in disputes to determine whether the CSRA serves its original purpose of promoting a relatively stable balance of power between the President and the bureaucracy. It then seeks to determine the degree to which labor disputes have generated controversy or become sites of legal or political contestation.

A caveat is necessary at the outset. The three-person FLRA is, in most instances, an appellate body. Most contractual disputes are resolved in the first instance by internal grievance processes or third-party arbitrators. Disputes over unfair labor practices are generally adjudicated first by administrative law judges.206 Disputes over bargaining unit recognition are heard first by FLRA Regional Directors; and negotiating impasses are typically resolved by the Federal Service Impasses Panel (FSIP).207 But the FLRA plays a formative role in setting federal labor policy, issuing authoritative constructions of the CSRA, and determining appeals from the hardest fought labor disputes. I therefore treat it as a reasonable proxy for which party the labor regime favors, and the controversy attending its decisions.

1. Wins and Losses

Key to understanding the effect of labor rights on bureaucratic relations is understanding which parties benefit from its provisions. Federal sector labor rights were designed to secure industrial peace within the executive branch. As described above, federal sector labor rights were the product of compromise between a presidency seeking greater freedom to structure the executive branch and a labor movement, supported by congressional Democrats, seeking more robust protections for federal employees. If they are serving that purpose, one would expect both labor and the President to prevail a meaningful percentage of the time. Guarantees of moderating power would be useless if one side gains a decisive or permanent advantage.

The data indicates that both labor and management do win a meaningful percentage of the time.208 As shown in Figures 1 and 2, this is true across presidential administrations, from 1979 to the present. It is true in periods of labor turmoil, such as the Reagan Administration, as well as times of relative rapprochement, such as the Clinton era.

FIGURE 1. AGENCY AND LABOR WINS OVER TIME, BY PERCENTAGE

[OMITTED]

FIGURE 2. AGENCY AND LABOR WINS OVER TIME, ABSOLUTE NUMBERS

[OMITTED]

As shown in Figures 3 and 4, while labor wins slightly more frequently when the FLRA has a Democratic majority (51.7% versus 48.0% during Republican majorities), the difference is relatively modest. Indeed, win rates for labor are much higher than for equivalent disputes before the MSPB, where surveys have consistently shown that agencies win over 75%, and perhaps as much as 90%, of the time.209 This data supports labor and Congress's assumption that unionized representation could serve as a more effective check on managerial authority than traditional civil service protections.

FIGURE 3. PREVAILING PARTY, DEMOCRATIC MAJORITY

[OMITTED]

FIGURE 4. PREVAILING PARTY, REPUBLICAN MAJORITY

One other aspect of this data is worth noting. The total number of cases declined dramatically from the 1980s to 2020s. This is not a quirk of the specific agencies studied here. The total number of FLRA decisions has declined over the past four decades. From January 1, 1979 to December 31, 1989 the FLRA issued 4,196 opinions; from January 1, 1990 to December 31, 2000, it issued 3,147; from January 1, 2001 to December 31, 2010, it issued 1,514; and from January 1, 2011 to December 31, 2020, it issued 1,176.210 The decline of the total number of FLRA cases does not mean that the federal labor regime has declined in importance. First, many disputes that were litigated in the CSRA's first decade are now settled informally through grievance procedures and labor-management programs such as those established under President Clinton's NPR program.211 These efforts reflect the bargaining power of federal workers. FLRA litigation is costly and disruptive. While there is no clear data on management council outcomes, anecdotes suggest that labor has a meaningful role in shaping management policy, and the councils are responsive to unions' concerns.212 Likewise, many disputes that might otherwise be litigated are instead now resolved through negotiated grievance procedures. Here again, anecdotal evidence suggest that these procedures can be more favorable to labor than the alternative.213

2. Controversy

The data also appear to show relative stability through the Trump Administration. This is significant, given President Trump's overt hostility to labor and the many ways in which his administration departed from traditional norms of labor relations.214 Observers have presumed that the FLRA majority appointed by President Trump was more hostile to labor than previous boards, including those with Republican-appointed majorities.215 Indeed, these accusations were so frequent that the FLRA's Chairman was questioned by the House Oversight and Reform Government Operations Subcommittee over her alleged "'anti-union' modus operandi."216 In terms of raw numbers on wins and losses, there is no clear indication of a strong anti-union bias. However, I reviewed additional metrics to examine whether there was any empirical support for the claim that the Trump-appointed FLRA was uniquely hostile to labor. Consistent with observations of labor hostility, and consistent with the general trend toward greater politicization of democratic institutions,217 these data do provide some indication that labor has become more politically divisive in the past decade.

#### Second, resistance. Win rates, union resources, publicity and lobbying, AND standing to challenge are vital to both resist politicization and generate confidence to whistleblow

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Federal employees' labor rights are likely to become more important in coming years. The Trump Administration accelerated a trend towards federal employees leveraging their labor rights to influence executive branch policies.18 In February 2020, for instance, the union representing ICE employees attempted to negotiate a collective bargaining agreement with Kenneth Cuccinelli, the departing de facto deputy head19 of the Department of Homeland Security, that would have significantly expanded their power to challenge immigration enforcement directives as violating agents' rights to certain working conditions.20 An EPA employees' union, emboldened by a victory before the FLRA, likewise sought to negotiate a new CBA enshrining certain protections for scientific expertise and neutrality as employment rights.21 Presidents, however, are not always on the losing end of such contractual arrangements. A 2004 effort by the Bush Administration to insert non-disclosure requirements into a CBA between the Department of Homeland Security and its employees, for instance, resulted in an employment-based ban on leaking from one of the nation's largest and most politically controversial agencies.22 As the norms promoting bureaucratic expertise weaken,23 and as other administrative structures designed to protect civil service independence come under sustained attack,24 such efforts will likely multiply.25 Understanding federal sector labor law is thus an urgent task, as it is an increasingly important battlefield for contesting both the practical control and legal legitimacy of the administrative state.

This Article begins that task by making two primary contributions. First,the Article describes and empirically documents how employment-based challenges to top-down management reshape presidential power by reviewing and compiling data on nearly 1,000 FLRA adjudications from the past forty years. It then provides in-depth case studies of agencies in three policy areas-immigration, environmental protection, and tax-to demonstrate how federal labor rights can shape policy outcomes within the executive branch. The Article focuses on these agencies because they have been sites of recurring, high-salience policy changes by presidential directive over the past several decades. And by virtue of the President's focus on these agencies as vehicles for executive policymaking, they have also been at the center of several high-profile disputes over agency policy between tenured staff and politically appointed heads.26 These case studies show that, at least in these critical areas of presidential policymaking, contractual rights play an important and underappreciated role in shaping presidential discretion over executive branch policy.

Second, this Article illuminates the ideological underpinnings of the modern federal labor regime and its implications for administrative law. It challenges the assumption, prevalent in the academic literature and central to debates about the legitimacy of the administrative state, that executive branch bureaucracy is a top-down hierarchy insulated from political influence. Both bureaucracy's critics and its defenders presume it suffers from a profound democratic deficit. Unitarists believe bureaucracy usurps presidential power, while defenders believe that, despite its salutary role in restraining presidential abuses, bureaucracy sits largely outside the legitimizing force of American law.27 But labor rights complicate these critiques. The federal labor regime is a more mutualistic and legalistic model of presidential-bureaucratic relations than contemporary observers appreciate.

While labor rights restrain the President's managerial authority in some respects, they also enhance presidential power and expand executive branch capacity in other ways, thereby complicating the unitarist critique. One surprising insight from the history of federal sector bargaining reveals that neither Congress nor the courts imposed such bargaining on the President.28 Instead, the President urged its adoption for two reasons. First, bargaining allowed the President to recruit skilled workers to join rapidly expanding executive agencies.29 Although the federal government could not compete with the private sector in terms of salary or perquisites, it could offer workers greater workplace autonomy and enable them to serve the public interest free from political interference.30 Second, bargaining tightened the President's control over the federal workforce. Since the late nineteenth century, most federal personnel administration had fallen under the control of the Civil Service Commission (CSC), an immensely powerful independent agency that oversaw everything from employee classification and hiring to disciplinary proceedings.31 Collective bargaining allowed the President to bypass the CSC and take a more active role in shaping federal workforce policies through negotiations and contract.32 In short, while worker protections are often cast as improper limits on presidential power, history shows that presidents themselves view labor rights in precisely the opposite terms, as a means of expanding presidential power through strategic concessions.

Labor rights also respond to concerns that bureaucratic resistance, however valuable in other ways, subverts democratic governance by permitting an unelected cohort of civil servants to shape executive policymaking.33 Labor rights are susceptible to formal, legal resolution and democratic oversight. Many of the disputes over bureaucratic power and managerial control that might otherwise be fought through inchoate "resistance," or opaque attempts to subvert managerial initiatives, are instead channeled into a highly formalized system of negotiation, contracting, arbitration, and appeal. The power arrangements between the bureaucracy and presidentially appointed agency heads are reduced to writings, and disputes are resolved by contract and statutory law, rather than through the exercise of raw institutional power. This arrangement not only makes bureaucratic power struggles more transparent and legalistic, it also enables each of the coordinate branches to supervise and regulate presidential-bureaucratic relations. By directing negotiations with unions, the President actively shapes workplace policy. Congress can shape civil servants' legal rights through statutory enactments. And courts can supervise the enforcement of these rights, reviewing important questions of statutory interpretation and ensuring that both labor and management bargain in good faith.

Nonetheless, civil servant labor rights do present a different set of challenges for the administrative state. While collective bargaining imports some of the legitimizing aspects of American political and legal culture into the federal bureaucracy, it may import some of those cultures' pathologies as well, for instance by providing new avenues to manipulate civil service rights for partisan advantage or to entrench ideological preferences.

This Article proceeds in four Parts. Part I draws on an array of primary and secondary sources to describe the historical origins and ideological underpinnings of federal sector bargaining. Part II sets forth the legal contours of modern federal sector labor rights and analyzes how they reshape presidential power and permit entry points for the coordinate branches to participate in shaping bureaucratic relations. Part III offers case studies on how bargaining can reshape agency dynamics in specific policy areas; it begins with descriptive data on FLRA adjudications, including how frequently labor and management prevail on their contract claims and how that success varies over time. It then provides descriptive accounts of how bargaining has impacted the operation of immigration, environmental, and tax policy. Finally, Part IV concludes with some reflections on the doctrinal and theoretical implications of bargaining's underappreciated influence on the administrative state.

I

THE HISTORY OF FEDERAL SECTOR BARGAINING

This Part draws on an array of primary sources and legislative history to document the history of federal sector bargaining and the reasons for its emergence. This story, while critical to understanding the modern executive branch, has never been told in the legal scholarship and has been presented only sparingly in other literatures. The proceeding sections argue that bargaining rights emerged as a way to expand the executive branch and to retain the professional integrity of skilled bureaucrats, while rendering bureaucratic relationships more transparent and susceptible to legal supervision. This made the federal bureaucracy more legitimate to an American political culture that by the 1970s was increasingly skeptical of centralized federal power.34 Unions were seen by both the President and Congress as a way of preserving civil servant independence while also rendering the civil service more responsive to democratic forces.

Section I.A provides an overview of the Civil Service Reform Act (CSRA) and the structural changes it imposed on the modern federal bureaucracy. Sections I.B and I.C document the reasons for the CSRA's passage, detailing the incentives that both the President and Congress, respectively, had for granting civil servants extensive rights to bargain over the contours of agency management.

A. The Civil Service Reform Act of1978

In 1978, President Carter signed the Civil Service Reform Act into law.35 Although now largely forgotten, the law was the most significant civil service reform in nearly a century: the "centerpiece" of President Carter's efforts at government reorganization.36 The Act's goal was to loosen the power of traditional, Progressive Era merit protections, allowing the President to steer executive branch policy over the resistance of "dug-in establishmentarians" within the federal bureaucracy.37

The CSRA "comprehensively overhauled the civil service system" of the New Deal era.38 As relevant here, the CSRA made two key changes to federal personnel management. One was structural. Prior to the enactment of the CSRA, nearly every aspect of the federal civil service was overseen by the Civil Service Commission (CSC), an enormously powerful independent agency. The CSC had been created by the Pendleton Act of 188339 and had grown over successive generations from a mostly advisory body to one tasked with administering a wide variety of things, such as hiring and classifying federal workers, adjudicating employment disputes and appeals, and formulating government-wide management policy.0 The CSRA abolished the CSC and distributed its functions across an array of new agencies. The Merits Systems Protection Board (MSPB) would oversee employee challenges to adverse personnel actions such as suspensions, demotions, and terminations; the Office of Personnel Management (OPM) would formulate management policy; and the Office of Special Counsel (OSC) would investigate certain violations of federal law, such as improper political activities in contravention of the Hatch Act.41 While still politically independent, these agencies were smaller and more specialized than the CSC, exerting a less concentrated influence over the bureaucratic organization of the executive branch and leaving more space for the President to influence personnel policy.

The second key change was substantive. The CSRA fundamentally altered the array of employment rights available to federal civil servants. Some rights were weakened. For instance, a number of procedural rights that had been developed by the CSC over the middle of the twentieth century and afforded to individual civil servants challenging adverse employment actions were eliminated or significantly curtailed.42 At the same time, however, the CSRA also granted federal workers an array of new labor and contractual rights. For the first time, federal workers were given the legal right to join a union, to collectively bargain over nearly any issue affecting the "conditions" of their employment, and to sue their employing agencies for violations of those contractual provisions.43 These contractual rights were to 'be enforced by a new independent agency, the Federal Labor Relations Authority (FLRA). The FLRA had a number of component parts, but at its core was a system of semi-private arbitration: In the event of an alleged breach of a CBA, the agency and the union would bring their dispute before a mutually selected, third-party arbitrator. Arbitrations could be appealed, or "except[ed]" in labor parlance, to the FLRA itself, which was composed of three bipartisan members serving fixed, five-year terms.44

The CSRA's establishment of labor rights was a dramatic departure from historical practice. Prior to 1978, federal law provided no formal statutory mechanism for employees to shape the ways in which the federal workplace was managed through contract or union organizing.45 While civil servants did attempt to unionize and bargain, they were afforded no formal legal status and their agreements were unenforceable against the federal government.46 Many commentators through the early 1970s believed that public sector unionism was fundamentally incompatible with democratic principles.47 In a widely cited article, then-professor Ralph K. Winter argued that a unionized public sector would "radically alter[]" the political process through the exercise of its extensive bargaining power.48 Indeed, prior to the 1960s, many viewed public sector bargaining as an unconstitutional delegation of executive power to private citizens.49

The CSRA's establishment of muscular federal labor rights thus poses a historical riddle. Why, if greater presidential control of the bureaucracy was the ultimate goal, did the CSRA create for the first time an extensive right for labor to bargain collectively? Why cede so much managerial authority to unions, particularly at a time when private sector labor power was declining precipitously?50 And why restructure bureaucratic relationships-a paradigmatic component of public law-through bargaining and contracts, a form of private ordering that historically had played no role in executive branch management?

As described in Sections I.B and I.C, a central claim of this Article is that the private law model of contract and bargaining provided a vehicle for dramatically expanding the scope of public administration from the mid-twentieth century forward, while presenting that expansion as both legally and democratically legitimate. The rise of federal sector collective bargaining can be understood as the product of two concurrent trends. One was internal to the executive branch, driven by the desire of the President to assert greater political control over the terms of federal employment.The other was external, driven by Congress's desire to exert greater control over executive branch operations and management. Both trends responded to a need to expand state capacity while shoring up its legitimacy, reining in both real and perceived abuses of a bureaucracy insulated from democratic control.

B. Labor Rights as an Enhancement of Presidential Power

President Kennedy first established federal sector bargaining by Executive Order in 1962,51 and it was subsequently expanded by presidents of both parties.52 The move reflected two strategic considerations. One responded to changes in the labor market. The President encouraged collective bargaining to entice skilled labor to join the executive branch. By offering workers autonomy and protection from managerial abuses, the federal bureaucracy could compete with the private sector. Politically, contracting also offered the President an opportunity to sidestep the long-standing managerial power of CSC. In both cases, contrary to depictions of unions and bureaucracies as illegitimate drags on presidential power, the executive branch itself initiated bargaining, primarily as a means of politically empowering the President and building state capacity.

1. Labor Market

Government from the 1950s to the 1970s was a "growth industry."53 The postwar era saw a major expansion in social service provision and a rapid expansion in the federal government's regulatory and national security remits.54 The growing need for skilled personnel created a recruiting crisis for government. There was a general perception that despite multiplying needs, the quality and efficiency of regulation and federal service provision had declined badly in the decades since the New Deal.55

The executive branch identified several recruiting challenges. One was a general inability to keep pace with private sector wages. In a 1953 report, the House Committee on the Post Office and Civil Service identified a number of "common deterrents in obtaining sufficient applicant supply," including pay "significantly below comparable jobs in industry" and "insecurity of tenure," which had a "marked adverse influence on the attraction of high caliber scientific and professional personnel, as well as key administrative personnel," as it was "generally felt that industry offers a better opportunity than Government for advancement in position and salary if an individual merits such advancement."56 The CSC reached similar conclusions about "[t]he problem of attracting highly qualified people-scientists, engineers, [and] administrators" in 1959.57

Low wages were exacerbated by widespread managerial abuses in federal employment. Despite extensive formal protections from major adverse actions such as firing and demotion, civil servants were susceptible to an array of lower-grade abuses that, in practice, gave managers wide range to harass or demoralize them. As a comprehensive study of the civil service concluded in1975,"[t]he work environment may be made friendly or hostile, open or repressive, tolerable or intolerable by the superior, who is equipped with a finely honed and calibrated set of sanctions to be used against subordinates."58 The CSC, which had a close relationship with the management at many agencies, was often accused of looking the other way when abuses occurred. By the 1970s, this reality had become widely known. As The Washington Post summarized, under the civil service system managers could "dispatch any civil servant" when their "prerogatives" are "attack[ed]."59 The practice was epitomized by the so-called Malek Manual (drafted by Fred Malek, President Nixon's director of personnel), a memorandum that expansively outlined the strategies managers could employ to sideline or harass disfavored workers without running afoul of civil service laws.60 The memo, which became notorious during the Senate's Watergate investigation, was considered to be "to personnel administration what Machiavelli's The Prince is [to] the broader field of political science."61

More generally, there was a growing belief that America, as the world's most powerful democracy, should subject its own government apparatus to "industrial democracy," promoting "consultative management by its own good example."62The 1949 Hoover Commission on government reorganization observed that employees "were 'not provided a positive opportunity to participate in the formulation of policies and practices which affect their welfare"'and"that'the President should require the heads of departments and agencies to provide for employee participation in the formulation and improvement of Federal personnel policies and practices."'63 By the 1950s, many labor organizers and public administrators questioned why robust unionization was permitted in the private sector but forbidden for similar roles in the public sector. The Second Hoover Commission concluded in 1955 that "[t]he Federal Government ha[d] lagged behind other organizations in recognizing the value of providing formal means for employee- management consultation."64

These challenges-the growing need for federal manpower, competition from the private sector, and the executive branch's particular need for skilled knowledge workers-required new models for recruitment and management. In exchange for lower wages than those in the private sector, collective bargaining could offer workers greater autonomy and a sense of professional purpose.65 As one expert in public administration testified in 1978, the "increasing professionalization of skills and bodies of knowledge" in social science and technical fields required management strategies for attracting skilled labor and for maximizing its creative output.66 This led to "an increasing reliance on public sector collective bargaining," a "decreasing reliance on authority/control strategies," and "a greater reliance on rational analysis, negotiation, and incentives."67

As early as the 1940s, the CSC and other commissions studying the civil service began insisting that federal employees' labor rights should be in parity with private sector ones.68 Others, including the Hoover Commission and National Civil Service League, similarly encouraged dealing.69 Increasingly, major private sector unions began to organize public sector workers.70 The executive branch began responding to these pressures even before any formal legal authorization.71 Informal bargaining with growing unions and trade associations in the executive branch expanded throughout the 1940s and 1950s.72 A 1961 Task Force commissioned by President Kennedy recognized that "[f]ederal employees very much want to participate in the formulation and implementation of personnel policies and have established large and stable organizations for this specific purpose."73 Executive Order 11,491 formalized this understanding, creating a centralized process for civil servants to bargain over employment conditions with agency heads.74

2. Disputes Over Presidential Administration

In addition to recruiting and labor pressures, the President also had a concrete political interest in pursuing more expansive bargaining. The CSC, as an independent Progressive Era agency, was highly insulated from presidential influence.75 Bargaining between unions and presidentially appointed agency heads gave the President greater direct control over the contours of bureaucratic power and cut a powerful intermediary out of his relationship with the federal workforce.

Moreover, presidents had long been hostile to the CSC. Since the Wilson administration, presidents had sought to exercise greater control over executive branch operations.76 The Brownlow and Hoover commissions on government reorganization had both wanted to bring personnel management under direct presidential control but had failed, even as they had succeeded in restructuring other previously independent branches of the executive branch such as the Budget Bureau.77 The independent CSC proved sticky: It had extensive formal legal power, management expertise, and was adept at building both bureaucratic and legislative constituencies.78It managed everything from hiring and classification of employees, to investigating and adjudicating disciplinary disputes, to generating high-level management policy. Serving "simultaneously both as the protector of employee rights and as the promoter of efficient personnel management policy,"it had become "manager, rulemaker, prosecutor and judge" of personnel matters.79 The CSC's extraordinary and very opaque power led to concern that the "federal personnel system" had become "too immune from political directives of any kind," and thus was "isolated, and resistant to carrying out new policy directives."80 This "lack of responsiveness to elected political leaders," in turn, revived longstanding concerns about the democratic legitimacy of the tenured civil service, as it "indicated a general lack of bureaucratic responsiveness to the citizenry."81

Labor agreements offered the President an opportunity to bypass the CSC, and thus the contours of bureaucratic power, and to negotiate terms of employment directly with the federal workforce. Moreover, these arrangements could be reduced to written and legally enforceable contracts, rather than entrusted to the rulemaking and enforcement discretion of the CSC. Bernard Rosen, chair of the CSC, expressed his view in 1975 that the CSC's position as sole arbiter of personnel disputes had become untenable: "With the growing power of Federal employee unions, and as general government-wide personnel policies have become a matter of increasing concern to them and to other organizations in our society," Rosen wrote, the "complexity of Federal personnel administration" and the "increasingly adversary relations developing between unions and agency management" necessitated "a central personnel agency that enjoys the confidence of the Congress, the President, and the unions ...."82

With the neoliberal policy turn of the late 1970s,83 President Carter had the opportunity to codify federal bargaining rights into law. Several factors produced the conditions for bureaucratic reform, including a loss of political support for bureaucracy, an economic slowdown, and resulting fiscal constraints. In the 1950s and 1960s, there had been an emphasis on expanding services, with less concern for fiscal discipline. By the 1970s, however, large outlays for bureaucratic programs, and the tenured civil servants that administered them, were increasingly seen as fiscally irresponsible and wasteful of taxpayer dollars.84 Carter had campaigned on the promise to clean up the "horrible bureaucratic mess in Washington" and to institute "tight, businesslike management and planning techniques" in government.85 But beyond cost-cutting, the CSRA also reflected a deeper ideological evolution in public administration. Throughout the 1960s and 1970s, economists and policy consultants had been reframing public policy in terms of economic efficiency, arguing that government programs modeled on private enterprise would be not only more socially productive but also, like private enterprises, more responsive to the demands of the public and the market and thus more legitimate.86 The CSRA extended this logic to the management of the civil service itself. While the bureaucracy of the New Deal legitimized its power through subject matter expertise and insulation from politics, the bureaucracy of the post-New Deal era would legitimize its power by bargaining for it. Contracts would reflect the social and economic value of civil servants by granting them only those labor rights to which the President and his appointees, under electoral pressure to deliver useful services, would agree.

C. Labor Rights as a Restraint on Presidential Power

The President thus leveraged bargaining rights to recruit talent to the executive branch and to consolidate presidential control over the bureaucracy. Congress, by contrast, viewed those same labor rights as tools for exercising greatersupervisionover presidentialadministration.Thesame attributes that made contract and bargaining effective tools for recruiting and negotiating with labor-their transparency, their enforceability against the President, their capacity to change in response to shifting political and economic conditions, and their ability to cover conditions of employment not captured by civil service laws-also made them effective tools for supervising presidential control of the executive branch.

In the 1970s, Congress and the judiciary established new checks on presidential power in response to the Watergate and Vietnam crises, as well as the revelation of longstanding abuses by the FBI, CIA, and other executive agencies.87 These checks included statutory reforms and commissions,such as the Freedom of InformationAct (FOIA),the Foreign Intelligence Surveillance Act (FISA), and the Church Commission, to limit executive discretion in law enforcement.88 They also included more general limitations on the power of the administrative state to make and enforce regulations, through judicial innovations such as "hard look" review of agency action.89 The CSRA presented a vehicle for extending similar interbranch checks to executive branch personnel management and was supported enthusiastically by congressional Democrats. In a 1977 report, the House Committee on the Post Office and Civil Service emphasized the need for alabor rights "system based on... statute,"rather than executive order, and with meaningful access to judicial review.90 The American Bar Association likewise testified that "[c]onsistent with a fundamental precept of our constitutional law system," statutory labor rights would provide civil service with "a source of authority outside the executive branch and beyond the control of. the executive as the primary employer of Federal civil servants," allowing for "access to the judicial branch for redress of grievances with the executive branch" and "meaningful bilateralism in the collective bargaining relationship."91

Like the President, Congress relied on the language of efficiency to justify the enlargement of labor rights. Here, it was the efficiency of management, rather than the bureaucracy, that Congress claimed to be advancing. In a committee report in support of draft labor legislation from 1977, the House Committee on the Post Office and Civil Service opined that "collective bargaining rights for Federal employees," including "[e]ffective labor unions," would "play a positive role in improving productivity in public service."92

Federal workers also lobbied for collective bargaining to play a greater role in civil service independence. Labor had historically been suspicious of the CSC and viewed it as hostile to their interests. A comprehensive 1975 study of civil service and the CSC observed that, despite statutory protections against firing and other major adverse actions, civil servants found themselves with "a lack of substantive rights" in a relationship "in which the superior has many opportunities to make discretionary judgments of considerable importance to the subordinate."93 Workers'"exercise of legal rights in such a relationship" was "often difficult and restrained."94 By the 1960s and 1970s, federal workers had come to view the merit system as a "euphemism for favoritism"and saw collective bargaining as an alternative that advanced stricter application of employment rules, based on uniform application of CBAs rather than managerial discretion.95

For labor and its allies in Congress, however, a weakening of the CSC's traditional power over federal personnel (which, however flawed, did restrain at least some managerial abuses by the President and his appointees) had to be accompanied by more robust labor and bargaining rights. As a legislative representative for AFL-CIO, which represented many federal workers, put it, labor's "support for the President's civil service reform plan is not unconditional," but was contingent on a robust "system of labor-management relations" codified "into statutory law."96 Labor's goal was not just to codify specific substantive labor rights, but to establish a statutory framework for collective organizing, bargaining, and adjudication to ensure that those rights were meaningfully enforced in practice. As a chapter president of the National Treasury Employees Union (NTEU) testified, "[i]f this reorganization effort is to improve the efficiency of government, and to protect the public interest in a merit-based civil service system, expanded collective bargaining must be a central factor."97 The CSRA would invest large, well-resourced unions, not individual employees or an independent agency with doubtful allegiances, with the legal power to bargain, litigate, and lobby on behalf of workers, granting labor's "countervailing power" against the President a foothold in law.98 The weaker position of the labor movement in the 1970s helped supporters of the CSRA frame unions as cooperative partners in government, rather than an adversarial interest group.99 Historical concerns that federal worker unions would be too powerful to be held democratically accountable-concerns prevalent through the bullish labor markets of the 1960s-had significantly diminished.

As enacted, the CSRA formalized and expanded existing bargain- ing relationships and provided for independent agency enforcement and judicial review of labor disputes. In addition to abolishing the CSC, the CSRA moved many traditional civil service functions into separate, presidentially controlled agencies, shifting the center of bureaucratic power from statutory to contractual protections.100 In doing so, the Act adopted the rationales of efficiency and amicable labor relations deployed by both labor and the President. As articulated in its statutory purpose, the Act's goal was to protect "the right of employees to organize" and "bargain collectively," which would "safeguard[] the public interest," by promoting "the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government."101

II

HOW BARGAINING RIGHTS SHAPE BUREAUCRATIC POWER

The goal of the CSRA was to provide a framework that could mediate employment disputes, empowering both labor and the President to reshape bureaucratic relationships, while at the same time allowing for legal and democratic supervision by the coordinate branches. This Part provides a typology of the methods by which unionized labor reshapes presidential administration in contemporary practice.

Descriptively, this Part aims to show how labor rights, while largely unnoticed and unstudied, reshape executive branch relations in profound ways. Across a wide variety of policy areas-from federal prisons to the adjudication of asylum applications-collective bargaining changes how agencies (and the millions of bureaucrats who staff them) carry out their missions. What enforcement guidelines border patrol agents follow, how claims processors assess benefits applications, how guards staff prisons-all of these decisions are shaped by labor agreements, with profound consequences for federal policy.

Normatively, this Part aims to upend a core assumption about bureaucratic power in the contemporary executive branch. There are many tools that the President uses to structure the incentives and behavior of civil servants, and thereby to influence how they implement federal policy: the power to discipline employees for disobedience; the power to allocate an agency's budget and resources, thereby setting the agency's enforcement priorities; the power to set performance standards and productivity quotas, determining what types of bureaucratic decisions merit reward or punishment; and many more. Most scholarship on administrative law and presidential power presume these tools to operate in a top-down manner: The President implements new management directives, and bureaucrats either obediently follow or illicitly resist them.10

But, as set forth below, this model of top-down implementation and bottom-up resistance is critically incomplete. More often, the President and the unionized civil service bargain over questions of management, rather than fight out their differences through the exercise of raw institutional power. Indeed, in a sharp deviation from the Progressive Era model of a politically insulated civil service, the CSRA explicitly empowered unions to act in a political capacity, including by lobbying Congress, litigating management disputes before Article III courts, endorsing political candidates, and speaking out publicly on questions of executive branch management and policy. Unions thus engage directly in democratic politics and serve as a key mechanism for bringing other democratic stakeholders, such as Congress and the judiciary, into disputes over the President's managerial power. In short, modern bureaucratic management is far more mutualistic, legalistic, and democratically engaged than administrative law scholarship generally presumes.

Section II.A below examines the substantive rights that labor law confers on civil servants, and the ways in which those rights can reshape presidential administration. Section II.B discusses unionization rights, including the boundaries and limitations of civil servant unionization and the role that federal sector unions play in promoting democratic oversight of the executive branch.

A. How Substantive Rights Mediate Bureaucratic Relations

Substantive labor rights, particularly those memorialized in collective bargaining agreements, are at the heart of how labor rebalances executive branch power. The CSRA grants extensive rights to labor. With certain important exceptions, particularly for salary and benefits which cannot be altered by contract,103 unions are permitted to bargain over nearly any issue affecting "conditions of employment."104 The main limitation on civil servant bargaining, and thus the primary battleground in litigation between agencies and labor, are certain statutorily defined "management rights," which are enumerated in sub- provisions of 5 U.S.C. § 7106.105

Through contractual provisions, the President and the civil service can agree to modify any number of key management tools, from employee discipline to performance evaluation metrics to merit pay. For the purpose of analyzing their impact on presidential power, contractual rights can be sorted into three categories. First are rights that act as a check on structural deregulation, or the use of abusive working conditions to demoralize or sideline bureaucrats in order to undermine an agency's substantive policy mission. Second, labor rights can act as indirect constraints on policy by shaping management tools, such as performance reviews and productivity requirements, that are well known to nudge civil servants' decisionmaking in certain ways. Finally, in certain circumstances labor can act as a direct constraint on policy by seriously limiting the types of enforcement directives management can issue to employees.

1. Check on Structural Deregulation

A major method of undermining regulatory effectiveness is to defund agencies, undermine the morale of agency personnel, and obstruct agency operations. Jody Freeman and Sharon Jacobs have identified many of the strategies that the President may use to cripple [incapacitate] agencies while evading civil service protections, including imposing burdensome working conditions, reassigning staff to undesirable roles, "demoralizing" staff through denigration and abuse, and cutting funding, resources, and pay.106 These are not direct attacks on an agency's legal authority, but a "structural" attack on an agency's ability to function.107 President Trump's unusually aggressive posture towards administrative agencies has put structural deregulation back in public focus, but it has long been a feature of presidential management, as the controversy surrounding the Malek memo in the 1970s illustrates.108

Here, many of the seemingly prosaic aspects of federal labor law are important. The terms and conditions of employment that govern the quotidian existence of civil servants are precisely the sorts of areas that structural deregulation targets. Changes to remote work policies, scheduling, and other routine workplace concerns can be used to demoralize or undermine an agency's staff.109 Unions routinely leverage contract rights to prevent deterioration in working conditions, litigating issues such as increases in workloads,110 compensation for travel and other overtime expenses,111 backpay for wrongful personnel actions,112 and how and when to award bonuses or special compensation required by contract or statute.113 Agencies can also be required to bargain over reductions in staffing levels or reorganization of duties.114

There are numerous examples in which fights over working conditions reflect larger political struggles over the ability of an agency to properly carry out its statutory mission. The infamous nationwide strike in 1981 by the Professional Air Traffic Controllers Organization (PATCO), representing federal air traffic controllers, is a useful example. The PATCO strike flouted the federal prohibition on civil servant strikes, in a bid by the union for higher pay and improved working conditions.115 Instead of negotiating, President Reagan broke the strike by calling up military service members and retired controllers to manage the nation's air traffic and firing the strikers (who made up nearly seventy- five percent of federal controllers).116 While PATCO is remembered today for its catastrophic collapse, the union's founding in the 1960s was driven by a decline in conditions of employment that related directly to the substantive mission of the Federal Aviation Administration: Flight speeds for jet planes reduced the margin of error for air traffic controllers, while understaffing and aging equipment made working conditions for controllers increasingly difficult and airport conditions less safe, leading to crashes. It was the FAA's failure to respond to these worker complaints, and its attempt to cover up safety risks, that first inspired the formation of the PATCO union.117

Contemporary examples abound as well. During the Trump Administration, the Department of Education was a frequent target of structural deregulation. In 2018, the agency purported to impose a new labor contract on employees without bargaining that, among other things, removed protections regarding pay raises, altered performance evaluations, and reduced rights regarding overtime, childcare, and work schedules.118 The FLRA subsequently ruled the unilateral contract illegal, forcing the agency to enter into an extensive settlement covering disputed labor issues.119 Federal prisons were another key site of disputes over labor rights. The Trump Administration sought to cut budgets, weaken unions, and worsen conditions at federal facilities at the Bureau of Prisons (BOP), as a prelude to privatization of many key functions. The agency would, for instance, cut shifts for guards and replace them with untrained, non-custody employees to guard prisons.120 These policies were enacted despite Congress allocating money for staffing, which the Administration refused to spend.121 At the same time, federal facilities experienced a significant influx of prisoners, including very large numbers of immigrants detained by ICE.122 BOP saw a major decline in prison conditions, leading to increases in assaults, health risks,123 overcrowding,124 and declining staff morale.125 The primary means for resisting these deregulatory policies was labor litigation. Many of these labor disputes concerned the precise tactics-shifting schedules, using untrained and unauthorized workers to staff dangerous prisons, understaffing, overcrowding, removing posts from union positions-that the Administration was deploying to defy Congress and pave the way for privatization.126 Workplace disputes thus dovetailed closely with a broader agenda of weakening prison standards and asserting greater political control over prisons.

2. Indirect Constraints on Policy

Labor can also serve to constrain substantive executive branch policy in many indirect but significant ways. It has long been recognized that certain presidential management techniques, while they putatively concern the internal business of overseeing executive branch resources and personnel, can impact substantive enforcement outcomes. As Jerry Mashaw canonically articulated, the administration of many large- scale federal welfare and regulatory programs requires a species of "bureaucratic justice," where fairness and efficiency are achieved through quality assurance, performance metrics, productivity quotas and other general, organization-wide management tools.127 Labor can reshape how many of these tools are used, in turn reshaping agency outcomes.

One important example is productivity requirements. Determining how much work employees are required to perform, and how they are to perform it, is a well-recognized management tool. These management tools have particularly important impacts on adjudicatory bodies and other discretionary decision-makers: Rules governing decisionmaking processes limit adjudicators' flexibility, while increased productivity requirements reduce the amount of time and effort adjudicators can spend on any one case, making it difficult to rule in favor of poorly represented or under- resourced parties.128 The FLRA routinely enforces contractual limitations on the types of productivity quotas agency management imposes, intervening for instance in disputes over quotas for claims processing for veterans' benefits,129 screening of passport applications by the Department of State,130 and caseload requirements for Taxpayer Advocates employed by the IRS.131

The Trump Administration engaged in particularly hard-fought disputes over productivity and process rules. The Social Security Administration (SSA) extensively litigated proposed productivity requirements for its unionized administrative law judges (ALJs), which would have sped up case timelines, potentially impacting the quality of decisionmaking and the amount of benefits awarded. An arbitrator repeatedly found that the agency's requirements violated the parties' CBA. A two-member majority on the FLRA, appointed by President Trump, however, consistently reversed these rulings,132 over the dissent of Member DuBester, the sole Democratic appointee, who found the policy to be a "straightforward" violation of the parties' agreement.133 Immigration law judges (IJs), likewise, have used bargaining and litigation to resist increased efficiency requirements during the Trump Administration, which would have limited IJs' ability to assist asylum seekers during removal hearings.134 Similarly, the United States Customs and Immigration Service (USCIS), under de facto head Ken Cuccinelli,135 pressured asylum officers to reduce grants of asylum, citing statistics showing high grant rates, urging officers to use tools to combat "frivolous claims" and make only "positive credible fear determinations."136 The union resisted these initiatives, which it characterized as pressure to "misapply laws" and "politicize" the asylum process.137 The USCIS union likewise challenged administration guidance to exclude large categories of migrants from asylum consideration and to divert considerable numbers to Honduras and Guatemala, calling the policies "unlawful" and even filing an amicus brief in support of a lawsuit challenging them.138

Negotiated provisions governing selection and promotion likewise can yield "significant" divergences from management's preferences.139 Federally unionized technicians with the Ohio National Guard, for instance,negotiated extensive contractual requirements for promotions, including criteria used to evaluate candidates and differences in merit promotion procedures.140 Agencies can be required to honor promotions dictated by contract.141 The FLRA has required the SSA to bargain over promotion plans for adjudicatory employees.142 Union contracts can also prevent discrimination. Unions included clauses in contracts protecting gay employees in the 1990s, well before federal antidiscrimination protections for LGBTQ+ people existed.143

Labor can also substantially reshape employment-based discipline and the hierarchies and incentives that disciplinary power creates. While agencies are subject to formal disciplinary procedures under civil service statutes, they often discipline workers through negotiated grievance procedures, resulting in sanctions that can differ substantially from those that might otherwise apply.144 A prominent example of this phenomenon involved a group of CBP officers who were discovered to have exchanged racist and threatening messages through a private Facebook group in 2019. Even though the incident aroused public outrage and the CBP Discipline Review Board recommended harsh punishments-including termination for eighteen agents-following a negotiated grievance process, some of the officers received substantially lighter punishments, including letters of reprimand, paid suspensions, and only two terminations.145 Indeed, according to data recently released by the Office of Personnel Management, arbitrators who hear cases under labor grievance reinstate three-fifths of all dismissed employees, as compared with only one quarter of all MSPB appeals.146 These obstacles to firing and other forms of discipline are some of labor's most powerful tools, and are also among its most controversial: Many critics accuse union-backed limits on employee discipline of rendering government service less efficient, though the evidence on this question is hotly contested.147 [FOOTNOTE 147] 147 See id. at 1 (arguing that the grievance arbitration "makes removing unionized federal employees very difficult"); see also PHILLIP K. HOWARD, NOT ACCOUNTABLE: RETHINKING THE CONSTITUTIONALITY OF PUBLIC EMPLOYEE UNIONS 18 (2023) (arguing that, due to public sector unionization,"[e]lected executives," including the President, "no longer have effective authority over the operations of government"). [\FOOTNOTE 147]

Finally, labor rights condition the ability of civil servants to leak, criticize, or otherwise speak out publicly about agency policy. David Pozen and Jennifer Nou, among others, have described how unauthorized disclosures of critical information by civil servants can check agency abuses, inform policy debates, and shape agencies' agendas by shifting public opinion.148 Labor rights are a key guarantor of civil servants' ability to speak publicly about agency policy through testimony, statements to the press, and other means. The CSRA protects the right of employees, when speaking in their capacity as union representatives, to present the "views of the labor organization" to "appropriate authorities," which the FLRA interprets, in many circumstances, to include the press.149 Union officials can thus speak publicly about agency policy and management, even when line employees cannot. Union officials have leveraged their protected status to criticize executive branch policy in environmental regulation, education, immigration, and labor, among other policy areas.150 Unions also advocate for the right of other employees to speak out through litigation and labor agreements. Immigration judges, for example, have historically been protected by labor agreements in their right to critique removal policies, even if they are not union officials.151

3. Direct Constraints on Policy

Labor provisions may also directly constrain policy choices. Theoretically, many such provisions are limited by management rights.152 But labor has been pushing for such contractual provisions more aggressively in recent years, sometimes with the encouragement of sympathetic presidents looking to lock in policy preferences.

By way of disputes over conditions of employment, labor can resist substantive policy directives to which line employees are opposed for professional, ideological, or other reasons. As discussed in greater detail in Part III, law enforcement functions, particularly in the immigration context, are perhaps the most prominent example. Unions representing CBP and ICE agents have successfully used labor rights to challenge many substantive management policies touching core questions of immigration enforcement tactics and priorities, often over the objection that such challenges infringe on protected management rights. These include what weapons agents are issued,153 what types of searches they must perform and how,154 and what information officers must provide to detained immigrants, including identifying information about officers and information about potential legal remedies,155 among many other issues. Complaints about conditions of employment have been used, among other things, to delay the implementation of agency policies directing agents to prioritize detentions of violent criminals and to deprioritize arrests of minors and other nonviolent immigrants.156

Under President Trump, both CBP and ICE negotiated, with the encouragement of the administration, for even more expansive rights to challenge any enforcement guidance affecting the conditions of their employment and to delay the implementation of those policies until any labor disputes have been resolved, a process potentially lasting years.157 Under the Biden Administration, unionized employees at the EPA are now attempting to bargain for similar protections that would preclude the agency from adopting any policies that violate certain principles of "scientific integrity."158 These developments demonstrate the capacity for labor to become not only an influence on policy but, through the deliberate use of conditions of employment as a restraint on managerial discretion, a primary driver of it.

B. How Unionization Rights Mediate Bureaucratic Relations

This Section sets forth the special rights that unions enjoy under the CSRA, and the ways in which union rights advance the separation-of-powers goals of the CSRA. Unions are the bedrock of legalized resistance to presidential management. The CSRA did not individualize labor rights, but instead provided for collective organization in institutions that are capable of bargaining, litigating, and lobbying.159 Battles between the civil service and the President over the scope of unionization rights, the proper bargaining units to be represented by unions, and the resources and legal rights available to unions reflect the growing centrality of collective bargaining to disputes over bureaucracy and the importance of unions in determining the balance of power between the President and the tenured workforce. The following sections set forth: (1) the value of unions to the civil service and the internal separation of powers, (2) the ways in which the President and the civil servants contest the scope of union power, and (3) the ways in which unions serve to further democratic and interbranch supervision of the President.

1. The Value of Unions

The civil service's move toward unionization reflects a broader recognition of the value of organized groups in protecting rights and pursuing key political objectives.160 Unions accumulate resources and expertise, allowing civil servants to mount sophisticated and well-financed defenses in labor disputes and to lobby effectively on key issues.161 Unions, for instance, are more effective at litigating employment disputes, a key tool in resisting the disciplinary efforts of management.162 They achieve higher win rates than unrepresented employees before arbitrators, a key strategic consideration for union-side counsel, as well as a key source of criticism from opponents of unionization rights.163 Unions also bolster the ability of civil servants to successfully litigate employment disputes against agencies in other ways. Through FLRA litigation, unions have secured civil servants Weingarten rights: the right to have a union representative present during a disciplinary investigation.164 Unions have likewise fought, with mixed success, to bargain for specific substantive rights for civil servants during interviews by agency inspectors general.165 Unions also provide extensive financial and logistical support to individual employees. The National Border Patrol Council, for instance, has established legal defense funds for CBP officers who are under investigation for their involvement in "critical incidents," such as the use of force.166

Even when unions do not litigate labor disputes directly, the threat of litigation-the possibility of losing, the need to delay policy implementation, the drain on budgets, and the attendant uncertainty-incentivizes agencies to cooperate with unions, and to take their preferences into account when staffing political positions and formulating policy. For instance, powerful unions, including those representing ICE and the EPA, can and do express their opposition to certain agency heads, dissuading the President from appointing them for fear of souring labor relations and inciting costly litigation battles.167

Perhaps the best example of labor's deterrent power is President Clinton's National Performance Review (NPR) program, launched in 1993. NPR's goal was to "reinvent[]" government by streamlining agency operations, reducing the size of the federal workforce, and reducing labor-management litigation.168 In exchange for union support for a variety of cost- and personnel-cutting measures, President Clinton granted unions substantial new powers.169 The National Partnership Council, which shaped agency reorganization policy, was given four union representatives (one from AFL-CIO, and one each from the largest federal unions-NTEU, AFGE, and NFFE).170 Further, in exchange for union cooperation, President Clinton issued Executive Order 12,871 requiring agencies to bargain over formerly optional subjects, effectively waiving a broad range of management rights and significantly expanding union bargaining power.171 Unions also took a substantial role in shaping the federal government's downsizing to ensure union positions received protection during workforce reduction.172

In addition to litigation, unions also have extensive statutory power to lobby Congress, often acting as one of the only sophisticated, proregulation advocacy groups in a competition of political influence dominated by private interests and well-funded nonprofit groups. The CSRA created unions that are, in effect, federally subsidized by dues, "official time" (time during which union officials are paid to engage in organizing and bargaining work), and protections against unfair labor practices.'73 To facilitate union lobbying, Congress also created numerous exceptions to rules governing political engagement by civil servants, including the right to lobby on behalf of a labor organization and Hatch Act exemptions to participate in politics.174

Unionized federal employees have been politically engaged since the enactment of the CSRA, lobbying on a range of budgetary and regulatory reform issues.175 Unions lobby on issues ranging from regulatory enforcement policy, to the selection of agency leadership, to questions of funding-and their efforts have had substantial influence in Congress.176 Unions representing the employees of the NLRB, Department of Education, and IRS have all, for instance, lobbied for increases in appropriations for regulatory efforts that have been regular targets of under-funding.177 Labor also endorses political candidates, testifies routinely before Congress, and speaks to the press on high- visibility policy issues, often expressing views contrary to the views of agency leadership.178

#### It’s reverse causal---especially for scientific integrity protections.

Dorning 25 [Jennifer Dorning, president of the Department for Professional Employees, AFL-CIO, “Congress must immediately restore the union rights of federal employees,” The Hill, 9-1-2025, https://thehill.com/opinion/congress-blog/labor/5477873-trump-union-busting-attack/

Specifically, through collective bargaining, federal employees are able to offer expertise and experience that improves processes, reduces waste and generates efficiencies.

Officers at the Transportation Security Administration have been able to negotiate for policies that provide for better work-life balance and expanded benefits that have helped performance and retention at the agency.

Additionally, collective bargaining at the Department of Veterans Affairs led to an improved promotion process, which is important to ensuring the agency can retain talented staff.

At the Social Security Administration, union members secured more time for employees to attend and complete training that helps them perform their responsibilities more effectively.

Union rights also provide federal employees with a voice and protections that allows them to push back against politically motivated requests to compromise professional standards or ignore facts without putting their jobs at risk.

For example, EPA staff secured scientific integrity provisions and whistleblower protections in their union contract to ensure federal scientists cannot be pressured to alter climate data to align with political agendas. FEMA employees, who support communities that have suffered from natural disasters, negotiated for the right to refuse unlawful orders.

If federal employees’ union rights are not restored, we can expect to see a politicized civil service that puts politicians and special interests ahead of the American people. This means that the effectiveness of government services will suffer, which will result in worse outcomes for everyday Americans.

Federal employees first gained collective bargaining rights over a half-century ago and these rights were expanded over time as Republicans and Democrats realized the utility of having a structured process for federal workers to address workplace issues without disrupting government operations.

Historically, presidents from both parties have upheld federal employees’ union rights. President Trump’s efforts to eliminate the collective bargaining rights of federal employees are radical and wrong.

#### Third, substance. Policy autonomy is the only way to access the benefits of expert capacity

Bednar 25 [Nicholas R. Bednar, Associate Professor of Law at the University of Minnesota Law School, PhD political science, Vanderbilt University, JD University of Minnesota Law School, “Presidential Control and Administrative Capacity,” Stanford Law Review, 77, April 2025, 77 STAN. L.REV. 823, https://review.law.stanford.edu/wp-content/uploads/sites/3/2025/04/Bednar-77-Stan.-L.-Rev.-823.pdf]

B. The Trade-Off Between Capacity and Control

The results here and elsewhere show a positive relationship between capacity and structural independence.472 Why do we observe this relationship? One explanation is that structural independence promotes bureaucratic autonomy.473 Autonomy is not synonymous with the legal concept of “independence,” but describes a broader form of discretion.474 By my definition, autonomy does not require a complete transfer of control from the President to agencies. Rather, career employees must personally feel like their opinion contributes to the operations of the agency.

Scholars have illustrated the importance of autonomy across time and contexts. Countries with stronger civil service laws possess higher levels of state capacity.475 Historically, federal agencies with greater autonomy developed strong policymaking and implementation capabilities.476 To explain this correlation, Sean Gailmard and John Patty theorize that discretion encourages individuals to choose careers in government and build expertise.477

As autonomy declines, however, career employees leave their agencies for other opportunities and expend less effort to build expertise.478 Employees who perceive high levels of politicization are a third more likely to express an intent to leave their agencies.479 These same employees engage in fewer activities to develop expertise, such as attending trainings or consulting with outside policy experts.480 Other evidence suggests that politicization decreases employee morale and results in poor performance.481 As Mark Richardson explains, “[l]oss of policy influence reduces the value policy-motivated civil servants derive from public service.”482

Agency structures help to protect autonomy. Gailmard and Patty argue that governments can preserve autonomy, in part, by “instituting relatively common civil service practices,” such as tenure.483 Although the United States has relatively high capacity compared to other states,484 some agencies exhibit higher capacity than others.485 One likely explanation is that many of the highest capacity agencies have additional structures, such as for-cause removal protections, that temper—but do not wholly eliminate—political influence.486

Collectively, these studies—paired with the finding that independent commissions exhibit higher levels of capacity487—offer evidence of a negative correlation between presidential control and capacity. Reforms aimed at increasing presidential control may erode capacity by eliminating structures that preserve autonomy. If true, then increasing presidential control may further weaken the President’s ability to implement their agenda in agencies that suffer from capacity constraints.

Current movements in constitutional law seek to strengthen presidential control. Proponents of a unitary executive argue that Article II vests the executive power in the President alone and, therefore, Presidents must have authority to control all powers of the Executive Branch.488 Although proponents of a unitary executive agree that Presidents must control administrative policymaking, they disagree about what mechanisms of control the Constitution mandates.489 Some proponents believe that Presidents may personally exercise the policymaking authority otherwise delegated to agencies.490 Others state that the Constitution permits the President to “veto” the actions of a subordinate.491 Most (but not all)492 proponents argue that Article II endows Presidents with the power to remove officers.493 This final argument has influenced the Supreme Court to strike down statutory features, such as for-cause removal protections, that insulate agencies from political pressure.494

Proponents of a unitary executive acknowledge—as a practical matter— that Presidents must rely on subordinates because they lack the requisite time and expertise to execute the laws themselves.495 But they assume that presidential control has the effect of energizing government.496 More often than not, proponents of a unitary executive espouse the familiar assumption that Presidents are sufficiently incentivized to build capacity and lack incentives to undermine capacity.497 But neither proponents nor critics of the unitary executive theory have thoroughly examined the risks presidential control poses to capacity.498

Unfortunately, implementation of unitary executive theory threatens policymaking capacity by eroding the autonomy that attracts individuals to public service. Schedule F provides one recent example. Schedule F exempted individuals in a “confidential, policy-determining, policy-making, or policy-advocating” occupation from the competitive service.499 The Trump Administration justified Schedule F with constitutional rhetoric, arguing that “[f]aithful execution of the law requires that the President have appropriate management oversight regarding this select cadre of professionals.”500 Proponents and opponents estimated that as many as 100,000 employees would be reclassified under Schedule F.501 The Government Accountability Office warned that “Schedule F could result in increased employee turnover between administrations, leading to a lack of continuity and a potential degradation in the overall subject matter expertise held within the civil service.”502

In the courts, the implementation of unitary executive theory has focused on restrictions on the removal of appointees.503 The degree to which the insulation of appointees protects the autonomy of career employees remains an open question. Nevertheless, some have sought to find a constitutional hook for eliminating civil-service protections for career employees. Judge James Ho of the Fifth Circuit has called on courts to reconsider the constitutionality of civil-service laws:

Federal civil service laws make it virtually impossible for a President to implement his vision without the active consent and cooperation of an army of unaccountable federal employees. . . . As anyone who has ever held a senior position in the Executive Branch can attest, federal employees often regard themselves, not as subordinates duty-bound to carry out the President’s vision whether they personally agree with it or not, but as a free-standing interest group entitled to make demands on their superiors. . . . In an appropriate case, we should consider whether laws that limit the President’s power to remove Executive Branch employees are consistent with the vesting of executive power exclusively in the President.504

These proposals would abandon the “relatively common civil service practices” that encourage individuals to pursue government service and invest in their expertise.505 Proponents of these reforms, however, fail to recognize that the President cannot pursue their vision without the capacity provided by these employees. Presidential control means nothing if the President lacks the workforce needed to make policy. Even Presidents who favor deregulation need some source of procedural expertise to avoid having their policies reversed by federal courts under the APA.506 As an assistant to President Lyndon Johnson once stated, “If you shouldn’t fire a pistol with a blindfold, you shouldn’t propose a major program without some basic knowledge of what will happen.”507

In theory, a robust labor pool may mitigate these concerns. If an administration could quickly fill vacancies with individuals who support the President’s agenda, then the President would have fewer difficulties balancing control and capacity. But that is unrealistic and dangerous for several reasons. Presume for the moment that Presidents make a good faith effort to ensure agencies have the capacity they need to execute their visions. First, Presidents already fail to fully staff the approximately 1,300 presidential appointments with Senate confirmation (PAS) in federal agencies.508 Larger human capital campaigns would require even greater effort. The Trump campaign indicated that it would attempt to replace 50,000 career employees through reforms like Schedule F.509 Staffing an additional 50,000 career employees would increase the federal government’s rate of hiring by 64% within a single presidential term.510

Moreover, constant turnover deprives the workforce of the experience and institutional knowledge possessed by high-capacity agencies. Steep learning curves ensure new employees need time to develop the procedural expertise and professional judgment that enable policymaking.511 When asked about turnover, career employees often express grave concerns about the loss of institutional knowledge in addition to the reduction in the size of the workforce.512

All of this suggests that a unitary executive threatens to undermine capacity by encouraging turnover and eliminating structures that protect bureaucratic autonomy.513 Nor is it clear that further increasing presidential control would improve the President’s ability to set rulemaking agendas or direct the day-to-day activities of the agency. The results generally suggest that control does not pose a major obstacle for Presidents because Presidents have invested significant energy into reforming the Executive Branch to improve responsive competence.514 Large-scale reforms to agency design or the civil service may increase turnover, creating problems for agency recruitment and retention, with only marginal improvements in presidential control.

What is the proper balance between presidential control and capacity? It is hard to say. If Presidents increase their control over the administrative state, then agencies may struggle to recruit and retain expert and experienced agency policymakers. Suddenly, Presidents find themselves incapable of promulgating policy through rulemaking. On the other hand, if Presidents voluntarily insulate agencies from presidential control to encourage recruitment, they may find themselves incapable of directing the agency’s policymaking activities. Agencies and careerists do have their own policy preferences, and they do behave strategically to advance those interests through the rulemaking process.515 Without institutions like OMB and OIRA, Presidents would surely encounter greater resistance to implementing their rulemaking agendas.

The equilibrium level of control and capacity varies from agency to agency. A preference for control may be more desirable in agencies that implement politically fraught policies under a theory that presidential involvement increases democratic accountability. A preference for capacity may be necessary in agencies that develop policies for highly technical and important sectors, such as financial, energy, or insurance markets. Discovering the precise balance requires management decisions tailored to specific domains rather than widespread reforms that impose a specific structure upon the entire administrative state.

C. Who Should Manage the Administrative State?

Who should manage the administrative state? I explore four options: the President, the courts, Congress, and the public. I identify ways that all four actors can promote capacity building.

1. Presidents

Presidents are the constitutional managers of the Executive Branch. Due to their position in the executive hierarchy, the President has the greatest opportunity to discover why a specific agency has failed to implement the President’s agenda. When a President struggles to control an agency, they may further politicize the agency’s leadership or centralize policymaking within the White House.516 When the agency lacks capacity, the President may improve recruitment and retention.

In some cases, recruiting and retaining a workforce of expert and experienced policymakers may require Presidents to adopt structural reforms aimed at increasing bureaucratic autonomy. Indeed, one plausible justification for independent commissions is that they better preserve expertise relative to agencies subject to complete presidential control.517 In the past, Congress has authorized Presidents to reorganize the Executive Branch to promote good governance.518 In 2003, the Volcker Commission recommended granting the President “expedited authority to recommend structural reorganization of federal agencies and departments” to ensure that “the operations of the federal government keep pace with the demands placed upon it.”519 Restoring the President’s authority to manage, reorganize, and restructure the administrative state may allow Presidents to design the administrative state in a way that improves agency performance.

Some may argue that Presidents would never use this reorganization power to insulate agencies. But history shows that Presidents sometimes tie their own hands to promote good administration. More than half of the agencies established since 1946 have been created through executive action, including the EPA, OPM, the Occupational Safety and Health Administration, and many others.520 Reorganization grants the President a first-mover advantage, resulting in a different structure than Congress may have chosen through the legislative process.521 Presidents occasionally choose to insulate these agencies from presidential control by locating them outside the cabinet departments, imposing a commission structure, or requiring appointees to have certain qualifications.522 The willingness of Presidents to sometimes insulate agencies demonstrates some engagement with agency design as a means of promoting good management.

Presidents also propose the budget and have a first-mover advantage in the budgeting process.523 In passing the Budget and Accounting Act, Representative James Good explained that “the President must lay out a work program for the Government, and the appropriations that would necessarily follow would only be to supply the money to do the work in accordance with that work program.”524 But the budgeting process has become another tool of presidential control rather than one of capacity building.525 Presidents should use budgeting as an opportunity to investigate which agencies need more capacity and to request that Congress provide needed resources.

I recommend presidential management with some trepidation. Improving the quality of administrative policymaking requires Presidents to take an active role in managing the administrative state. But Presidents rarely have sufficient incentives to build capacity.526

Asymmetric priorities among Presidents exacerbate the situation. During the 2020 election, 95% of liberal voters said that climate change was an important election issue.527 President Biden coupled large regulatory reforms in the EPA with a significant push for increased staffing.528 By contrast, President Trump disfavored EPA policy and allowed the agency’s workforce to shrink to the lowest level since the 1980s.529 Ideological differences may cause agencies to whipsaw between periods of growth and periods of deconstruction. Left to their own devices, Presidents are unlikely to build or maintain capacity in an agency if they disapprove of its mission.

The EPA reveals another asymmetry. Although all Presidents enact new policies, some Presidents place a greater emphasis on deregulation. Approximately half of Americans support a reduction in government regulation and programs, making an emphasis on deregulation a viable campaign strategy for some Presidents.530 Repealing existing regulations may require less capacity than developing new regulations. When seeking to develop new policies, agencies must collect evidence and identify new methods of achieving the desired policy outcome.531 By contrast, repealing old policies simply requires reversion to the status quo and a reasoned explanation about the benefits of the old policy.532 Future research may explore whether deregulation truly requires less capacity.

At the same time, we should be cautious about overstating the role that these asymmetries play in everyday governance. Even Presidents who prefer deregulation benefit from experienced civil servants who understand the rulemaking process. Failure to rely on career civil servants during rulemaking often leads to litigation and vacatur of the agency’s action.533 Moreover, Presidents have few incentives to deconstruct agencies that administer popular programs. Benefits programs like Social Security and Medicare enjoy widespread support from the public.534 To improve Medicare, the Trump Administration reduced Medicare Advantage premiums and reformed insulin pricing.535 Other programs, however, are so obscure that Presidents have no reason to either build or deconstruct the agency’s capacity. The greatest problem confronting the average agency is not deconstruction; it is decades of persistent neglect.536

How do we incentivize greater investment by Presidents and discourage behaviors that diminish capacity? Presidential control does not prompt Presidents to invest. The agencies with the lowest levels of capacity are in the fifteen cabinet departments.537 Despite already high levels of control, we do not observe Presidents prioritizing management in these agencies. If control does not cure maladministration, then we must seek new strategies to improve governance. One strategy is to empower other actors—the courts, Congress, and the public—to meaningfully oversee the managerial activities of the President.

2. Courts

Judicial review may have both positive and negative impacts on administrative capacity. I have already reviewed the threat posed by constitutional challenges to agency design.538 Another threat comes from the development of doctrine. In Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, the Supreme Court held that, “in light of internal organization considerations,” courts should not impose additional procedures on agency rulemaking beyond what the APA requires.539 Despite Vermont Yankee, the courts have read heightened evidentiary requirements into the APA, such as hard look review,540 the obligation to disclose data relied upon in rulemaking,541 and the requirement that agencies respond to significant comments.542 Some of these doctrines may follow from a good-faith reading of the APA; others may not.543

More stringent doctrines, such as hard look review, require agencies to conduct more reaching analyses during rulemaking, requiring greater capacity.544 Richard Pierce accuses the Supreme Court of basing its doctrine “on the implicit assumption that the politically accountable branches of government will simply take whatever actions are necessary to assure adequate agency staffing and funding to perform the missions they are assigned in a manner consistent with the doctrines announced and applied by the Court”— an assumption that mirrors those advanced by scholars of presidential administration.545

Judicial review plays an important role in checking the procedural and substantive quality of agency regulations.546 At the same time, it is unclear whether stringent procedural requirements produce better policy. Nicholas Bagley argues that proceduralism tends to “drain agencies of their legitimacy, impair their responsiveness to the public, and expose them to capture” rather than improve their legitimacy.547 Moreover, judges are generalists who may struggle to discern whether improper procedures truly resulted in substantive errors.548 Justice Barrett’s dissent in Ohio v. EPA accuses the majority of favoring a “cherry-picked assortment of EPA statements” to strike down a regulation as procedurally defective based on purely speculative comments.549 Of course, as Judge Posner states, “understaffing is not a defense to a violation of principles of administrative law.”550 Yet the Supreme Court should review whether current administrative law doctrines frustrate the ability of agencies to implement the policies enacted by Congress.

Courts could also play a positive role by protecting agencies from intentional maladministration by the President. This argument assumes that Presidents have an obligation to faithfully manage the administrative state. Gillian Metzger argues that the delegation of broad authority to the Executive Branch creates a “responsibility to supervise so as to ensure that the transferred authority is used in a constitutional and accountable fashion.”551 Metzger’s description creates a duty to supervise. Jodi Freeman and Sharon Jacobs argue that efforts to deconstruct agencies undermine the separation of powers by preventing agencies from executing the laws enacted by Congress.552 Freeman and Jacobs’s description creates a prohibition on malicious deconstruction.

Proponents of a unitary executive have traditionally assumed Presidents do not engage in intentional maladministration.553 Annie Benn, however, theorizes that Presidents intentionally undermine capacity to “tie the hands” of their successors.554 Space may exist for courts to police intentional maladministration. In Free Enterprise Fund v. Public Company Accounting Oversight Board, the Supreme Court invoked the Take Care Clause in severing for-cause removal restrictions from members of the Public Company Accounting Oversight Board.555 In justifying the majority’s decision, Chief Justice Roberts explained, “[t]he President can always choose to restrain himself in his dealings with subordinates. He cannot, however, choose to bind his successors by diminishing their powers, nor can he escape responsibility for his choices by pretending that they are not his own.”556

The Supreme Court’s decision suggests that Presidents cannot manage the administrative state in ways that limit the power of future Presidents. It is unclear why a unitary executive would prohibit tying a successor’s hand with respect to control but would permit intentionally undermining capacity. Undermining capacity diminishes the power of future Presidents by limiting their ability to engage in administrative policymaking.557

The Supreme Court has expressed hesitation to intervene in cases that involve an agency’s allocation of resources.558 How does one distinguish between budget cuts resulting from policy disagreements versus those that seek to intentionally hobble an agency’s ability to execute the law? At the same time, courts have placed prisons into receivership when poor management interferes with the constitutional rights of inmates.559 Future research may identify the conditions under which receivership of agencies is an appropriate remedy.

3. Congress

We should not understate the role of Congress. Congress possesses the power of the purse and appropriates funds for agencies.560 Congress should scrutinize any proposed budget cuts to determine whether those cuts are likely to interfere with agency operations. In the wake of government failure, Congress should conduct oversight hearings and pursue long-term solutions to deficiencies in capacity.

Yet like Presidents, members of Congress also lack sufficient incentives to build capacity.561 Congress often builds capacity on a quid pro quo basis, expecting agencies to deliver benefits to their districts in exchange for funding.562 Members of Congress also recognize the benefits of funding relief in the wake of a disaster because this spending increases their vote shares.563 Yet they have fewer incentives to prepare the agency for productive management in the future.564 Incentivizing Congress to appropriate funds and conduct oversight is a main hurdle to building capacity.

4. The public

Presidents and members of Congress lack electoral incentives to build administrative capacity. Therefore, the incentivize must come from the voting public. A primary reason that Presidents and Congress neglect most agencies is that the public lacks awareness about these agencies and their programs.565 The public struggles to connect the everyday benefits of government programs to specific agencies.566 When voters do become aware of maladministration, however, they punish elected officials.567 Raising public awareness about agencies, their programs, and maladministration may incentivize Presidents and members of Congress to build capacity to avoid these electoral consequences.

Conclusion

All Presidents want to make policy using the authority delegated to federal agencies. Rulemaking allows Presidents to create durable policies while circumventing congressional logjams. To succeed, Presidents must exercise sufficient control over the agency, and the agency to have sufficient capacity. Balancing control and capacity proves more difficult than scholars often appreciate.

Presidential power as it relates to the administrative state can only be defined when control and capacity are considered in concert. Undoubtedly, presidential control is important. The results in this Article suggest that Presidents largely succeed at setting rulemaking agendas and directing the day-to-day activities of agencies. Yet the dearth of capacity in many agencies poses a significant hurdle to presidential administration. Without sufficient capacity, agencies prove incapable of developing and promulgating the policies promised by Presidents.

Improving administrative capacity likely requires more than bigger budgets. Presidents must create an environment amenable to recruiting and retaining the best people for government work. In some instances, that means loosening the reins and granting civil servants some degree of autonomy over the policymaking process. Theories of presidential power that advocate for strengthening the presidency by improving presidential control may prove ineffective. Wrestling with this question requires both empiricists and constitutional law scholars to engage more with administrative capacity and less with presidential control.

Postscript

Shortly before this Article’s publication, President Trump was inaugurated for a second term in office. The early days of his presidency have highlighted the tension between presidential control and administrative capacity. The Trump Administration has cited unitary executive theory in its reinstatement of Schedule F and its efforts to remove over 700,000 federal employees through reductions in force, voluntary resignations, and the use of administrative leave.568 These personnel actions have already had a negative impact on the implementation of federal programs.569 In some cases, the Trump Administration has sought to reverse its removal of career employees with limited success.570 Simultaneously, it has also announced a massive deregulatory program that requires agencies to repeal ten existing rules for every new rule promulgated.571

Many of the personnel actions taken by the Trump administration reflect a fear that the President lacks sufficient control over career employees. For example, in reinstating Schedule F, President Trump included new language that Schedule F employees are “required to faithfully implement administration policies to the best of their ability, consistent with their constitutional oath and the vesting of executive authority solely in the President.”572 This fear is misplaced. Presidential control rarely impedes the implementation of the President’s policy agenda. In light of his swift effort to shrink the federal workforce, administrative capacity will present a greater constraint on President Trump’s agenda during his second term. An attorney within the Department of Justice has told a federal judge that the firings have made it difficult to properly staff cases seeking to defend the President’s policies.573 Diminishing administrative capacity will limit the administration’s ability to deregulate and defend its actions in court.

In some ways, the events of the first month of the Trump administration provide support for the final arguments of this Article.574 President Trump has demonstrated that the President has the greatest ability to make meaningful changes—good or bad—to agency management. At the same time, his actions demonstrate the need for significant guardrails to prevent executive actions from threatening the long-term health of the administrative state. Many courts have refused to intervene in cases involving the termination of federal employees, citing the need for employees to exhaust their administrative remedies before the Merit Systems Protection Board.575 **[FOOTNOTE 575]** 575. See Am. Fed’n of Gov’t Emps. v. Ezell, No. 12-10276, 2025 WL 470459, at \*2 (D. Mass. Feb. 12, 2025) (“Congress intended for the FSL-MRS and the Civil Service Reform Act of 1978 . . . to provide the exclusive procedures for disputes involving employees and their federal employers and disputes between unions representing federal employees and the federal government.”); Nat’l Treasury Emps. Union v. Trump, 25-CV-420, 2025 WL 561080, at \*8 (D.D.C. Feb. 20, 2025) (requiring a union to present its claims to the Federal Labor Relations Authority). **[\FOOTNOTE 575]** Members of Congress have done little to hold the President accountable,576 despite concerns about the economic impact of the President’s actions in their districts.577 Consequently, morale among federal workers has declined, and the agencies have begun to lose their credibility as employers.578 The loss of agency autonomy, morale, and reputation will make it more difficult for future Presidents to rebuild the administrative capacity they need to implement their own policy agendas.

#### Only CBRs accomplish that.

Handler 24 [Nicholas Handler, Thomas C. Grey Fellow and Lecturer in Law at Stanford Law School, former Associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP, clerked at the U.S. Court of Appeals for the Second Circuit, JD Yale Law School, MPhil University of Cambridge, “Separation of Powers by Contract: How Collective Bargaining Reshapes Presidential Power,” New York University Law Review, 99(1), April 2024, pp.45-127, HeinOnline] \*[language modifications in brackets]

INTRODUCTION

Over the past three decades, the President's power to shape policy through executive action has grown substantially.1 Scholars have responded by spotlighting how the federal civil service, and the millions of bureaucrats who staff it, restrain presidential power.2 Observers agree that Congress and courts are no longer capable of overseeing the full scope of executive activity. The federal bureaucracy, by contrast, has the size, personnel, and expertise to monitor executive action, identify potential abuses, and resist ill-considered or improperly politicized policy. Bureaucrats' independence and their practical and legal ability to challenge presidential policy therefore have become critical modulators of executive power.3 **[FOOTNOTE 3]** 3 A number of emerging accounts focus on the substantial practical ability of the civil service to check presidential power by leveraging asymmetries of resources and information to pursue programs that might be at odds with the President's goals, see, e.g., Nou, supra note 2, at 363-65, or by maintaining bureaucratic cultures that persistently exercise discretion in specific ways, see, e.g., Ingber, supra note 2, at 169-73. Other accounts have investigated more formal mechanisms for civil servants to challenge the President, including by seeking standing to challenge executive policies on the merits in Article III courts. See, e.g., Jennifer Nou, Dismissing Decisional Independence Suits, 86 U. CH1. L. REv. 1187, 1191-95 (2019) (discussing Judge Posner's approach to analyzing the standing of ALJs to challenge agency action); Alex Hemmer, Note, Civil Servant Suits, 124 YALE L.J. 758 (2014). Still others focus on the role that internal management of the executive branch plays in lending structure and legitimacy to executive action, importing the norms and structure of traditional law into areas of otherwise unconstrained policy discretion. See, e.g., Gillian E. Metzger & Kevin M. Stack, Internal Administrative Law, 115 MIcH. L. REv. 1239, 1249-59 (2017); Christopher J. Walker & Rebecca Turnbull, Operationalizing Internal Administrative Law, 71 HASTINGS L.J. 1225,1231-32 (2020). **[\FOOTNOTE 3]**

To critics, including proponents of the unitary executive theory, the tenured federal bureaucracy constitutes a "deep state," unelected and illegitimate, that has wrested away power constitutionally vested in the President.4 Former President Trump has vowed, if re-elected in 2024, to purge thousands of federal civil servants and replace them with political loyalists, claiming to have a list of fifty thousand civil servants to terminate.5 Even bureaucracy's defenders worry about the civil service's supposed insulation from interbranch supervision and democratic accountability. The mechanisms bureaucrats use to "check" the President are deemed irregular at best, extralegal at worst. They require acts of "disobedience" or "resistance"-such as deliberate noncompliance with or half-hearted implementation of the President's directives.6 **[FOOTNOTE 6]** 6 See, e.g., Nou, supra note 2, at 381 (noting that "bureaucracy [was] openly challenging decisions" during the Trump administration); Ingber, supra note 2, at 139. **[\FOOTNOTE 6]**

At the heart of this debate over the legitimacy of the federal bureaucracy are basic questions of personnel management-to whom do bureaucrats answer? Who structures their incentives? Who can fire, discipline, or reassign them, and for what reasons? Are bureaucrats truly a "ruling class" of "unaccountable 'ministers,"' insulated from the control of the coordinate branches and the American public, as critics on the Supreme Court and elsewhere suggest?? Or do they, as defenders argue, serve a pro-constitutional role by curbing presidential excess and promoting separation of powers and rule of law?8 The answers to these questions have important implications for the legal viability of the administrative state itself, as recent judicial decisions make clear.9

But surprisingly, administrative law scholars have ignored a complex system of labor law at the heart of modern personnel administration, which reshapes presidential-bureaucratic relations in profound ways and challenges many of our assumptions about bureaucracy and the administrative state. Federal employees have extensive, statutorily enshrined labor rights. They have the legal right to form labor unions, to negotiate the terms of their employment with presidentially appointed agency heads, and to enter into complex collective bargaining agreements (CBAs) that govern many aspects of their work and shape how the federal government implements public policy.10 These contractual arrangements can amend the relationship between the President and the civil service in important ways, restructuring how agencies work and constraining what agency heads can direct employees to do in service of an agency's mission. Hundreds of these CBAs have been adopted, governing millions of federal employees ranging from immigration judges to scientists to prison guards.11 Their provisions are enforced through thousands of adjudications each year, hundreds of which are appealed to the Federal Labor Relations Authority (FLRA) and dozens to circuit courts.12

Take the field of immigration as an example. Typically, the story goes that the President imposes policies with profound implications for the immigration system, such as prioritizing the arrest and deportation of certain populations or setting targets to grant or deny certain numbers of asylum applications or removal challenges." Once those policies are announced, bureaucrats may choose to either sheepishly obey or clandestinely resist their orders. Presidential administration thus produces either an "imperial" presidency or an unaccountable "deep state."

But in the overlooked field of labor, bureaucrats may check presidential directives not through subterfuge, but through formal and legal challenges resting on breach of contract or labor violation claims. Immigration and Customs Enforcement (ICE) agents can challenge and defeat policies requiring them to deprioritize the arrest of certain populations-such as minors and those without criminal records-or to provide legal information to detained immigrants on the grounds that those policies improperly alter agents' conditions of employment.14 Border patrol guards can defeat policies altering what types of border searches they may conduct, what types of weapons they may carry, or what disciplinary processes they may face for misconduct.15 Immigration judges can defeat productivity quotas or performance evaluation standards designed to force them to process cases more quickly-a process well known to produce lower win rates for immigrants challenging removals.16 And employees of the United States Customs and Immigration Service (USCIS) may challenge directives pushing them to grant fewer asylum applications.'7 In all these instances, important questions of presidential policy may rise and fall not on deep analyses of Article II or the Administrative Procedure Act, but on disputes over contractual interpretation, bargaining obligations, and unfair labor practices. In short, federal labor provides a forum in which civil servants openly and formally, rather than secretly and illicitly, challenge presidential administration in a wide range of important contexts. What emerges from the study of federal sector labor is a picture of presidential power neither imposed from above nor subverted from below. Rather, the President and the civil service bargain over the contours of executive authority and litigate their disputes before arbitrators and courts.

Federal employees' labor rights are likely to become more important in coming years. The Trump Administration accelerated a trend towards federal employees leveraging their labor rights to influence executive branch policies.18 In February 2020, for instance, the union representing ICE employees attempted to negotiate a collective bargaining agreement with Kenneth Cuccinelli, the departing de facto deputy head19 of the Department of Homeland Security, that would have significantly expanded their power to challenge immigration enforcement directives as violating agents' rights to certain working conditions.20 An EPA employees' union, emboldened by a victory before the FLRA, likewise sought to negotiate a new CBA enshrining certain protections for scientific expertise and neutrality as employment rights.21 Presidents, however, are not always on the losing end of such contractual arrangements. A 2004 effort by the Bush Administration to insert non-disclosure requirements into a CBA between the Department of Homeland Security and its employees, for instance, resulted in an employment-based ban on leaking from one of the nation's largest and most politically controversial agencies.22 As the norms promoting bureaucratic expertise weaken,23 and as other administrative structures designed to protect civil service independence come under sustained attack,24 such efforts will likely multiply.25 Understanding federal sector labor law is thus an urgent task, as it is an increasingly important battlefield for contesting both the practical control and legal legitimacy of the administrative state.

This Article begins that task by making two primary contributions. First,the Article describes and empirically documents how employment-based challenges to top-down management reshape presidential power by reviewing and compiling data on nearly 1,000 FLRA adjudications from the past forty years. It then provides in-depth case studies of agencies in three policy areas-immigration, environmental protection, and tax-to demonstrate how federal labor rights can shape policy outcomes within the executive branch. The Article focuses on these agencies because they have been sites of recurring, high-salience policy changes by presidential directive over the past several decades. And by virtue of the President's focus on these agencies as vehicles for executive policymaking, they have also been at the center of several high-profile disputes over agency policy between tenured staff and politically appointed heads.26 These case studies show that, at least in these critical areas of presidential policymaking, contractual rights play an important and underappreciated role in shaping presidential discretion over executive branch policy.

Second, this Article illuminates the ideological underpinnings of the modern federal labor regime and its implications for administrative law. It challenges the assumption, prevalent in the academic literature and central to debates about the legitimacy of the administrative state, that executive branch bureaucracy is a top-down hierarchy insulated from political influence. Both bureaucracy's critics and its defenders presume it suffers from a profound democratic deficit. Unitarists believe bureaucracy usurps presidential power, while defenders believe that, despite its salutary role in restraining presidential abuses, bureaucracy sits largely outside the legitimizing force of American law.27 But labor rights complicate these critiques. The federal labor regime is a more mutualistic and legalistic model of presidential-bureaucratic relations than contemporary observers appreciate.

While labor rights restrain the President's managerial authority in some respects, they also enhance presidential power and expand executive branch capacity in other ways, thereby complicating the unitarist critique. One surprising insight from the history of federal sector bargaining reveals that neither Congress nor the courts imposed such bargaining on the President.28 Instead, the President urged its adoption for two reasons. First, bargaining allowed the President to recruit skilled workers to join rapidly expanding executive agencies.29 Although the federal government could not compete with the private sector in terms of salary or perquisites, it could offer workers greater workplace autonomy and enable them to serve the public interest free from political interference.30 Second, bargaining tightened the President's control over the federal workforce. Since the late nineteenth century, most federal personnel administration had fallen under the control of the Civil Service Commission (CSC), an immensely powerful independent agency that oversaw everything from employee classification and hiring to disciplinary proceedings.31 Collective bargaining allowed the President to bypass the CSC and take a more active role in shaping federal workforce policies through negotiations and contract.32 In short, while worker protections are often cast as improper limits on presidential power, history shows that presidents themselves view labor rights in precisely the opposite terms, as a means of expanding presidential power through strategic concessions.

Labor rights also respond to concerns that bureaucratic resistance, however valuable in other ways, subverts democratic governance by permitting an unelected cohort of civil servants to shape executive policymaking.33 Labor rights are susceptible to formal, legal resolution and democratic oversight. Many of the disputes over bureaucratic power and managerial control that might otherwise be fought through inchoate "resistance," or opaque attempts to subvert managerial initiatives, are instead channeled into a highly formalized system of negotiation, contracting, arbitration, and appeal. The power arrangements between the bureaucracy and presidentially appointed agency heads are reduced to writings, and disputes are resolved by contract and statutory law, rather than through the exercise of raw institutional power. This arrangement not only makes bureaucratic power struggles more transparent and legalistic, it also enables each of the coordinate branches to supervise and regulate presidential-bureaucratic relations. By directing negotiations with unions, the President actively shapes workplace policy. Congress can shape civil servants' legal rights through statutory enactments. And courts can supervise the enforcement of these rights, reviewing important questions of statutory interpretation and ensuring that both labor and management bargain in good faith.

Nonetheless, civil servant labor rights do present a different set of challenges for the administrative state. While collective bargaining imports some of the legitimizing aspects of American political and legal culture into the federal bureaucracy, it may import some of those cultures' pathologies as well, for instance by providing new avenues to manipulate civil service rights for partisan advantage or to entrench ideological preferences.

This Article proceeds in four Parts. Part I draws on an array of primary and secondary sources to describe the historical origins and ideological underpinnings of federal sector bargaining. Part II sets forth the legal contours of modern federal sector labor rights and analyzes how they reshape presidential power and permit entry points for the coordinate branches to participate in shaping bureaucratic relations. Part III offers case studies on how bargaining can reshape agency dynamics in specific policy areas; it begins with descriptive data on FLRA adjudications, including how frequently labor and management prevail on their contract claims and how that success varies over time. It then provides descriptive accounts of how bargaining has impacted the operation of immigration, environmental, and tax policy. Finally, Part IV concludes with some reflections on the doctrinal and theoretical implications of bargaining's underappreciated influence on the administrative state.

I

THE HISTORY OF FEDERAL SECTOR BARGAINING

This Part draws on an array of primary sources and legislative history to document the history of federal sector bargaining and the reasons for its emergence. This story, while critical to understanding the modern executive branch, has never been told in the legal scholarship and has been presented only sparingly in other literatures. The proceeding sections argue that bargaining rights emerged as a way to expand the executive branch and to retain the professional integrity of skilled bureaucrats, while rendering bureaucratic relationships more transparent and susceptible to legal supervision. This made the federal bureaucracy more legitimate to an American political culture that by the 1970s was increasingly skeptical of centralized federal power.34 Unions were seen by both the President and Congress as a way of preserving civil servant independence while also rendering the civil service more responsive to democratic forces.

Section I.A provides an overview of the Civil Service Reform Act (CSRA) and the structural changes it imposed on the modern federal bureaucracy. Sections I.B and I.C document the reasons for the CSRA's passage, detailing the incentives that both the President and Congress, respectively, had for granting civil servants extensive rights to bargain over the contours of agency management.

A. The Civil Service Reform Act of1978

In 1978, President Carter signed the Civil Service Reform Act into law.35 Although now largely forgotten, the law was the most significant civil service reform in nearly a century: the "centerpiece" of President Carter's efforts at government reorganization.36 The Act's goal was to loosen the power of traditional, Progressive Era merit protections, allowing the President to steer executive branch policy over the resistance of "dug-in establishmentarians" within the federal bureaucracy.37

The CSRA "comprehensively overhauled the civil service system" of the New Deal era.38 As relevant here, the CSRA made two key changes to federal personnel management. One was structural. Prior to the enactment of the CSRA, nearly every aspect of the federal civil service was overseen by the Civil Service Commission (CSC), an enormously powerful independent agency. The CSC had been created by the Pendleton Act of 188339 and had grown over successive generations from a mostly advisory body to one tasked with administering a wide variety of things, such as hiring and classifying federal workers, adjudicating employment disputes and appeals, and formulating government-wide management policy.0 The CSRA abolished the CSC and distributed its functions across an array of new agencies. The Merits Systems Protection Board (MSPB) would oversee employee challenges to adverse personnel actions such as suspensions, demotions, and terminations; the Office of Personnel Management (OPM) would formulate management policy; and the Office of Special Counsel (OSC) would investigate certain violations of federal law, such as improper political activities in contravention of the Hatch Act.41 While still politically independent, these agencies were smaller and more specialized than the CSC, exerting a less concentrated influence over the bureaucratic organization of the executive branch and leaving more space for the President to influence personnel policy.

The second key change was substantive. The CSRA fundamentally altered the array of employment rights available to federal civil servants. Some rights were weakened. For instance, a number of procedural rights that had been developed by the CSC over the middle of the twentieth century and afforded to individual civil servants challenging adverse employment actions were eliminated or significantly curtailed.42 At the same time, however, the CSRA also granted federal workers an array of new labor and contractual rights. For the first time, federal workers were given the legal right to join a union, to collectively bargain over nearly any issue affecting the "conditions" of their employment, and to sue their employing agencies for violations of those contractual provisions.43 These contractual rights were to 'be enforced by a new independent agency, the Federal Labor Relations Authority (FLRA). The FLRA had a number of component parts, but at its core was a system of semi-private arbitration: In the event of an alleged breach of a CBA, the agency and the union would bring their dispute before a mutually selected, third-party arbitrator. Arbitrations could be appealed, or "except[ed]" in labor parlance, to the FLRA itself, which was composed of three bipartisan members serving fixed, five-year terms.44

The CSRA's establishment of labor rights was a dramatic departure from historical practice. Prior to 1978, federal law provided no formal statutory mechanism for employees to shape the ways in which the federal workplace was managed through contract or union organizing.45 While civil servants did attempt to unionize and bargain, they were afforded no formal legal status and their agreements were unenforceable against the federal government.46 Many commentators through the early 1970s believed that public sector unionism was fundamentally incompatible with democratic principles.47 In a widely cited article, then-professor Ralph K. Winter argued that a unionized public sector would "radically alter[]" the political process through the exercise of its extensive bargaining power.48 Indeed, prior to the 1960s, many viewed public sector bargaining as an unconstitutional delegation of executive power to private citizens.49

The CSRA's establishment of muscular federal labor rights thus poses a historical riddle. Why, if greater presidential control of the bureaucracy was the ultimate goal, did the CSRA create for the first time an extensive right for labor to bargain collectively? Why cede so much managerial authority to unions, particularly at a time when private sector labor power was declining precipitously?50 And why restructure bureaucratic relationships-a paradigmatic component of public law-through bargaining and contracts, a form of private ordering that historically had played no role in executive branch management?

As described in Sections I.B and I.C, a central claim of this Article is that the private law model of contract and bargaining provided a vehicle for dramatically expanding the scope of public administration from the mid-twentieth century forward, while presenting that expansion as both legally and democratically legitimate. The rise of federal sector collective bargaining can be understood as the product of two concurrent trends. One was internal to the executive branch, driven by the desire of the President to assert greater political control over the terms of federal employment.The other was external, driven by Congress's desire to exert greater control over executive branch operations and management. Both trends responded to a need to expand state capacity while shoring up its legitimacy, reining in both real and perceived abuses of a bureaucracy insulated from democratic control.

B. Labor Rights as an Enhancement of Presidential Power

President Kennedy first established federal sector bargaining by Executive Order in 1962,51 and it was subsequently expanded by presidents of both parties.52 The move reflected two strategic considerations. One responded to changes in the labor market. The President encouraged collective bargaining to entice skilled labor to join the executive branch. By offering workers autonomy and protection from managerial abuses, the federal bureaucracy could compete with the private sector. Politically, contracting also offered the President an opportunity to sidestep the long-standing managerial power of CSC. In both cases, contrary to depictions of unions and bureaucracies as illegitimate drags on presidential power, the executive branch itself initiated bargaining, primarily as a means of politically empowering the President and building state capacity.

1. Labor Market

Government from the 1950s to the 1970s was a "growth industry."53 The postwar era saw a major expansion in social service provision and a rapid expansion in the federal government's regulatory and national security remits.54 The growing need for skilled personnel created a recruiting crisis for government. There was a general perception that despite multiplying needs, the quality and efficiency of regulation and federal service provision had declined badly in the decades since the New Deal.55

The executive branch identified several recruiting challenges. One was a general inability to keep pace with private sector wages. In a 1953 report, the House Committee on the Post Office and Civil Service identified a number of "common deterrents in obtaining sufficient applicant supply," including pay "significantly below comparable jobs in industry" and "insecurity of tenure," which had a "marked adverse influence on the attraction of high caliber scientific and professional personnel, as well as key administrative personnel," as it was "generally felt that industry offers a better opportunity than Government for advancement in position and salary if an individual merits such advancement."56 The CSC reached similar conclusions about "[t]he problem of attracting highly qualified people-scientists, engineers, [and] administrators" in 1959.57

Low wages were exacerbated by widespread managerial abuses in federal employment. Despite extensive formal protections from major adverse actions such as firing and demotion, civil servants were susceptible to an array of lower-grade abuses that, in practice, gave managers wide range to harass or demoralize them. As a comprehensive study of the civil service concluded in1975,"[t]he work environment may be made friendly or hostile, open or repressive, tolerable or intolerable by the superior, who is equipped with a finely honed and calibrated set of sanctions to be used against subordinates."58 The CSC, which had a close relationship with the management at many agencies, was often accused of looking the other way when abuses occurred. By the 1970s, this reality had become widely known. As The Washington Post summarized, under the civil service system managers could "dispatch any civil servant" when their "prerogatives" are "attack[ed]."59 The practice was epitomized by the so-called Malek Manual (drafted by Fred Malek, President Nixon's director of personnel), a memorandum that expansively outlined the strategies managers could employ to sideline or harass disfavored workers without running afoul of civil service laws.60 The memo, which became notorious during the Senate's Watergate investigation, was considered to be "to personnel administration what Machiavelli's The Prince is [to] the broader field of political science."61

More generally, there was a growing belief that America, as the world's most powerful democracy, should subject its own government apparatus to "industrial democracy," promoting "consultative management by its own good example."62The 1949 Hoover Commission on government reorganization observed that employees "were 'not provided a positive opportunity to participate in the formulation of policies and practices which affect their welfare"'and"that'the President should require the heads of departments and agencies to provide for employee participation in the formulation and improvement of Federal personnel policies and practices."'63 By the 1950s, many labor organizers and public administrators questioned why robust unionization was permitted in the private sector but forbidden for similar roles in the public sector. The Second Hoover Commission concluded in 1955 that "[t]he Federal Government ha[d] lagged behind other organizations in recognizing the value of providing formal means for employee- management consultation."64

These challenges-the growing need for federal manpower, competition from the private sector, and the executive branch's particular need for skilled knowledge workers-required new models for recruitment and management. In exchange for lower wages than those in the private sector, collective bargaining could offer workers greater autonomy and a sense of professional purpose.65 As one expert in public administration testified in 1978, the "increasing professionalization of skills and bodies of knowledge" in social science and technical fields required management strategies for attracting skilled labor and for maximizing its creative output.66 This led to "an increasing reliance on public sector collective bargaining," a "decreasing reliance on authority/control strategies," and "a greater reliance on rational analysis, negotiation, and incentives."67

As early as the 1940s, the CSC and other commissions studying the civil service began insisting that federal employees' labor rights should be in parity with private sector ones.68 Others, including the Hoover Commission and National Civil Service League, similarly encouraged dealing.69 Increasingly, major private sector unions began to organize public sector workers.70 The executive branch began responding to these pressures even before any formal legal authorization.71 Informal bargaining with growing unions and trade associations in the executive branch expanded throughout the 1940s and 1950s.72 A 1961 Task Force commissioned by President Kennedy recognized that "[f]ederal employees very much want to participate in the formulation and implementation of personnel policies and have established large and stable organizations for this specific purpose."73 Executive Order 11,491 formalized this understanding, creating a centralized process for civil servants to bargain over employment conditions with agency heads.74

2. Disputes Over Presidential Administration

In addition to recruiting and labor pressures, the President also had a concrete political interest in pursuing more expansive bargaining. The CSC, as an independent Progressive Era agency, was highly insulated from presidential influence.75 Bargaining between unions and presidentially appointed agency heads gave the President greater direct control over the contours of bureaucratic power and cut a powerful intermediary out of his relationship with the federal workforce.

Moreover, presidents had long been hostile to the CSC. Since the Wilson administration, presidents had sought to exercise greater control over executive branch operations.76 The Brownlow and Hoover commissions on government reorganization had both wanted to bring personnel management under direct presidential control but had failed, even as they had succeeded in restructuring other previously independent branches of the executive branch such as the Budget Bureau.77 The independent CSC proved sticky: It had extensive formal legal power, management expertise, and was adept at building both bureaucratic and legislative constituencies.78It managed everything from hiring and classification of employees, to investigating and adjudicating disciplinary disputes, to generating high-level management policy. Serving "simultaneously both as the protector of employee rights and as the promoter of efficient personnel management policy,"it had become "manager, rulemaker, prosecutor and judge" of personnel matters.79 The CSC's extraordinary and very opaque power led to concern that the "federal personnel system" had become "too immune from political directives of any kind," and thus was "isolated, and resistant to carrying out new policy directives."80 This "lack of responsiveness to elected political leaders," in turn, revived longstanding concerns about the democratic legitimacy of the tenured civil service, as it "indicated a general lack of bureaucratic responsiveness to the citizenry."81

Labor agreements offered the President an opportunity to bypass the CSC, and thus the contours of bureaucratic power, and to negotiate terms of employment directly with the federal workforce. Moreover, these arrangements could be reduced to written and legally enforceable contracts, rather than entrusted to the rulemaking and enforcement discretion of the CSC. Bernard Rosen, chair of the CSC, expressed his view in 1975 that the CSC's position as sole arbiter of personnel disputes had become untenable: "With the growing power of Federal employee unions, and as general government-wide personnel policies have become a matter of increasing concern to them and to other organizations in our society," Rosen wrote, the "complexity of Federal personnel administration" and the "increasingly adversary relations developing between unions and agency management" necessitated "a central personnel agency that enjoys the confidence of the Congress, the President, and the unions ...."82

With the neoliberal policy turn of the late 1970s,83 President Carter had the opportunity to codify federal bargaining rights into law. Several factors produced the conditions for bureaucratic reform, including a loss of political support for bureaucracy, an economic slowdown, and resulting fiscal constraints. In the 1950s and 1960s, there had been an emphasis on expanding services, with less concern for fiscal discipline. By the 1970s, however, large outlays for bureaucratic programs, and the tenured civil servants that administered them, were increasingly seen as fiscally irresponsible and wasteful of taxpayer dollars.84 Carter had campaigned on the promise to clean up the "horrible bureaucratic mess in Washington" and to institute "tight, businesslike management and planning techniques" in government.85 But beyond cost-cutting, the CSRA also reflected a deeper ideological evolution in public administration. Throughout the 1960s and 1970s, economists and policy consultants had been reframing public policy in terms of economic efficiency, arguing that government programs modeled on private enterprise would be not only more socially productive but also, like private enterprises, more responsive to the demands of the public and the market and thus more legitimate.86 The CSRA extended this logic to the management of the civil service itself. While the bureaucracy of the New Deal legitimized its power through subject matter expertise and insulation from politics, the bureaucracy of the post-New Deal era would legitimize its power by bargaining for it. Contracts would reflect the social and economic value of civil servants by granting them only those labor rights to which the President and his appointees, under electoral pressure to deliver useful services, would agree.

C. Labor Rights as a Restraint on Presidential Power

The President thus leveraged bargaining rights to recruit talent to the executive branch and to consolidate presidential control over the bureaucracy. Congress, by contrast, viewed those same labor rights as tools for exercising greatersupervisionover presidentialadministration.Thesame attributes that made contract and bargaining effective tools for recruiting and negotiating with labor-their transparency, their enforceability against the President, their capacity to change in response to shifting political and economic conditions, and their ability to cover conditions of employment not captured by civil service laws-also made them effective tools for supervising presidential control of the executive branch.

In the 1970s, Congress and the judiciary established new checks on presidential power in response to the Watergate and Vietnam crises, as well as the revelation of longstanding abuses by the FBI, CIA, and other executive agencies.87 These checks included statutory reforms and commissions,such as the Freedom of InformationAct (FOIA),the Foreign Intelligence Surveillance Act (FISA), and the Church Commission, to limit executive discretion in law enforcement.88 They also included more general limitations on the power of the administrative state to make and enforce regulations, through judicial innovations such as "hard look" review of agency action.89 The CSRA presented a vehicle for extending similar interbranch checks to executive branch personnel management and was supported enthusiastically by congressional Democrats. In a 1977 report, the House Committee on the Post Office and Civil Service emphasized the need for alabor rights "system based on... statute,"rather than executive order, and with meaningful access to judicial review.90 The American Bar Association likewise testified that "[c]onsistent with a fundamental precept of our constitutional law system," statutory labor rights would provide civil service with "a source of authority outside the executive branch and beyond the control of. the executive as the primary employer of Federal civil servants," allowing for "access to the judicial branch for redress of grievances with the executive branch" and "meaningful bilateralism in the collective bargaining relationship."91

Like the President, Congress relied on the language of efficiency to justify the enlargement of labor rights. Here, it was the efficiency of management, rather than the bureaucracy, that Congress claimed to be advancing. In a committee report in support of draft labor legislation from 1977, the House Committee on the Post Office and Civil Service opined that "collective bargaining rights for Federal employees," including "[e]ffective labor unions," would "play a positive role in improving productivity in public service."92

Federal workers also lobbied for collective bargaining to play a greater role in civil service independence. Labor had historically been suspicious of the CSC and viewed it as hostile to their interests. A comprehensive 1975 study of civil service and the CSC observed that, despite statutory protections against firing and other major adverse actions, civil servants found themselves with "a lack of substantive rights" in a relationship "in which the superior has many opportunities to make discretionary judgments of considerable importance to the subordinate."93 Workers'"exercise of legal rights in such a relationship" was "often difficult and restrained."94 By the 1960s and 1970s, federal workers had come to view the merit system as a "euphemism for favoritism"and saw collective bargaining as an alternative that advanced stricter application of employment rules, based on uniform application of CBAs rather than managerial discretion.95

For labor and its allies in Congress, however, a weakening of the CSC's traditional power over federal personnel (which, however flawed, did restrain at least some managerial abuses by the President and his appointees) had to be accompanied by more robust labor and bargaining rights. As a legislative representative for AFL-CIO, which represented many federal workers, put it, labor's "support for the President's civil service reform plan is not unconditional," but was contingent on a robust "system of labor-management relations" codified "into statutory law."96 Labor's goal was not just to codify specific substantive labor rights, but to establish a statutory framework for collective organizing, bargaining, and adjudication to ensure that those rights were meaningfully enforced in practice. As a chapter president of the National Treasury Employees Union (NTEU) testified, "[i]f this reorganization effort is to improve the efficiency of government, and to protect the public interest in a merit-based civil service system, expanded collective bargaining must be a central factor."97 The CSRA would invest large, well-resourced unions, not individual employees or an independent agency with doubtful allegiances, with the legal power to bargain, litigate, and lobby on behalf of workers, granting labor's "countervailing power" against the President a foothold in law.98 The weaker position of the labor movement in the 1970s helped supporters of the CSRA frame unions as cooperative partners in government, rather than an adversarial interest group.99 Historical concerns that federal worker unions would be too powerful to be held democratically accountable-concerns prevalent through the bullish labor markets of the 1960s-had significantly diminished.

As enacted, the CSRA formalized and expanded existing bargain- ing relationships and provided for independent agency enforcement and judicial review of labor disputes. In addition to abolishing the CSC, the CSRA moved many traditional civil service functions into separate, presidentially controlled agencies, shifting the center of bureaucratic power from statutory to contractual protections.100 In doing so, the Act adopted the rationales of efficiency and amicable labor relations deployed by both labor and the President. As articulated in its statutory purpose, the Act's goal was to protect "the right of employees to organize" and "bargain collectively," which would "safeguard[] the public interest," by promoting "the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government."101

II

HOW BARGAINING RIGHTS SHAPE BUREAUCRATIC POWER

The goal of the CSRA was to provide a framework that could mediate employment disputes, empowering both labor and the President to reshape bureaucratic relationships, while at the same time allowing for legal and democratic supervision by the coordinate branches. This Part provides a typology of the methods by which unionized labor reshapes presidential administration in contemporary practice.

Descriptively, this Part aims to show how labor rights, while largely unnoticed and unstudied, reshape executive branch relations in profound ways. Across a wide variety of policy areas-from federal prisons to the adjudication of asylum applications-collective bargaining changes how agencies (and the millions of bureaucrats who staff them) carry out their missions. What enforcement guidelines border patrol agents follow, how claims processors assess benefits applications, how guards staff prisons-all of these decisions are shaped by labor agreements, with profound consequences for federal policy.

Normatively, this Part aims to upend a core assumption about bureaucratic power in the contemporary executive branch. There are many tools that the President uses to structure the incentives and behavior of civil servants, and thereby to influence how they implement federal policy: the power to discipline employees for disobedience; the power to allocate an agency's budget and resources, thereby setting the agency's enforcement priorities; the power to set performance standards and productivity quotas, determining what types of bureaucratic decisions merit reward or punishment; and many more. Most scholarship on administrative law and presidential power presume these tools to operate in a top-down manner: The President implements new management directives, and bureaucrats either obediently follow or illicitly resist them.10

But, as set forth below, this model of top-down implementation and bottom-up resistance is critically incomplete. More often, the President and the unionized civil service bargain over questions of management, rather than fight out their differences through the exercise of raw institutional power. Indeed, in a sharp deviation from the Progressive Era model of a politically insulated civil service, the CSRA explicitly empowered unions to act in a political capacity, including by lobbying Congress, litigating management disputes before Article III courts, endorsing political candidates, and speaking out publicly on questions of executive branch management and policy. Unions thus engage directly in democratic politics and serve as a key mechanism for bringing other democratic stakeholders, such as Congress and the judiciary, into disputes over the President's managerial power. In short, modern bureaucratic management is far more mutualistic, legalistic, and democratically engaged than administrative law scholarship generally presumes.

Section II.A below examines the substantive rights that labor law confers on civil servants, and the ways in which those rights can reshape presidential administration. Section II.B discusses unionization rights, including the boundaries and limitations of civil servant unionization and the role that federal sector unions play in promoting democratic oversight of the executive branch.

A. How Substantive Rights Mediate Bureaucratic Relations

Substantive labor rights, particularly those memorialized in collective bargaining agreements, are at the heart of how labor rebalances executive branch power. The CSRA grants extensive rights to labor. With certain important exceptions, particularly for salary and benefits which cannot be altered by contract,103 unions are permitted to bargain over nearly any issue affecting "conditions of employment."104 The main limitation on civil servant bargaining, and thus the primary battleground in litigation between agencies and labor, are certain statutorily defined "management rights," which are enumerated in sub- provisions of 5 U.S.C. § 7106.105

Through contractual provisions, the President and the civil service can agree to modify any number of key management tools, from employee discipline to performance evaluation metrics to merit pay. For the purpose of analyzing their impact on presidential power, contractual rights can be sorted into three categories. First are rights that act as a check on structural deregulation, or the use of abusive working conditions to demoralize or sideline bureaucrats in order to undermine an agency's substantive policy mission. Second, labor rights can act as indirect constraints on policy by shaping management tools, such as performance reviews and productivity requirements, that are well known to nudge civil servants' decisionmaking in certain ways. Finally, in certain circumstances labor can act as a direct constraint on policy by seriously limiting the types of enforcement directives management can issue to employees.

1. Check on Structural Deregulation

A major method of undermining regulatory effectiveness is to defund agencies, undermine the morale of agency personnel, and obstruct agency operations. Jody Freeman and Sharon Jacobs have identified many of the strategies that the President may use to cripple [incapacitate] agencies while evading civil service protections, including imposing burdensome working conditions, reassigning staff to undesirable roles, "demoralizing" staff through denigration and abuse, and cutting funding, resources, and pay.106 These are not direct attacks on an agency's legal authority, but a "structural" attack on an agency's ability to function.107 President Trump's unusually aggressive posture towards administrative agencies has put structural deregulation back in public focus, but it has long been a feature of presidential management, as the controversy surrounding the Malek memo in the 1970s illustrates.108

Here, many of the seemingly prosaic aspects of federal labor law are important. The terms and conditions of employment that govern the quotidian existence of civil servants are precisely the sorts of areas that structural deregulation targets. Changes to remote work policies, scheduling, and other routine workplace concerns can be used to demoralize or undermine an agency's staff.109 Unions routinely leverage contract rights to prevent deterioration in working conditions, litigating issues such as increases in workloads,110 compensation for travel and other overtime expenses,111 backpay for wrongful personnel actions,112 and how and when to award bonuses or special compensation required by contract or statute.113 Agencies can also be required to bargain over reductions in staffing levels or reorganization of duties.114

There are numerous examples in which fights over working conditions reflect larger political struggles over the ability of an agency to properly carry out its statutory mission. The infamous nationwide strike in 1981 by the Professional Air Traffic Controllers Organization (PATCO), representing federal air traffic controllers, is a useful example. The PATCO strike flouted the federal prohibition on civil servant strikes, in a bid by the union for higher pay and improved working conditions.115 Instead of negotiating, President Reagan broke the strike by calling up military service members and retired controllers to manage the nation's air traffic and firing the strikers (who made up nearly seventy- five percent of federal controllers).116 While PATCO is remembered today for its catastrophic collapse, the union's founding in the 1960s was driven by a decline in conditions of employment that related directly to the substantive mission of the Federal Aviation Administration: Flight speeds for jet planes reduced the margin of error for air traffic controllers, while understaffing and aging equipment made working conditions for controllers increasingly difficult and airport conditions less safe, leading to crashes. It was the FAA's failure to respond to these worker complaints, and its attempt to cover up safety risks, that first inspired the formation of the PATCO union.117

Contemporary examples abound as well. During the Trump Administration, the Department of Education was a frequent target of structural deregulation. In 2018, the agency purported to impose a new labor contract on employees without bargaining that, among other things, removed protections regarding pay raises, altered performance evaluations, and reduced rights regarding overtime, childcare, and work schedules.118 The FLRA subsequently ruled the unilateral contract illegal, forcing the agency to enter into an extensive settlement covering disputed labor issues.119 Federal prisons were another key site of disputes over labor rights. The Trump Administration sought to cut budgets, weaken unions, and worsen conditions at federal facilities at the Bureau of Prisons (BOP), as a prelude to privatization of many key functions. The agency would, for instance, cut shifts for guards and replace them with untrained, non-custody employees to guard prisons.120 These policies were enacted despite Congress allocating money for staffing, which the Administration refused to spend.121 At the same time, federal facilities experienced a significant influx of prisoners, including very large numbers of immigrants detained by ICE.122 BOP saw a major decline in prison conditions, leading to increases in assaults, health risks,123 overcrowding,124 and declining staff morale.125 The primary means for resisting these deregulatory policies was labor litigation. Many of these labor disputes concerned the precise tactics-shifting schedules, using untrained and unauthorized workers to staff dangerous prisons, understaffing, overcrowding, removing posts from union positions-that the Administration was deploying to defy Congress and pave the way for privatization.126 Workplace disputes thus dovetailed closely with a broader agenda of weakening prison standards and asserting greater political control over prisons.

2. Indirect Constraints on Policy

Labor can also serve to constrain substantive executive branch policy in many indirect but significant ways. It has long been recognized that certain presidential management techniques, while they putatively concern the internal business of overseeing executive branch resources and personnel, can impact substantive enforcement outcomes. As Jerry Mashaw canonically articulated, the administration of many large- scale federal welfare and regulatory programs requires a species of "bureaucratic justice," where fairness and efficiency are achieved through quality assurance, performance metrics, productivity quotas and other general, organization-wide management tools.127 Labor can reshape how many of these tools are used, in turn reshaping agency outcomes.

One important example is productivity requirements. Determining how much work employees are required to perform, and how they are to perform it, is a well-recognized management tool. These management tools have particularly important impacts on adjudicatory bodies and other discretionary decision-makers: Rules governing decisionmaking processes limit adjudicators' flexibility, while increased productivity requirements reduce the amount of time and effort adjudicators can spend on any one case, making it difficult to rule in favor of poorly represented or under- resourced parties.128 The FLRA routinely enforces contractual limitations on the types of productivity quotas agency management imposes, intervening for instance in disputes over quotas for claims processing for veterans' benefits,129 screening of passport applications by the Department of State,130 and caseload requirements for Taxpayer Advocates employed by the IRS.131

The Trump Administration engaged in particularly hard-fought disputes over productivity and process rules. The Social Security Administration (SSA) extensively litigated proposed productivity requirements for its unionized administrative law judges (ALJs), which would have sped up case timelines, potentially impacting the quality of decisionmaking and the amount of benefits awarded. An arbitrator repeatedly found that the agency's requirements violated the parties' CBA. A two-member majority on the FLRA, appointed by President Trump, however, consistently reversed these rulings,132 over the dissent of Member DuBester, the sole Democratic appointee, who found the policy to be a "straightforward" violation of the parties' agreement.133 Immigration law judges (IJs), likewise, have used bargaining and litigation to resist increased efficiency requirements during the Trump Administration, which would have limited IJs' ability to assist asylum seekers during removal hearings.134 Similarly, the United States Customs and Immigration Service (USCIS), under de facto head Ken Cuccinelli,135 pressured asylum officers to reduce grants of asylum, citing statistics showing high grant rates, urging officers to use tools to combat "frivolous claims" and make only "positive credible fear determinations."136 The union resisted these initiatives, which it characterized as pressure to "misapply laws" and "politicize" the asylum process.137 The USCIS union likewise challenged administration guidance to exclude large categories of migrants from asylum consideration and to divert considerable numbers to Honduras and Guatemala, calling the policies "unlawful" and even filing an amicus brief in support of a lawsuit challenging them.138

Negotiated provisions governing selection and promotion likewise can yield "significant" divergences from management's preferences.139 Federally unionized technicians with the Ohio National Guard, for instance,negotiated extensive contractual requirements for promotions, including criteria used to evaluate candidates and differences in merit promotion procedures.140 Agencies can be required to honor promotions dictated by contract.141 The FLRA has required the SSA to bargain over promotion plans for adjudicatory employees.142 Union contracts can also prevent discrimination. Unions included clauses in contracts protecting gay employees in the 1990s, well before federal antidiscrimination protections for LGBTQ+ people existed.143

Labor can also substantially reshape employment-based discipline and the hierarchies and incentives that disciplinary power creates. While agencies are subject to formal disciplinary procedures under civil service statutes, they often discipline workers through negotiated grievance procedures, resulting in sanctions that can differ substantially from those that might otherwise apply.144 A prominent example of this phenomenon involved a group of CBP officers who were discovered to have exchanged racist and threatening messages through a private Facebook group in 2019. Even though the incident aroused public outrage and the CBP Discipline Review Board recommended harsh punishments-including termination for eighteen agents-following a negotiated grievance process, some of the officers received substantially lighter punishments, including letters of reprimand, paid suspensions, and only two terminations.145 Indeed, according to data recently released by the Office of Personnel Management, arbitrators who hear cases under labor grievance reinstate three-fifths of all dismissed employees, as compared with only one quarter of all MSPB appeals.146 These obstacles to firing and other forms of discipline are some of labor's most powerful tools, and are also among its most controversial: Many critics accuse union-backed limits on employee discipline of rendering government service less efficient, though the evidence on this question is hotly contested.147 [FOOTNOTE 147] 147 See id. at 1 (arguing that the grievance arbitration "makes removing unionized federal employees very difficult"); see also PHILLIP K. HOWARD, NOT ACCOUNTABLE: RETHINKING THE CONSTITUTIONALITY OF PUBLIC EMPLOYEE UNIONS 18 (2023) (arguing that, due to public sector unionization,"[e]lected executives," including the President, "no longer have effective authority over the operations of government"). [\FOOTNOTE 147]

Finally, labor rights condition the ability of civil servants to leak, criticize, or otherwise speak out publicly about agency policy. David Pozen and Jennifer Nou, among others, have described how unauthorized disclosures of critical information by civil servants can check agency abuses, inform policy debates, and shape agencies' agendas by shifting public opinion.148 Labor rights are a key guarantor of civil servants' ability to speak publicly about agency policy through testimony, statements to the press, and other means. The CSRA protects the right of employees, when speaking in their capacity as union representatives, to present the "views of the labor organization" to "appropriate authorities," which the FLRA interprets, in many circumstances, to include the press.149 Union officials can thus speak publicly about agency policy and management, even when line employees cannot. Union officials have leveraged their protected status to criticize executive branch policy in environmental regulation, education, immigration, and labor, among other policy areas.150 Unions also advocate for the right of other employees to speak out through litigation and labor agreements. Immigration judges, for example, have historically been protected by labor agreements in their right to critique removal policies, even if they are not union officials.151

3. Direct Constraints on Policy

Labor provisions may also directly constrain policy choices. Theoretically, many such provisions are limited by management rights.152 But labor has been pushing for such contractual provisions more aggressively in recent years, sometimes with the encouragement of sympathetic presidents looking to lock in policy preferences.

By way of disputes over conditions of employment, labor can resist substantive policy directives to which line employees are opposed for professional, ideological, or other reasons. As discussed in greater detail in Part III, law enforcement functions, particularly in the immigration context, are perhaps the most prominent example. Unions representing CBP and ICE agents have successfully used labor rights to challenge many substantive management policies touching core questions of immigration enforcement tactics and priorities, often over the objection that such challenges infringe on protected management rights. These include what weapons agents are issued,153 what types of searches they must perform and how,154 and what information officers must provide to detained immigrants, including identifying information about officers and information about potential legal remedies,155 among many other issues. Complaints about conditions of employment have been used, among other things, to delay the implementation of agency policies directing agents to prioritize detentions of violent criminals and to deprioritize arrests of minors and other nonviolent immigrants.156

Under President Trump, both CBP and ICE negotiated, with the encouragement of the administration, for even more expansive rights to challenge any enforcement guidance affecting the conditions of their employment and to delay the implementation of those policies until any labor disputes have been resolved, a process potentially lasting years.157 Under the Biden Administration, unionized employees at the EPA are now attempting to bargain for similar protections that would preclude the agency from adopting any policies that violate certain principles of "scientific integrity."158 These developments demonstrate the capacity for labor to become not only an influence on policy but, through the deliberate use of conditions of employment as a restraint on managerial discretion, a primary driver of it.

B. How Unionization Rights Mediate Bureaucratic Relations

This Section sets forth the special rights that unions enjoy under the CSRA, and the ways in which union rights advance the separation-of-powers goals of the CSRA. Unions are the bedrock of legalized resistance to presidential management. The CSRA did not individualize labor rights, but instead provided for collective organization in institutions that are capable of bargaining, litigating, and lobbying.159 Battles between the civil service and the President over the scope of unionization rights, the proper bargaining units to be represented by unions, and the resources and legal rights available to unions reflect the growing centrality of collective bargaining to disputes over bureaucracy and the importance of unions in determining the balance of power between the President and the tenured workforce. The following sections set forth: (1) the value of unions to the civil service and the internal separation of powers, (2) the ways in which the President and the civil servants contest the scope of union power, and (3) the ways in which unions serve to further democratic and interbranch supervision of the President.

1. The Value of Unions

The civil service's move toward unionization reflects a broader recognition of the value of organized groups in protecting rights and pursuing key political objectives.160 Unions accumulate resources and expertise, allowing civil servants to mount sophisticated and well-financed defenses in labor disputes and to lobby effectively on key issues.161 Unions, for instance, are more effective at litigating employment disputes, a key tool in resisting the disciplinary efforts of management.162 They achieve higher win rates than unrepresented employees before arbitrators, a key strategic consideration for union-side counsel, as well as a key source of criticism from opponents of unionization rights.163 Unions also bolster the ability of civil servants to successfully litigate employment disputes against agencies in other ways. Through FLRA litigation, unions have secured civil servants Weingarten rights: the right to have a union representative present during a disciplinary investigation.164 Unions have likewise fought, with mixed success, to bargain for specific substantive rights for civil servants during interviews by agency inspectors general.165 Unions also provide extensive financial and logistical support to individual employees. The National Border Patrol Council, for instance, has established legal defense funds for CBP officers who are under investigation for their involvement in "critical incidents," such as the use of force.166

Even when unions do not litigate labor disputes directly, the threat of litigation-the possibility of losing, the need to delay policy implementation, the drain on budgets, and the attendant uncertainty-incentivizes agencies to cooperate with unions, and to take their preferences into account when staffing political positions and formulating policy. For instance, powerful unions, including those representing ICE and the EPA, can and do express their opposition to certain agency heads, dissuading the President from appointing them for fear of souring labor relations and inciting costly litigation battles.167

Perhaps the best example of labor's deterrent power is President Clinton's National Performance Review (NPR) program, launched in 1993. NPR's goal was to "reinvent[]" government by streamlining agency operations, reducing the size of the federal workforce, and reducing labor-management litigation.168 In exchange for union support for a variety of cost- and personnel-cutting measures, President Clinton granted unions substantial new powers.169 The National Partnership Council, which shaped agency reorganization policy, was given four union representatives (one from AFL-CIO, and one each from the largest federal unions-NTEU, AFGE, and NFFE).170 Further, in exchange for union cooperation, President Clinton issued Executive Order 12,871 requiring agencies to bargain over formerly optional subjects, effectively waiving a broad range of management rights and significantly expanding union bargaining power.171 Unions also took a substantial role in shaping the federal government's downsizing to ensure union positions received protection during workforce reduction.172

In addition to litigation, unions also have extensive statutory power to lobby Congress, often acting as one of the only sophisticated, proregulation advocacy groups in a competition of political influence dominated by private interests and well-funded nonprofit groups. The CSRA created unions that are, in effect, federally subsidized by dues, "official time" (time during which union officials are paid to engage in organizing and bargaining work), and protections against unfair labor practices.'73 To facilitate union lobbying, Congress also created numerous exceptions to rules governing political engagement by civil servants, including the right to lobby on behalf of a labor organization and Hatch Act exemptions to participate in politics.174

Unionized federal employees have been politically engaged since the enactment of the CSRA, lobbying on a range of budgetary and regulatory reform issues.175 Unions lobby on issues ranging from regulatory enforcement policy, to the selection of agency leadership, to questions of funding-and their efforts have had substantial influence in Congress.176 Unions representing the employees of the NLRB, Department of Education, and IRS have all, for instance, lobbied for increases in appropriations for regulatory efforts that have been regular targets of under-funding.177 Labor also endorses political candidates, testifies routinely before Congress, and speaks to the press on high- visibility policy issues, often expressing views contrary to the views of agency leadership.178

#### It empirically guardrails market liberalism---that’s the consensus of every study of Trump.

Carati & Locatelli 25 [Andrea Carati, Associate Professor in Political Science and International Relations at the University of Milan, PhD Political Studies, University of Milan, Italy; and Andrea **Locatelli**, Associate Professor at the Catholic University in Milan, PhD Political Science, University of Florence, Italy; “Bureaucratic Politics and Leadership Style in the Trump Administration: An Overview,” Chapter 2, *Taming the President: Trump, the Advisory System, and the Mechanisms of US Foreign Policy Decision-Making*, De Gruyter, 8-22-2025, ISBN 9783111382852, p.36-39]

From a bureaucratic politics perspective, Trump’s foreign policy was mostly thwarted by administrative constraints. As the argument goes, organisational expertise, resources, control of information and bureaucrats’ ability to structure both policy formation and implementation impeded Trump’s fulfilling his revisionist agenda. In addition, it was rather easy for resilient, permanent agencies with a strong sense of purpose and identity (what scholars identify as organisational ‘essence’) to resist a President with scant knowledge of the policy process and negligible expertise in foreign affairs. The information gap, expertise, autonomy and ability to exercise discretion, limiting the range of available options and resisting change, all favoured bureaucracy against an erratic and unknowledgeable President.

To confirm this explanation there is, first of all, a vast assortment of anecdotal evidence (Leonnig and Rucker 2020; Woodward 2021; Wolff 2018, 2019). There are plenty of examples from the first Trump administration of political dynamics that corroborate the bureaucratic politics paradigm. For instance, in the yearly days of the presidency, the unpreparedness of Trump’s White House staff concerning foreign affairs – mainly due to the lack of a proper transition team for the President elect (King and Riddlesperger 2018) – allowed the establishment to select key figures for the top positions in the foreign policy machinery. That, in turn, let the foreign policy community defend the tradition of liberal internationalism (Carati and Locatelli 2023).

Another case in point is the defence of the Korea-US Free Trade Agreement (KORUS) in the first months of the administration: the fierce resistance of Gary Cohn (Director of the National Economic Council (NEC) and Trump’s top economic adviser) and Rob Porter (Chief of Staff in the White House) made it possible for KORUS to survive despite Trump’s proposal to abandon the treaty (Woodward 2021). They took advantage of the information gap and the President’s apparent un familiarity with administrative procedures. Consequently, they succeeded in post poning the drafting of the letter intended for South Korean government. This was achieved by concealing the letter and exploiting the President’s demanding sched ule and short memory.

Similar organisational manoeuvring occurred during decision-making on a new strategy for Afghanistan during Trump’s first year in office. Throughout the electoral campaign and in the early months of 2017, Trump had been calling for disengagement from the Afghan quagmire. However, in the end, after a long and intricate policy process, in August he decided on a partial re-engagement with about 3,000 additional troops and a ‘condition-based’ approach for the withdrawal – that is, a sort of an open-ended commitment (Clarke and Ricketts 2017; Haar and Krebs 2021). Similarly to what Gary Cohn and Rob Porter did for the KORUS, the roles of Secretary of Defense James Mattis and National Security Advisor H.R. McMaster in the strategy for Afghanistan proved to be pivotal in averting a prema ture withdrawal from the region and instead facilitating the reinstatement of US military engagement.

Even during the preparation of the most important public document for every US President’s foreign policy, the National Security Strategy (NSS), Trump was not in full control of the process. The Pentagon’s organisational essence, its know-how, time and knowledge allowed the defence agencies to have the final word on the text. The NSS (2017) adopted by Trump was a rather ordinary strategy, confirming all the key elements of American liberal hegemony (Weaver 2018). Trump missed the opportunity to set a revisionist strategic posture because the process was most ly controlled by the defence bureaucracy. The result was that “the anti-globalist rhetoric permeated the short introduction (signed by the President), but the full length document (prepared by bureaucratic staff ) was a manifesto of liberal inter nationalism” (Carati and Locatelli 2023: 98).

The entire first term of Trump’s presidency confirmed his inability to be fully in control of policymaking (Herbert et al. 2019). Bureaucratic impediments were part of that inability – not only at the start, due to his need to familiarise himself with a new institutional environment – but also afterwards. Indeed, in the beginning of 2019, Trump seemed to carve out greater room to manoeuvre vis-à-vis the establishment. As Martha Cottam (2021) noted, there were some differences between the first and final two years in terms of constraints on the President. Some decisions revealed that change, the most indicative being the unexpected US withdrawal from Syria and eventual disengagement from Afghanistan (accompanied by negotiations with the Taliban). Trump appeared less inhibited by bureaucracy: “the bulk of his most competent and least sycophantic advisers have now left the administration” (Ragget and Shapiro 2019) and he got rid “of most of the advisers who reportedly tried to constrain his impulses” (Dale 2019). Any way, even though the bureaucratic grip on Trump seemed partially diminished, it did not disappear, and his political control over foreign policy making remained feeble and inconsistent (Wolff 2021).

Beyond the more anecdotical literature on Trump policymaking – which of fers, despite its descriptive character, a broad picture of what happened in the White House, confirming the bureaucratic politics paradigm – several contributions in the field of FPA present more structured analyses. In one of the most systematic investigations of the Trump administration, Jon Herbert, Trevor McCrisken and Andrew Wroe (2019: 8) found that the first answer to the question of what led from an extraordinary President to a rather ordinary presidency is the American political system in itself: “the Founding Fathers designed a system to constrain ambitious and potentially dangerous leaders”. Even beyond constitutional constraints, every President meets a thick and sticky administrative environment of entrenched interests, agencies and lobbies. In their efforts to lead and govern, US Presidents need rare and effective political skills to achieve results and “these skills […] amount primarily to the president’s ability to bargain with and persuade other office holders” (Herbert et al. 2019: 9).

Trump, according to the three authors, lacked that ability and suffered from bureaucratic constraints. To make matters worse, in his first term, Trump did not have the opportunity for action offered by crises, in which political power usually flows to the centre. He governed during a moderately quiet period for international politics – e. g., nothing comparable to a major war, the 9/11 terrorist attack, a large NATO intervention or Russian aggression against Ukraine occurred in his first four years in office. The authors concluded that the populist motto of ‘draining the swamp’ in Washington failed miserably because of Trump’s ignorance of policy, his lack of success in controlling political processes in the White House, and erratic presidential dealings with departments and Congress. In the end, his anti-establishment rhetoric manifested itself in recurring, disrespectful statements about institutions but did not turn into tangible presidential influence over bureaucracy.

In a similar vein, Daniel Drezner (2019) argues that, although Trump succeeded in challenging liberal internationalism both in public and within the US foreign policy establishment, he failed to establish a new, anti-globalist and neo-isolationist approach. Overall, he could not embed his “foreign policy ideas into new or existing foreign policy institutions” (Drezner 2019: 723). More specifically, under Trump, presidential influence over entrenched organisational interests was ephemeral or absent: Trump, unlike his predecessors, did not create new agencies or offices to bypass the policy status quo imposed by existing institutions and advance his own ideas. Beyond polemic skirmishes, Trump made no real institutional effort to challenge that status quo: he did not push Congress or key administrative branches to enshrine foreign policy in the direction of his choosing. Even his efforts to build on, or connect with, alternative or conservative think tanks committed to his foreign policy agenda proved to be short-lived, devoid of a plan or direction. So, Drezner (2019: 726) concludes, “the evidence suggests that [Trump’s] efforts to embed populist foreign policy ideas into foreign policy and national security bureaucracies largely failed”.

Investigating the interplay between Trump and the ‘deep state’, Robert Horowitz (2021) argues that at the end of his presidency, Trump portrayed himself as having been subverted by a “shadowy network of unelected bureaucrats that illegitimately holds the levers of real power in the United States” (Horowitz 2021: 473). In other words, his foreign policy agenda underachieved because hidden elements within the federal bureaucracy sabotaged his political initiatives. While there is a strong populist component to the accusation, mainly based on an overstatement of the power of the American deep state, beyond conspiracy theories, Trump was revealing something true about the bureaucratic difficulties he experienced in the White House. Horowitz’s focus in his article is on a flawed understanding of the term ‘deep state’ in Trump’s narrative and how dangerous it is for American democracy. Nonetheless, his analysis is also telling from a bureaucratic politics perspective, where it shed light on the role of agencies, the intelligence community, Congress and the foreign policy apparatus within the administration.

Other scholars investigated the relationship between Trump and top officials and advisers (Bergen 2019; Carati and Locatelli 2023; Cottam 2021; Da Vinha 2019; Haar and Krebs 2021; Schmidt 2020). All these contributions, one way or another, demonstrate that the relationship between the President and cabinet secretaries, agency heads and policy entrepreneurs was mismanaged. As we will examine at greater length in the second part of the book, the empirical evidence largely confirms that, in his first four years in office, Trump was not in full control of administrative procedures: officials, advisers and agency representatives were able to reframe the direction and decision-making agenda concerning foreign policy. There is a broad consensus that in the first half of the presidency, key top officials challenged, shaped and constrained Trump’s foreign policy making. What was called the ‘Axis of Adults’ (Bergen 2019: 362) – including, among others, Secretary of De fence James Mattis, Secretary of State Rex Tillerson, National Security Advisor Her bert McMaster, Chief of Staff John Kelly, and Director of the National Economic Council Gary Cohn – was able to keep US foreign policy firmly within liberal inter nationalism. Taking advantage of the President’s ignorance regarding policy and lack of familiarity with defence and security issues, they eventually won the battle within the administration against anti-globalist representatives, led by chief strategist Steve Bannon (Haar and Krebs 2021). But even after he had gotten rid of all of the ‘adults’ by early 2019, the administration remained chaotic (Carati and Locatelli 2023; Cottam 2021): Trump did not replace the ‘Axis of Adults’ with experts at the same level; what he gained in terms of loyalty he lost in terms of efficiency.

#### It’s NOT about reversing firings---they’re statistically negligible and concentrated in agencies irrelevant to our impacts---it’s about protecting holdouts from quitting or cowering---and they’re banking on union lawsuits

Schumaker 25 [Erin Schumaker, health care reporter at POLITICO, covers the National Institutes of Health, formerly Business Insider's science editor, graduated from Northwestern University and Union College, “The ‘deep state’ is proving to Trump it’s a worthy foe,” Politico, 9-14-2025, https://www.politico.com/news/2025/09/14/trump-federal-workers-deep-state-civil-service-00558940]

President Donald Trump and his team are crowing about the downsizing of the federal bureaucracy, which is set to shrink by tens of thousands more Sept. 30 when workers who took a DOGE buyout hang it up.

But if Trump’s goal was to dismantle the workforce he calls the “deep state” — and blames for the failings of his first term — he’s got a long way to go. Although he’s disrupted swaths of the government, the vast majority of career federal employees who avoided the firings of the past seven months are sticking it out, according to Labor Department statistics and the White House’s own admission.

Many of those who’ve chosen to remain are keeping their heads down. Some aren’t — and their open defiance of Trump administration policies may make it harder for the administration to achieve Trump’s goals — much like Trump complained they did in his first term.

At the end of the day, career staffers still believe that politicians come and go and it’s them who will persevere, the survivors told POLITICO.

“They are staying in their jobs — the vast majority of people, even though they could get a job somewhere else or look for a job somewhere else,” said Rushab Sanghvi, general counsel for the American Federation of Government Employees, whose bargaining agreements at at least six agencies Trump has sought to scuttle. “There will be a new administration, with new priorities.”

For many, that’s true, but for others, such as those in highly specialized fields like foreign aid, the job market for former government workers is limited. The Bureau of Labor Statistics said Sept. 9 it likely overestimated past job growth by hundreds of thousands, painting a grimmer picture of the employment market than previously thought. That too could be a factor in federal workers’ apparent resolve to stay.

While 200,000 federal workers have left the government this year, the most in a single year since World War II, Trump still employs about 2.2 million civil servants.

By year’s end, the administration expects to cut loose 100,000 more federal workers, according to the White House Office of Personnel Management. That’s a lot, but it amounts to a cut of about 12 percent.

Some agencies have taken bigger hits. Health Secretary Robert F. Kennedy Jr., for one, says he expects the staff of the Department of Health and Human Services will shrink by a quarter. Others, such as the Department of Education and the EPA, have taken deep blows.

In terms of sheer numbers, the biggest hits have come at the Department of Defense, which has shed 56,000 workers out of about 900,000 civilians; the Department of Agriculture, down 22,000 from about 98,000, and HHS, which has 13,000 fewer people on the payroll compared to a year ago, when there were 93,000, according to a tally as of the end of August compiled by the Partnership for Public Service, a nonprofit group that opposes Trump’s downsizing.

But for all of Trump’s broadsides — he’s called civil servants “crooked” and “dishonest” people who are “destroying this country” — the percentage of federal workers quitting each month hasn’t budged, according to Bureau of Labor Statistics data. The quit rate is holding steady at 0.5 percent as of July, the same percentage as last year before Trump took office and down from 0.7 percent at the height of the pandemic.

A minority of federal workers back Trump and support what he’s doing. Thirty-eight percent of them voted for him last November, according to a Washington Post-Ipsos poll conducted in early March, and 83 percent of those who voted for Trump approved of his job performance, despite the turmoil in their workplaces that was well underway at the time.

The quit rate among federal workers is still far below the 2.2 percent rate of the private sector.

That’s despite the White House’s estimate that 80 percent of the departures were voluntary.

It’s not clear how many of those workers were planning to quit, or retire, anyway — and enjoyed a few extra months’ pay thanks to the “deferred resignation” deal Elon Musk’s Department of Government Efficiency offered. The White House doesn’t have the data yet on the retirement eligibility of workers who took Musk’s “fork in the road” — or even hard numbers on how many did — but expects at least a third and as many as half had enough service to start collecting their pensions.

Rather than go quietly, workers who resent Trump’s attacks, as well as the damage they say the president has done to the programs they work on, intend to fight it out.

In response to Kennedy and Trump’s firing of the director of the Centers for Disease Control and Prevention on Aug. 27, more than 1,000 civil servants, some current, some former, published an open letter demanding Kennedy’s resignation. CDC workers at agency headquarters in Atlanta held a “clap out” to thank three departing colleagues who’d quit in protest.

At the National Institutes of Health, workers have publicly accused Director Jay Bhattacharya of prioritizing politics over human safety, prompting him to meet with them. Bhattacharya promised to permit open debate and said he wouldn’t retaliate against them for speaking out.

In an interview with POLITICO, Trump’s personnel chief, former venture capitalist Scott Kupor said: “I don’t fault anybody for having views that are different from what the administration is doing.” Kupor added: “This is a completely different motion than anybody’s ever seen. So it’s not surprising to me at all that people are reacting to it.”

Agency leaders have, in other cases, punished workers who’ve resisted Trump’s moves. The Environmental Protection Agency fired employees who wrote a letter criticizing agency leadership and the Federal Emergency Management Agency suspended workers who warned in a letter that the Trump administration’s actions were preventing the agency from fully responding to extreme weather events like hurricanes and floods.

Those in the crosshairs say they’re leaning on the extensive system of protections Congress created to shield the civil service from political interference. “I’m grounded in what the rules are,” said a career senior executive at the Department of Health and Human Services, who was placed on administrative leave and offered a transfer to the Indian Health Service.

“It’s not perfect, but it’s set up to give people due process. Employees are entitled to their due process, and by you just walking away and saying, ‘I’m just going to retire,’ you’re letting them not follow due process,” said the HHS staffer, who was granted anonymity to avoid retribution.

AFGE and its allies have filed at least a dozen lawsuits still working their way through the courts, Sanghvi said, and union members are making the case to the public and to Congress about why the jobs they do and the services their agencies provide matter. Some have filed whistleblower complaints or gone public with their concerns about political interference at their agencies.

As Debra Katz, legal counsel for two former NIH officials who filed whistleblower complaints Sept. 3 over the administration’s moves to change vaccine recommendations put it: “We shouldn’t roll over and play dead. Even though the institutions that have been set up to protect workers are not functional now, the administration at some point could change, and we could see this agency functioning again.”