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Why Donald Trump needs the 'administrative state' that Steve Bannon wants to destroy

By David Lewis March 2

White House adviser Stephen K. Bannon recently announced that he wanted to deconstruct the administrative state. Bannon believes that the bureaucracy is staffed by liberals and is committed to subverting the president's plans.

There's one big problem with Bannon's goal: Trump actually **needs** bureaucrats if he wants to accomplish his goals. So Trump's real challenge isn't how to deconstruct the bureaucracy. It's how to secure the bureaucracy's cooperation. But that may be quite difficult. Here's why.

What bureaucrats do

The career executives who staff and run the approximately 250 federal departments and agencies not only formulate and implement executive orders, they also make choices every day that influence large swaths of public policy — from immigration to law enforcement to education to the environment. They use their legal authority to do what all executives do: interpret the power given them by their board of directors (in this case, Congress), set organizational priorities in formal guidance or memorandums and make decisions about where to allocate people and dollars.

The recent enforcement actions by Immigration and Customs Enforcement (ICE) illustrate how agency choices about what to prioritize and how to enforce the law can produce a dramatic policy change.

Trump's success as president depends in part on his ability to get agencies to behave like ICE and choose to use their power in the ways he would prefer.

Why it is hard for the president to get the bureaucracy to cooperate

Presidents often struggle to control the bureaucracy simply because agencies have a great deal of discretion. Consider the following tasks:

1) Determining what an agency can do. Congress gives agencies a lot of authority to determine what statutes mean and what the law requires.

For example, federal law requires the Occupational Safety and Health Administration to "to assure so far as possible every working man and woman in the Nation safe and healthy working conditions." The agency must decide how "so far as possible" constrains them along with what "safe" and "healthy" mean in the context of thousands of workplace hazards and toxins. These terms get clarified over time in agency rulemaking and judicial decisions, but there is still room to maneuver.

So a president and his staff have to know what agencies must do and also what they are prohibited from doing. What happens when presidents lack this knowledge? You get the kind of problems that Trump encountered with his travel ban.

2) Deciding what an agency should prioritize. Congress enacts hundreds of statutes each year. As a result, Congress mandates that each major department and agency implement scores of different laws. This forces agencies to prioritize.

For example, an agency like the Coast Guard has to decide whether to prioritize boater safety, drug interdiction or disaster response. The Coast Guard's Commandant must allocate the best people to some tasks and not others. He must also decide which priorities get the most attention in public statements and budgets.

These decisions are a form of policymaking. Orders to drop everything to pursue a priority goal effectively makes policy in the areas that have been dropped. For example, the Federal Emergency Management

Agency's focus on domestic terrorism after 9/11 influenced its ability to respond to Hurricane Katrina years later.

3) Choosing how an agency should enforce the law. Departments and agencies have substantial latitude to determine how to enforce specific laws. Federal officials decide when to investigate, arrest and prosecute crimes. Every day government workers decide which taxpayers to audit and workplaces to investigate. They determine whether to go after one expensive and high profile antitrust case or a dozen smaller cases. They decide which federal laws to defend and which to drop.

For example, the Department of Homeland Security historically has had only a fraction of the funds that would be required to deport all undocumented immigrants in the United States. This forced them to prioritize the deportation of some types of people in the country illegally, namely violent criminals. Trump has promised increases in funding but DHS will still be able to determine enforcement priorities.

4) Allocating people and resources. Congress gives all agency executives resources to carry out their tasks, and it rarely specifies the details of personnel or spending.

For example, during the Reagan administration, the first head of the Environmental Protection Agency, Anne Gorsuch, moved people out of the Office of Enforcement. President Barack Obama was able to find hundreds of millions to combat Zika by moving funds from existing accounts appropriated for other purposes.

Federal executives say they have considerable discretion

The autonomy and discretion of agency executives isn't just hypothetical. It's what these executives perceive, too. In recent research with Mark Richardson, I surveyed 3,500 executives who run federal agencies and programs. We asked them how much discretion their agency had over the interpretation of statutes, prioritization of agency responsibilities, enforcement, allocation of personnel and spending decisions after funds have been appropriated by Congress.

As the graph below shows, large majorities reported "a good bit" or a "a great deal" of discretion.

In other words, federal executives report that their agencies have a significant amount of authority to decide what to do and how they do it.

What this all means for Trump

Trump confronts three problems in trying to get control of federal agencies and direct their work. First, many agencies do not share the president's views about policy. ICE and Customs and Border Protection have more enthusiasm for the new president than do employees in many other agencies.

Second, the president does not know where the discretion resides or how to use it. As a novice to government, Trump does not know where the power lies. Questions have been raised about whether his chief of staff Reince Priebus does as well. Until the Trump administration begins to understand the levers of power, it will not be able to use them effectively.

Third, even knowledgeable presidents cannot be experts on every agency. Ultimately, presidential power depends upon the voluntary cooperation of federal executives. Getting appointees in place will help, but only if the appointees themselves are experts. Otherwise, Trump will simply depend on career professionals to volunteer information about where the discretion exists.

So far, President Trump has tended to appoint outsiders and hasn't made much effort to cultivate cooperation from the career professionals. His executive orders have been very general and should be understood as a sign of weakness rather than strength. With a better understanding of the levers of power, Trump would issue orders that are more detailed, or else would realize that an order isn't necessary because agencies will do what the president wants without a formal directive.

Bannon may want to deconstruct it, but the administrative state exists for a good reason: to provide newcomers like Trump the expertise they need to accomplish their goals.

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