

## BUREAUCRACY

# Schedule F: The Phantom Menace

*Both Trump and his critics misunderstand the nature of bureaucracy.*

BY THOMAS A. FIREY

Three months before the end of his presidency, Donald Trump quietly issued Executive Order 13957, allowing the conversion of some federal civil service jobs to excepted service under a new classification, Schedule F. If a position was reclassified, the president could fire its occupant at will and install a successor without going through the civil service hiring and placement process. Trump issued the order after years of complaining that a practically conspiratorial federal bureaucracy was obstructing his agenda. His successor, President Joe Biden, rescinded the order two days after taking the oath of office in early 2021.

Trump, now running against Biden (again) to return to the Oval Office, has made reinstating Schedule F and remaking the federal bureaucracy (and retaliating against some of its occupants) one of the top themes of his campaign. “Either the deep state destroys America, or we destroy the deep state,” he said at the first major rally of his current campaign, a vow he has repeated ever since.

Many former Trump staffers and prominent supporters have echoed the theme. Russ Vought, who led Trump’s Office of Management and Budget at the end of his presidency, has written that the federal bureaucracy currently carries out “the policy plans and preferences of a radical, supposedly ‘woke’ faction of the country,” and that the next president must show “boldness to bend or break the bureaucracy to the presidential will.” In a recent TV interview, Sen. J.D. Vance (R-OH), rumored to be posturing for Trump’s vice president pick, was blunter: “If I was giving [him] one piece of advice, [it would be to] fire every single mid-level bureaucrat, every civil servant in the administrative state, [and] replace them with our people.”

Trump’s critics, whether on the “Never Trump” right, among federal employee unions, or in the Democratic Party, have rallied

to defend the civil service. Sen. Mark Warner (D-VA), whose state is home to many federal workers, dismissed the claims of a conspiratorial bureaucracy, saying: “The Deep State is not a thing. It is a conspiracy theory”—a notion echoed by former Republican House speaker John Boehner. American Federation of Government Employees leader Everett Kelley recently told his members, “Every gain we have won, every value we hold dear, every aspect of our democracy, and, yes, the very survival of our great union: it’s all on the line.” Warns attorney Erica Newland of the Never Trump group Protect Democracy, “Trump will reorient the federal government away from serving and empowering the American people, however imperfectly, and toward serving and empowering himself.”

Given Trump’s frequent vows to deliver “retribution” against his critics and political opponents if he returns to office, it is unnerving to think of a federal bureaucracy of loyalists carrying out his commands. Some of his critics have gone so far as to compare him to foreign autocrats using government workers to methodically institute their horrifying agendas. But a Trump restoration of Schedule F and takeover of the federal bureaucracy is unlikely to play out the way either he or his critics imagine. It would be a disaster, but not in the way his opponents envision.

## THE REAL DEEP STATE AND PUBLIC CHOICE

The modern federal civil service is typically dated to the 1883 Pendleton Act, passed two years after the assassination of Republican President James Garfield. Garfield was shot by a delusional man who believed he was owed a consulship in return for supporting Garfield’s campaign. Ironically, Garfield was a staunch critic of the spoils system, in which elected officials routinely awarded government jobs to their political supporters and demanded from them “assessments” that were the primary source of funding for the political parties. Such a system was not only vulnerable to corruption but also meant the bureaucracy



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was often restaffed after elections with untrained and inexperienced people, resulting in delays before government operations returned to normal.

Sen. George Pendleton sponsored the reform legislation, which created the Civil Service Commission, prohibited assessments, protected some government workers (initially about 10 percent) from political retribution, and required some government positions (again, about 10 percent) be filled via competitive examinations rather than the spoils system. His motivations likely were not high-minded; a “Copperhead” Democrat who had previously defended slavery, Pendleton was troubled that Stalwart Republicans were socially and economically elevating Blacks by giving them government jobs.

It’s often said on both the political left and right that the decline of the spoils system and the rise of the career civil service

marked the United States’ embrace of government according to the progressive vision of “scientific management” by nonpartisan “experts.” Yet, as Judge Glock previously explained in *Regulation*, the story is more complicated. (“The Origins of the Novice Administrative State,” Spring 2023.) Over the first five decades of the modern civil service, the commissions at its center were composed of nonexperts, many of whom were ex-politicians. The legislators and lawmakers who created the commissions weren’t interested in *expert* decision-making so much as they were in *consistent and moderate* decision-making. The commissions were expected to be a vast improvement over the wildly inconsistent juries throughout the country that previously decided cases concerning alleged violations of government rules. As Massachusetts Sen. George Hoar argued during the 1887 debate over creating the Interstate Commerce Commission, it was preferable to railroad cases being

## BUREAUCRACY

“settled in one place by one jury one way and in another place by another jury another way.”

**Public Choice** / Of course, as the new career government workers accrued years and then decades of experience, they did develop expertise in their jobs. And as civil service protections were extended to more of the federal workforce and as Congress expanded government intervention into more and more of American life, the number of bureaucrats grew dramatically. This is a key characteristic of the federal bureaucracy: civil service positions exist and multiply because of congressional legislation, enforced by the federal judiciary, and they operate in accordance with bureaucratic rules and regulations grounded in statute. That is, the bureaucracy exists, persists, and expands in accordance with, and to carry out, the will of elected policymakers.

The result has been, indeed, the emergence of a “deep state” of government workers following bureaucratic procedures and afforded civil service protections. And they have been a bane to presidents long before Trump, and not just Republicans. Franklin Delano Roosevelt and Lyndon Johnson pursued civil service reforms, complaining the federal bureaucracy was obstructing their ambitious agendas. Richard Nixon assembled the Ash Commission on the civil service and put John D. Ehrlichman in charge of bringing the cabinet, agency heads, and the civil service under Nixon’s tight control (a plan that didn’t work out well). As political scientist Clinton Rossiter wrote in his 1956 book *The American Presidency*, the chief executive’s biggest challenge is “not to persuade Congress to support a policy dear to his political heart, but to persuade the pertinent bureau or agency—even when headed by men of his own choosing—to follow his direction faithfully and transform the shadow of the policy into the substance of the program.”

Many supporters of broad government intervention—often, but not exclusively, on the political left—claim that civil servants are altruistic experts who selflessly (though sometimes imperfectly) pursue the public good. Many critics of government intervention—often, but not exclusively, on the political right—say bureaucrats are incompetents or malevolent ideologues hellbent on (to borrow Vought’s words) imposing “a radical, supposedly ‘woke’” agenda or (to borrow Trump’s) destroying America.

As different as those characterizations are, they are both rooted in Public Interest Theory, the naïve belief that public employees and the managers and politicians who oversee them are—or, at least, should be—motivated by the desire to benefit the public. Government officials who fail to do so must be either incompetent (e.g., Herbert Hoover) or selfish and evil (e.g., Richard Nixon). However, according to believers in Public Interest Theory on the left, many if not most government employees work to benefit the public, while believers on the right think the federal bureaucracy *would* benefit the public if it were restaffed (using Vance’s words) “with our people.”

A more reasonable concept of the civil service came along more than a half century ago. Public Choice Theory holds that

political actors—voters, officeholders, and bureaucrats—are as self-interested as their counterparts in the private sector. William Niskanen, one-time editor of *Regulation* and later chair of its advisory board, examined the incentives of bureaucrats in his 1971 book *Bureaucracy and Representative Government*. According to Niskanen, bureaucrats specifically are motivated by the rewards (monetary and non-monetary, including prestige) they receive for their work, and want their jobs to be secure and pleasant. That doesn’t mean they don’t care whether their work benefits others (many care a great deal), but rather they care for the same reasons that many private-sector workers and managers care about their work: because of personal ethics, or because they believe their work is important, or just because they want to keep and advance in their jobs. Under Public Choice, government workers and officials (for the most part) are neither altruistic nor malevolent, but human—like everyone else.

So how do bureaucrats pursue their self-interest? In the heavily regimented federal bureaucracy, they do so by following the seemingly countless Civil Service Rules and Procedures, congressional mandates, and (yes) executive directives they are given. This can be difficult because those rules, mandates, and directives often conflict. Congress may say it wants a certain policy goal achieved quickly, the president may oppose that goal, and government procedure requires a lengthy and exhaustive rulemaking process—and government workers try to satisfy all three.

Further complicating matters, Congress routinely forces bureaucrats to make difficult policy decisions that the lawmakers don’t want to make themselves, and then the bureaucrats must enforce those decisions. For instance, as David Schoenbrod has recounted in *Regulation*, many federal environmental regulations were required by high-minded Clean Air and Clean Water legislation. (“Cleaning Out the Statutory Junk,” Summer 2018.) Congress set nebulous goals and then delegated to federal agencies the thankless work of stipulating exactly what those goals are and how they should be met. Knowing their decisions would be attacked by special interests on the left or right (if not both), and with executive branch priorities changing whenever the occupant of the Oval Office changed, the bureaucracy responded by, basically, stalling—until federal courts ordered them to hop to it. So, far from being the product of conspiratorial, ideologically driven warriors at the Environmental Protection Agency and other bureaus, the nation’s environmental regulations are the product of a shirking Congress, vacillating presidency, rigid judiciary, and dithering but ultimately obedient bureaucracy. Civil servants had to satisfy all three government branches *and* follow bureaucratic rules in order to pursue their self-interest in keeping their jobs. This dynamic plays out repeatedly in different policy areas throughout government.

**ONCE AND FUTURE SCHEDULE F**

Given the conflicted and difficult position of government workers, Trump’s Schedule F executive order does make some sense.

By replacing key bureaucrats with allies who are not under the civil service system, a president seemingly can elevate his own policy preferences over Congress's, shunt aside bureaucratic rules, and perhaps even hold the judiciary at bay.

Schedule F was grounded in a provision of the 1978 Civil Service Reform Act that exempted from civil service protections any employee "whose position has been determined to be of confidential, policy-determining, policy-making, or policy-advocating character." The provision reflects the belief that there should be a division of labor in government, with policy being set by elected officials and their appointees and thus responsive to the electorate, while a-political bureaucrats then carry out that policy. This provision is behind the president's authority to install some 4,000-plus people in exempted positions throughout the bureaucracy, only about a third of whom require approval by the Senate. These people, serving at the will and pleasure of the president, are charged with pursuing his agenda.

Trump's EO 13957 read the Civil Service Reform Act provision far more broadly than it had been before, to encompass positions that were previously deemed part of the career civil service and thus subject to civil service protections and hiring requirements. Under the order, those positions were not immediately reclassified as exempt. Rather, appointed agency heads could petition the Office of Personnel Management (headed by an appointee) to convert specific positions to Schedule F status, after which the president could fire and replace the officeholder at will.

It was never clear how many federal employees could be subject to Schedule F. The *Washington Post* reported that "civil service experts and union leaders estimated anywhere from tens of thousands to hundreds of thousands in a workforce of 2.1 million" would be affected, adding that these included "scientists, attorneys, regulators, [and] public health experts." James Sherk, the Trump administration official credited with conceiving Schedule F, told *Axios* that the number was around 50,000. However, in that same article an anonymous administration source said the administration did not expect to replace anywhere near that number of federal workers, but instead it would target some "bad apples" to produce "behavioral change" in the rest of the bureaucracy.

**Return of Schedule F?** / In July 2022, reporter Jonathan Swan, then of *Axios*, broke news in a two-part series that "Trump's top allies are preparing to radically reshape the federal government if he is re-elected, purging potentially thousands of civil servants and filling career posts with loyalists to him and his 'America First' ideology." Swan, now at the *New York Times*, has regularly followed up on the story, often writing with *Times* colleagues Maggie Haberman and Charlie Savage. Other media like *Politico*,

*The Atlantic*, *Slate*, and the Associated Press have also reported on the effort.

The story they tell goes like this: Several former Trump aides, now ensconced at established think tanks like the Heritage Foundation as well as newcomer groups like the America First Policy Institute, Conservative Partnership Institute, and the Center for Renewing America, are assembling a roster of thousands of people who could enter government as Schedule F employees in the first days of a new Trump administration. The reports stress that the people in those databases are being vetted, with the chief qualifications being loyalty to Trump and his agenda and a willingness

## The president already is entitled to install some 4,000-plus people throughout the bureaucracy to pursue his agenda, but Trump didn't take advantage of that power.

to work in government for only a short time, while experience and governmental operations knowledge are seen as negatives.

The reports stress that these people would not fill the top levels of agency bureaucracies, displacing longtime bureaucrats who have climbed to the top levels of the General Schedule. Rather, these would be mid-level managers, between low-level employees and the GS-13s to GS-15 at the top of the bureaucracy. These mid-level positions are deemed integral to implementing a Trump second-term agenda.

**Would it work?** / The prospect of a vetted, trained, ideologically committed cadre of workers flooding the federal bureaucracy and displacing career civil service workers would certainly stir the hearts of Trump supporters and chill his critics. But there are reasons to doubt this effort would yield the policy change that either group envisions.

First, despite more than a year of press coverage characterizing the effort as unified and organized, it apparently isn't. A recent guest essay in the *New York Times* by political observer Sam Adler-Bell tells, instead, of multiple, competing efforts by different groups to create their own rosters of potential Schedule F workers, with heated squabbling and suspicion between the groups.

Second, there's question of just how useful the newly created databases—often characterized as "a Linked-In for Trump supporters"—would be. Experienced DC hands know the quality of the town's many long-established job banks (some operated by organizations involved in the Schedule F effort): they're *fine* for staffing a mailroom or front desk, but things get iffy beyond that. Similar databases are unlikely to yield many workers—deliberately

## BUREAUCRACY

chosen for their *inexperience* and who *don't* want to make civil service a career, it's worth repeating—who can manage the countless rules and procedures of the federal bureaucracy, follow the complex statutes of Congress, and satisfy the scrutiny of judges empowered to strike down efforts that violate those laws and rules. Far from effectively pushing the policies of a second Trump administration, these replacement workers would almost certainly bumble and bog it down. Moreover, they will be responsible for seamlessly continuing decades-old policies initiated by federal statute, policies that Americans—whether happily or not—have

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come to expect and rely on. The result will be a lot of public and official frustration with the exempted workers and the administration that installed them.

A third problem is that—again, contrary to most press reports—Trump does not embrace these various groups' work. As Adler-Bell notes in his essay, a pair of recent statements issued by Trump's top campaign advisers, Susie Wiles and Chris LaCivita, gave the cold shoulder to Heritage et al. In the first, issued last November, they said:

We are seeing more and more stories about various groups' intentions for leading a Trump transition. These stories are neither appropriate nor constructive. ... These reports about personnel and policies that are specific to a second Trump administration are purely speculative and theoretical. Any personnel lists, policy agendas or government plans published anywhere are merely suggestions.

In case the message was missed, Wiles and LaCivita put out a second one a month later, which said in part: "Let us be even more specific, and blunt: People publicly discussing potential administration jobs for themselves or their friends are, in fact, hurting President Trump ... and themselves."

The reason for the chill may be that Trump feels burned by the policy and staffing assistance he received when he was president. Lawmakers like Senate Republican Leader Mitch McConnell (Supreme Court appointments) and former House speaker Paul Ryan (the 2017 tax legislation) may have been the driving forces behind some of his presidency's major achievements, but they also then shared Trump's limelight and, later, condemned his actions that were, well, condemnable. Reince Priebus, Bill

Barr, Mick Mulvaney, and other "establishment Republicans" may have held important roles in his administration, but they ultimately had "red lines" they were unwilling to cross in support of him and his agenda. Leonard Leo and the Federalist Society may have delivered a carefully curated list of judicial nominees who were popular with Trump's base, but those judges proved too committed to the law and the facts, especially when they sat in judgment of his claims that the 2020 election had somehow been stolen from him. Trump likely looks at Heritage et al. and sees them as more committed to traditional Republican conservatism than to him, and therefore no more loyal to him and his agenda than McConnell, Barr, and Leo.

So, without those databases, how would Trump find people to fill Schedule F positions during a second presidency? The likely answer is that, for the most part, he wouldn't. As previously noted, presidents *now* can fill some 4,000-plus positions throughout the federal government with loyalists to push their agenda.

Yet Trump came nowhere close to taking advantage of that ability. Nearly a third of the 1,200 or so top-level jobs were unfilled at any given point in his administration, and the numbers were likely worse for the rest of the positions. Moreover, many of the people who he did install did not last long or proved to be not up to the job. If he cannot fill 4,000 currently exempted positions, it's hard to imagine him filling an additional 5,000—or 50,000.

As a businessman, Trump did not have the reputation of an organized, careful, diligent, and informed strategist skilled at managing a large team of underlings. As president, he clearly was not—as reflected by the sparse list of actual accomplishments of his presidency. (See "The Trump Economy: Three Years of Volatile Continuity," Summer 2020.) Bureaucratic reform cannot happen without careful organization, diligence, informed strategy, and skilled management.

### REFORMING THE BUREAUCRACY

None of this should be read to suggest that there shouldn't be significant change and downsizing of the federal bureaucracy—quite the opposite. Making agency operations more accountable to the president, who in turn is accountable to the public, would be a good start. So how could this be done?

For one thing, a reformist president could repeat what effective presidents did in the past and take full advantage of the aforementioned 4,000-plus appointments that can be made throughout the federal government. Ronald Reagan's administration, which adopted the mantra "Personnel is policy," installed people who proved talented and determined to shift federal operations and regulation. Bill Clinton did much the same thing. As Stuart Shapiro has explained in *Regulation*, government bureaucracies will

follow the policy leads of their chief executives—if those executives are capable leaders. (“Politics and Regulatory Policy Analysis,” Summer 2006.)

The chief locus for initiating reform, however, is not the White House but Capitol Hill. As stressed above, the federal bureaucracy exists, persists, and expands in accordance with, and to carry out, the will of Congress. To change the bureaucracy, Congress—perhaps at the behest of a skilled, deal-making president—would need to unwind or revise many of the vague but interventionist statutes it passed over the decades and stop passing similar statutes in the future. In recent years, there have been some proposals to do this by constraining rulemaking activity at the agency level and by increasing congressional oversight of proposed and final regulation. Among the former are such ideas as increasing the use and rigor of cost-benefit and other critical analysis of existing and proposed rules, caps on the overall number of regulations and their aggregate compliance cost, and ad hoc, temporary suspensions of specific rules to boost economic activity or experiment with alternative regulatory schemes.

But as meritorious as those ideas might seem, their benefits would likely be limited and perhaps nonexistent. Concerning constraints on agency rulemaking, Shapiro has shown that if an administration favors a proposed regulation, negative analysis results usually pose little impediment to its implementation. Likewise, positive analysis gives little boost to a regulation the administration opposes. Or as Niskanen previously argued in *Regulation*, such analyses would gather dust on office shelves, occasionally seized on by politicians to justify their opinions but not to inform them. (“More Lonely Numbers,” Fall 2003.) Administration priorities would also likely overcome caps on the number or cost of regulation.

There is more promise in proposals to give Congress greater ability to review, block, and repeal regulations. Among those proposals are the REINS Act, which would require congressional approval of any new major regulation via an expedited process (see “Would the REINS Act Rein in Federal Regulation?” Summer 2011), and the inclusion of “sunset” clauses in legislation, which would force Congress to regularly revisit statutory delegations of rulemaking power. However, as demonstrated by the infrequent use of the Congressional Review Act—a regulatory oversight proposal that became law in 1996—an unlikely alignment of political factors is necessary for these powers to be exercised. Still, expansion of Congress’s ability to check agency rulemaking would be worthwhile.

But the best policy would be for Congress—again, perhaps at the behest of a skilled, deal-maker president—to limit its delegation of policymaking authority to civil servants. Good public policy is the product of compromise and the alignment of different factions’ interests, within the confines of limited governance. It is also hard work. As such, elected policymakers should set federal policy and government agencies should carry it out and, at most, only “fill up the details” (to borrow from an 1825 Supreme Court

decision allowing congressional delegation to the bureaucracy) of what Congress legislates.

This could be helped along by the Supreme Court. The Court recently heard arguments on curtailing the *Chevron* Doctrine, which limits judicial review of the basic question of whether specific agency rulemakings reflect congressional intent. Supporters of the doctrine—typically, but not always, on the left—claim it is vital to modern regulation because it puts the details of policymaking in the hands of expert civil servants rather than an inexpert Congress or the courts. (Ironically, the *Chevron* Doctrine dates to 1984, at the dawn of what is commonly considered the era of *deregulation*. Somehow, supporters of the doctrine and of government intervention miss that irony.) But Schoenbrod, in a different *Regulation* article, points out that *Chevron* also allows Congress to sluff off its decision-making responsibility and can put that power in the hands of a president skilled at manipulating the bureaucracy. (“From *Chevron* to ‘Consent of the Governed,’” Summer 2018.) A scaling back of *Chevron* would force Congress to resume its policymaking responsibility.

## CONCLUSION

The prospect of a second Trump administration installing thousands of inexperienced, ideologically driven supporters throughout the federal bureaucracy is understandably unnerving—especially given Trump’s rhetoric about using the federal government to visit “retribution” on his critics and political opponents. For them, a Trump restoration is understandably frightening.

But his Schedule F plans should also trouble ordinary Americans. The administrative state needs reform, but firing career government employees and replacing them with incompetents—or with no one at all—is not reform; it is dereliction. The resulting disfunction will likely engender broad public dissatisfaction with Trump, his administration, and his allies. It could even spur public support for *bigger* government.

Reforming the bureaucracy and rewriting statutes and regulations is hard work, requiring careful policymaking and consensus-building. It is not the product of gimmicks like Schedule F and databases of inexperienced people. That’s why a Trump remake of the federal bureaucracy would prove disastrous—especially for people who truly want to see the bureaucracy downsized. R

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