



# A REPUBLIC, If We Can Keep It

## *Donald Trump and the Hazards of Executive-Centered Partisanship*

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### **MEMO PREPARED FOR CONFERENCE: A REPUBLIC, IF WE CAN KEEP IT**

On April 12-13th, 2018, researchers, scholars, journalists, and policymakers came together at New America in Washington D.C. to address questions about the health and resiliency of American democracy. This conference considered questions such as: Can a liberal democracy and representative government persist in the United States? Are we experiencing a breakdown of democracy? Are checks and balances that are built into the political system and the mediating institutions that link citizens and government strong enough to sustain liberal democracy?

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*Donald Trump and the Hazards of Executive-Centered Partisanship*

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Prepared for Conference, “A Republic, if We Can Keep It,” April 12-13, 2018, Washington, D.C.<sup>1</sup>

Accepting the Republican nomination in July 2016, Donald J. Trump depicted a once proud nation in a spiral of decline, bereft of leadership capable of guiding the country back to its former greatness. Standing before a rapturous assembly of delegates in Cleveland – many of them first time attendees to a national convention – Trump described America as a place plagued by “poverty and violence at home, war and destruction abroad.” A former Democrat who left the Republican Party as recently as 2011, there Trump pledged to the American people that, “I am your voice.” The then-sitting President, Barack Obama, told the nation that the complexity of problems facing America required an experienced and steady hand. Proclaiming that he did not think “there’s ever been someone so qualified to hold this office,” Obama pleaded with Americans to place their faith in the former First Lady, Senator from New York, and Secretary of State, Hillary Clinton.<sup>2</sup> He argued that the country should dismiss the grandiose promises and despondent narratives from a man who had never held elected office. Trump’s retort was that only an outsider who had long jostled with the “establishment” could truly reform a “rigged system.” “Nobody knows the system better than me,” Trump claimed, “which is why I alone can fix it.”<sup>3</sup>

Nearly a year a half into Trump’s presidency, such braggadocio had become the stuff of ridicule by scholars, pundits, and detractors on both sides of the partisan divide. Trump has failed to translate most of his promises into legislation: Obamacare is still the law of the land; there is no “big, beautiful” wall on the border with Mexico; save for a massive tax bill, which threatens to ooze rather than drain the “swamp,” a unified Republican Congress has yet to enact any major program central to the White House’s America First agenda; and Trump had the dubious honor of recording the lowest public approval ratings for a president’s first year in modern history.<sup>4</sup>

At first glance, it seems that never has there been such dramatic validation of Theodore Lowi’s refrain that the modern presidency is trapped in an intractable dynamic of “Power Invested” and “Promise Unfulfilled.” Yet often overlooked among the disappointments and recriminations of Trumps’ frenzied beginning is his administration’s aggressive and deliberate assault on the Liberal state. True, much of the new administration is built atop substantive imagery and the creative repurposing of his catch-all slogan, “Make America Great.” Nevertheless, since day one, Trump has forcefully – and sometimes successfully - taken aim at

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<sup>1</sup> This memo is drawn from Sidney M. Milkis and Nicholas Jacobs, “I Alone Can Fix It’: Donald Trump, the Administrative Presidency and the Hazards of Executive-Centered Partisanship,” *The Forum* 2017; 15(3): 583–613.

<sup>2</sup> Annie Karni. June 9, 2016. “President Obama Endorses Hillary Clinton.” *Politico*. URL: <http://www.politico.com/story/2016/06/president-obama-endorses-hillary-clinton-224130>.

<sup>3</sup> Donald Trump’s full remarks available in: “Full Text: Donald Trump 2016 RNC Draft Speech Transcript,” July 21, 2016. *Politico*. URL: <http://www.politico.com/story/2016/07/full-transcript-donald-trump-nomination-acceptance-speech-at-rnc-225974>.

<sup>4</sup> According to the average of several polls calibrated by Real Clear Politics, 39.9% of those surveyed approved of Trump’s performance, while 55% disapproved. Using data from Gallup, we calculate that no president’s first eight months in office has, on average, been viewed so unfavorably, URL: [https://www.realclearpolitics.com/epolls/other/president\\_trump\\_job\\_approval-6179.html](https://www.realclearpolitics.com/epolls/other/president_trump_job_approval-6179.html); <http://www.gallup.com/poll/116677/presidential-approval-ratings-gallup-historical-statistics-trends.aspx>.

the programmatic achievements of his predecessor. In an effort, as one of Trump's supporters put it, to "erase Obama's legacy," the President has issued a blizzard of executive initiatives that have refashioned, or seriously disrupted government commitments in critical policy arenas such as immigration, climate change, foreign trade, criminal justice, civil rights, and, health care policy. Moreover, Trump appointed a Supreme Court justice – Neal Gorsuch – who will shift the balance on the court towards greater acceptance of public action that advances conservative policies in national security, protection of the homeland, policing, and civil rights.

There are many features of Trump's shocking rise to the White House and the tumultuous beginning of his presidency that represent novel features of American politics. However, the administrative aggrandizement that so far has dominated his time in office marks the continuation of a far-reaching development in American politics: the rise of an executive centered partisanship, which relies on presidential candidates and presidents to pronounce party doctrine, raise campaign funds, campaign on behalf of their partisan brethren, mobilize grass roots support, and advance party programs.<sup>5</sup> Unilateral presidential action became an indispensable feature of executive-centered partisanship during the George W. Bush and Obama years, fueled in no small part by their having to face a Congress when at least one of its chambers was controlled by the other party over substantial periods of their presidencies. So far did Obama push the administrative envelope that after Republicans assumed command of the House in the 2010 elections, GOP strategists eagerly anticipated that the next president their party elected would seize the loaded administrative weapon Obama had left in the Oval Office.<sup>6</sup> One might think an aggressive administrative strategy would not have been so pivotal after the GOP won control of the Senate in 2014 and began this current Republican administration under unified government in 2017. Nevertheless, Trump resorted to administrative aggrandizement right from the start, often in the service of highly controversial measures that strained his relations with congressional Republicans who remained split in the areas of free trade and immigration.

Trump's presidency thus confirms that partisan administration is a hallmark of contemporary presidential politics. The state and Federal Courts, state and local governments, and the Congress still exercise important authority to thwart unilateral administrative action, and no doubt limit the extent to which Trump makes good on some of his most divisive plans. Nevertheless, Trump's executive actions pose hard challenges to collective responsibility and the rule of law that undergirds it. His bold and, as many would charge, reckless administrative tactics have not yet appeared to jeopardize the direct, strong relationship he formed with the Republicans' conservative base. He thus tapped into an important change in the party system that has its origins in the fractious politics of the 1960s – the emergence of a paradoxical relationship between the decline of party organizations and angry partisanship. This unfiltered partisanship without parties, if you will, has given rise to a presidency-centered and rancorous contest between Liberals and Conservatives, which further diminishes the integrity of Congress and the

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<sup>5</sup> For a more comprehensive discussion of executive-centered partisanship, see Milkis, Sidney M. Milkis, Jesse H. Rhodes, and Emily J. Charnock, "What Happened to Post-partisanship? Barack Obama and the New American Party System." *Perspectives on Politics* (2012) 10 (1): 57-76.

<sup>6</sup> David Klaidman and Andrew Romano. October 12, 2002. "President Obama's Executive Power Grab," *The Daily Beast*. URL: [www.thedailybeast.com/newsweek/2012/10/21/president-obama-s-executive-power-grab.html](http://www.thedailybeast.com/newsweek/2012/10/21/president-obama-s-executive-power-grab.html). Last Accessed: September 12, 2017.

States, weakens the system of checks and balances, and erodes citizens' trust in the competence and fairness of the national government.

### **Battling for the Services of the Administrative State**

The rise of executive-centered partisanship defies the conventional wisdom that the two major parties engage in a partisan battle to expand or roll back the state. The equation of conservative Republicanism and the retrenchment of the administrative state elides a critical change in the relationship between party politics and administrative power. With the development of executive-centered partisanship, political contestation in the United States is no longer a struggle over the size of the State; rather it is a struggle between liberals and conservatives, to seize and deploy the State and its resources.<sup>7</sup> Liberals emphasize the instruments of social welfare policy, while conservatives seek to use analogous instruments of state power to shore up national and homeland security. Trump's election and his governing tactics are of potential importance not only because he has promised to dismantle many liberal institutions and programs (or to "deconstruct the administrative state" in Stephen Bannon's phrase), but because he plans to reshuffle those fiscal, administrative, and human resources to construct a conservative state in his own image.

Of course, the aggressive use of executive power to pursue policy objectives is not of recent vintage. The "administrative presidency" has been an important feature of policymaking since the New Deal.<sup>8</sup> Modern presidents, building on theoretical and practical developments that had their origin in the Progressive Era have attempted to strengthen their capacity to achieve policy objectives by wielding administrative powers through the bureaucracy rather than navigating a complex system of separated powers. However, Progressive reformers sought to replace Congress-centered partisan politics - seen as beholden to "special interests" - with nonpartisan administrative politics that claimed to serve the "whole people." Although partisan politics hardly disappeared, the Progressive tradition informed the presidencies of the Roosevelts, Woodrow Wilson and Lyndon Johnson. Conceiving the executive as the "steward of the public welfare," to use Theodore Roosevelt's elusive and exalted phrase, they presumed nonpartisan leadership of public opinion and management of the bureaucracy as the essential means for enhancing economic and social reform.

The support for an executive-centered administrative state was solidified by the programmatic commitments of New Deal liberalism. As FDR argued in his iconic State of the Union message of 1941, traditional freedoms like speech and religion needed to be supplemented by two new rights: "freedom from want" and "freedom from fear." These new freedoms, representing for all intents and purposes the charter of the modern American state, were given institutional form by the welfare and national security states. The "Four Freedoms" speech ushered in a new understanding of rights, under which domestic programs like Social Security and international causes like the Cold War called not for partisanship, but for "enlightened

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<sup>7</sup> Scholars have begun to take notice of this development (for example, see Zachary Callen, "Repurposing the Administrative State," *The Forum* 2017, 15 (2): 379-393), but it has yet to be centered a broad historical and institutional context. The redeployment strategy and the Trump administration's use of it is explored in Desmond King, Nicholas Jacobs and Sidney M. Milkis, "Building A Conservative State: Partisan Polarization and the Redevelopment of Administrative Power," Under Review.

<sup>8</sup> Richard Nathan, *The Administrative Presidency* (New York: Wiley, 1983); Sidney M. Milkis, *The Presidents and the Parties: The Transformation of the American Party System Since the New Deal* (New York: Oxford University Press, 1993).

administration” (as Roosevelt had described his New Deal aspiration in the 1932 Commonwealth Club address). Politics was now a search for pragmatic solutions to the challenging responsibilities that America had to assume, at home and abroad, in the wake of the Great Depression and World War II.<sup>9</sup> From the end of the Second World War to the late 1960s, party politics was subordinated to a policy making state, where partisan conflict and resolution were largely displaced by a new understanding of rights and the delivery of services associated with those rights.<sup>10</sup>

Recent institutional developments and changes in the dynamics of partisanship, however, encouraged the White House to deploy executive power in the service of partisan objectives. Beginning with the presidency of Richard Nixon, party conflict has roiled the administrative state forged during the Progressive and New Deal eras. Most accounts of our present discontents have emphasized polarization in Congress, but the modern executive has also become more partisan. In fact, the fractious politics in Congress, which have not only sharply divided Democrats and Republicans but also created internal disputes within the legislative caucuses, has made parties even more dependent on presidents to advance their objectives. Republican presidents, especially Ronald Reagan and George W. Bush, pioneered the art of mobilizing partisan opinion and exploiting administrative power for their partisan objectives.<sup>11</sup> During his campaign, Obama presented himself as a transcendent leader who could imbue the policy state with new causes and moral fervor. Yet, by the time he reached office, it no longer seemed possible for presidents to stand apart from partisan combat; more to the point, partisan polarization had come to so divide Congress and advocacy groups in Washington that the Obama Administration had strong incentives to take “refuge” and pursue progressive policies in the administrative presidency.

Obama’s partisanship was a critical prelude to Trump’s administrative partisanship. Indeed, it is impossible to understand the momentum and force of Trump’s presidency without taking account of Obama’s sustained reliance on executive administration. Scholars and pundits usually depicted Obama as a prisoner of partisan rancor in Congress, which was especially fierce and obstructive on the Republican side of the aisle during his two terms in office. To the contrary, he actively – if sometimes reluctantly – embraced the role of party leader, even in the management of the bureaucracy, the arena in which the modern presidency’s claim to transcend partisanship was nurtured.<sup>12</sup> During the final six years of this presidency, Obama surpassed the institutional strategies of the Bush administration in combining programmatic achievement and partisan calculation. Most of his executive actions were directed to strengthening a widely scattered but potentially powerful coalition that had been forming since the Great Society: minorities, youth, the LGBTQ community, and educated white voters, especially single women. Many of Obama’s administrative actions in the service of environmental protection, women’s

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<sup>9</sup> Sidney M. Milkis, "Ideas, Institutions, and the New Deal Constitutional Order," *American Political Thought* 3, no. 1 (Spring, 2014): 167-176.

<sup>10</sup> Milkis, *The President and the Parties*, 143; Karen Orren and Stephen Skowronek, *The Policy State: An American Predicament* (Cambridge, MA: Harvard University Press, 2017).

<sup>11</sup> Daniel J. Galvin, *Presidential Party Building: Dwight D. Eisenhower to George W. Bush*. (New Jersey: Princeton: Princeton University Press, 2010); “Presidents as Agents of Change,” *Presidential Studies Quarterly* vol. 44, issue 1 (March, 2014): 95-119.

<sup>12</sup> Kenneth Lowande and Sidney M. Milkis. 2014. “‘We Can’t Wait’: Barack Obama, Partisan Polarization, and the Administrative Presidency.” 2014, *The Forum* 12 (1): 3-27.

rights and criminal justice reform appealed to those constituencies. Similarly, the administration's direction to the Justice Department in February 2011 to stop defending the Defense of Marriage Act (DOMA), which barred federal recognition of same sex marriage, against constitutional challenges sealed the White House's partnership with the LGBTQ movement. Perhaps the most significant and polarizing action the Obama administration took to strengthen support of this coalition was in the controversial matter of immigration. Failing to reach an agreement with the Republican Congress on comprehensive immigration reform, Obama took dramatic administrative action that provided deportation relief and work authorizations to more than five million undocumented immigrants. It is not coincidental, therefore, that his immigration initiatives defined the lines of partisan conflict in Congress, the courts, and the 2016 election campaign.

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

Obama envisaged his administration as a progressive crusade that marked a new stage in the fusion of executive power and partisan politics. He coupled his ambitious administrative strategy alongside an innovative political organization that was dedicated to linking him directly with potential supporters. Born during the 2008 campaign as “Obama for America,” this mass mobilization effort was incorporated into the Democratic National Committee as “Organizing for America” during Obama's first term in the White House; after 2012, the group was spun off as a non-profit social welfare agency called “Organizing for Action” (OFA). This information age, grass-roots tool was critical not only to his two presidential campaigns, but also to the enactment of major legislative reform including the 2010 Affordable Care Act. When Obama removed his organization from the Democratic National Committee under the guise that it would strengthen its potential as a grass roots movement, he further solidified an executive-centered Democratic Party. Candidate-centered organizations had been a staple of American politics since the Kennedy administration, but Obama was the first president to keep his electoral machine intact as the vanguard of a movement that would free him from the constraints of the Democratic “establishment” and connect him directly to the new progressive coalition he envisioned. Significantly, just as Obama's attention shifted to executive action in 2011, OFA redeployed his staff and volunteers to defend the president's administrative initiatives, touting with special urgency the unilateralism which would advance climate change policy, LGBTQ rights and immigration reform<sup>13</sup>.

Trump's odds-defying ascendance to the presidency in 2016 appeared to complete the fusion of centralized administration and partisanship. Trump lacks an independent grass-roots machine as organized or as institutionally sophisticated as Obama's. However, his reliance on variegated media platforms (social and traditional) galvanized his supporters with the same fervor and passion as liberal advocates under OFA. Like Obama, too, Trump did not disband his movement at the end of the campaign; rather, the president-elect took off on a “thank you tour”

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<sup>13</sup> Sidney M. Milkis and John W. York. 2017. “Barack Obama, Organizing for America, and Executive-Centered Partisanship.” *Studies in American Political Development* 31 (1): 1-23.

during the transition period, showing how he intended to continue to hold mass rallies after he occupied the White House. Just weeks after his inauguration, Trump returned to the campaign stump, appearing in Melbourne, Florida on February 18<sup>th</sup>. Proclaiming that the people in the room were a part of “a great movement, a movement like has never been seen before in our country our probably anywhere else,” Trump explained why he felt compelled to leave and travel to see them in person: “I...want to speak to you without the filter of the fake news.” Invoking comparisons to his White House predecessors, the new president continued, “Thomas Jefferson, Andrew Jackson, and Abraham Lincoln and many of our greatest presidents fought with the media and called them out often times on their lies. When the media lies to people, I will never, ever let them get away with it.”<sup>14</sup> In campaign-style rallies since then – averaging one a month – the media have suffered some of the president’s harshest blows, energizing his supporters, and renewing their faith that the president speaks for them, and them alone.

Sensitive to the fact that the substance of Obama and Trump’s messages are radically divergent, their method of communication has nevertheless further ritualized the independent and plebiscitary nature of presidential-politicking. Just as Obama relied on OFA and direct mass appeals to mobilize support for his candidacy and programs, so Trump stood apart from most of the GOP “establishment,” basing his campaign on cable television, social media (especially his notorious Twitter account), and mass rallies.

Of course, a number of conservative media outlets, the conservative intelligentsia, and conservative politicians are still lukewarm if not avowedly hostile to the Republican White House. Trump’s campaign, championed by Stephen Bannon’s “alt right” *Breitbart News*, displaced the traditional conservative emphasis on rugged individualism and redefined it under the administration’s ubiquitous, yet amorphous, “Make America Great Again” slogan. The first sentence of the 2016 Republican platform echoed what had become a conservative rallying cry: “We believe in American exceptionalism.” However, the conservative ideal, heralded by Reagan and George W. Bush, included an activist foreign policy that encouraged the promotion of democratic ideals abroad through a combination of a forceful military presence and the pursuit of free trade policy. Denouncing conservative internationalism as a catastrophe, Trump touted a regressive America First program that seeks to distance America from its traditional allies, while engaging in a strange mating dance with Russian President Vladimir Putin’s authoritarian ambitions. Obama positioned himself as the leader of a new progressive “coalition of the ascendant;” Trump and his strategists view the new president as the steward of a “coalition of restoration” comprised of blue-collar, religiously devout, and non-urban whites who are frightened about demographic and social change ending their white privilege – and forging an American State to which they no longer feel an allegiance.<sup>15</sup>

Some Republicans lament this reinterpretation of conservative principles and wonder how the Party can be so oblivious to country’s massive demographic shifts. The Republican party’s own “autopsy report” following Romney’s 2012 loss suggested as much. Yet, even as many self-appointed Reagan heirs lament how the rhetorical tone that once animated the

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<sup>14</sup> Donald Trump’s full remarks available at: “Read: Full transcript of Trump's rally speech in Florida,” February 18, 2017. *Palm Beach Post*. URL: <http://www.palmbeachpost.com/news/national/read-full-transcript-trump-rally-speech-florida/DeDCpoNEKLQmWcIKndWB0M/>.

<sup>15</sup> Ronald Brownstein, April 17, 2015. “The Clinton Conundrum.” *The Atlantic*. URL: <https://www.theatlantic.com/politics/archive/2015/04/the-clinton-conundrum/431949/>. Last Accessed: September 12, 2017.

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

In the wake of the September 11 attacks and the Great Recession of 2007-09, the main targets of conservative statism became radical Islamic terrorism and illegal immigration. Foreign-born individuals now make up about 14 percent of the U.S. population, historically the same levels as the late nineteenth and early twentieth century, which, as Nolan McCarty has pointed out, is the other period in American history roiled by ritualized partisan combat.<sup>16</sup> To a point, Trump’s candidacy has been fueled by the economic despair of a declining working class, suggesting that he has blurred the partisan line between Freedom from Fear and Freedom from Want. Yet the major factor in his elevation to the White House was an appeal to Fear, to the feeling of a large number of Americans that immigrants are responsible, not only for the country’s economic problems, but also for the terrible threat that “radical Islamic terrorism” poses to the security of the homeland. Trump’s presidency thus marks a troubling culmination of a battle for the services of the national administrative state forged on the New Deal and elaborated during the Great Society – with Democrats embracing Freedom from Want and Republicans Freedom from Fear.

Trump’s unilateralism, therefore, dovetailed with his promise to advance a conservative offensive at war with the Republican establishment. Rather than invest heavily in an information age, grass roots organization like OFA that would mediate between the White House and the Republican base, Trump preferred to communicate directly with his followers through social media and mass rallies. He and his strategists thus sought a fusion of the presidency and the conservative movement that relied almost totally on his personal appeal and unilateral initiative. His promise that he “alone” could fix the mess left by America’s first African-American president thus foreshadowed the blitzkrieg of executive action that has dominated the first fourteen months of his presidency.

### **Donald Trump and the Redeployment of the American State**

Placing himself at the head of a “movement” dedicated to “Making America Great Again,” the Trump administration envisaged a renewed conservative offensive that had been battling for control of the State since the Nixon administration. His early administrative measures included executive orders that would impose a moratorium on migration from seven countries deemed to harbor “radical Islamic terrorists,” begin building a wall on the Mexican border, strip federal grant money from “sanctuary” states and cities that harbor illegal immigrants and often refuse to cooperate with federal authorities, and – on his first day in office – instructing federal officials to ease regulations associated with the Affordable Care Act (ACA) by directing

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<sup>16</sup> Nolan McCarty, “Polarization and American Political Development” in Richard M. Valelly, Suzanne Mettler, and Robert C. Lieberman (Eds.) *Oxford Handbook of American Political Development* (New York: Oxford University Press, 2016).

agencies “to waive, defer, grant exemptions from or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden.” The efforts of the Trump administration to repeal and replace the ACA stalled in the Congress, largely because Republicans could not reach a consensus about what health care policies should succeed “Obamacare.” But as has been demonstrated since the Reagan presidency, administrative action such as waivers can be used to redirect policy – to redeploy State power -- albeit not without a measure of recrimination from the Congress and States.

Targeting the ACA’s most redistributive feature – Medicaid expansion – the Trump White House recently began to consider issuing waivers that would allow some of the most conservative states that expanded health benefits for disadvantaged Americans – Arizona, Arkansas, Indiana, Kentucky, and New Hampshire -- to take coverage away from those who aren’t working or participating in work-related activities for a minimum number of hours per month, without providing any new job search assistance, job training, transportation, child-care, or other services that could help people find and hold a job. Echoing the defense of welfare “reform” that was enacted in 1996, the Centers for Medicaid and Medicare Service called this conservative recasting of benefits for the poor “helping people rise out of poverty and live the American Dream”.<sup>17</sup>

The administrative assault on the ACA sought to remake Obama’s signature policy achievement into one that better comported with conservative ideals. Other actions sought to hew closely to more conventional Republican objectives. Since Richard Nixon, law and order has been a signature commitment of conservative State ambitions. No sooner had he been inaugurated than Trump began to use executive power to encourage state and local police officers “to do their job.” On March 31, 2017 the Department of Justice announced that it would drastically curtail its use of consent decrees, which had become a major instrument under the Obama administration for investigating civil rights complaints levied against police departments.<sup>18</sup> And in late August, Trump announced an executive order that revoked a January, 2015 order prohibiting the sale of military-grade munitions and equipment to local and state police forces.<sup>19</sup> In a further maneuver meant to reverse his predecessor’s effort to reform criminal justice, the administration overturned an Obama-era order that would have slowly ended the federal government’s reliance on for-profit prisons.<sup>20</sup>

Trump’s conservative statism focused especially on radical Islamic terrorism and illegal immigration. The decision to suspend the Deferred Action for Childhood Arrivals (DACA) program was especially controversial; however, this action did not just placate his conservative base. In a calculated political maneuver, Trump sought to appear simultaneously hard on

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<sup>17</sup> Jared Bernstein and Hannah Katch, “Trump Administration’s Attack on Medicaid is Picking Up Speed,” *Washington Post*, March 6, 2018, [https://www.washingtonpost.com/news/posteverything/wp/2018/03/06/trump-administrations-under-the-radar-attack-on-medicaid-is-picking-up-speed/?utm\\_term=.45973635280a](https://www.washingtonpost.com/news/posteverything/wp/2018/03/06/trump-administrations-under-the-radar-attack-on-medicaid-is-picking-up-speed/?utm_term=.45973635280a).

<sup>18</sup> “Supporting Federal, State, Local, and Tribal Law Enforcement.” March 31, 2017. Memorandum for Heads of Department Components and United States Attorneys, From the Attorney General. URL: <https://www.documentcloud.org/documents/3535148-Consentdecreebaltimore.html>.

<sup>19</sup> “Restoring State, Tribal, and Local Law Enforcement’s Access to Life-Saving Equipment and Resources,” Executive Order 13809. August 28, 2017. *Federal Registrar*, vol. 82, no. 168, p. 41499-41500.

<sup>20</sup> “Rescission of Memorandum on Use of Private Prisons,” Memorandum for the Acting Director Federal Bureau of Prisons. February 21, 2017. Office of the Attorney General.

immigration and in favor of any number of legislative proposals likely to pass the Congress over the fate of Dreamers. By delaying DACA's termination, he has attempted to force Republican and Democratic legislators to either enact legislation or share the blame with the White House for rescinding a popular program. Still, DACA was born of administrative unilateralism and was promptly terminated with similar instrumental gusto; therefore, far from decreasing the likelihood of future policymaking through such means, it will likely encourage further reliance on administrative fiat. Indeed, executive-centered partisanship reared its head in the legislative machinations that followed Trump's rescission of Obama's executive actions. Amid Congressional efforts to avoid a budgetary impasse that would shut down the government, Republican leaders, such as Speaker Paul Ryan and Senate leader Mitch McConnell, denounced Democrats' insistence that legal protection of Dreamers be part of any spending deal. GOP lawmakers thus chose to firmly align with the conservative posture on immigration that Trump sounded to rally the base in the 2016 campaign.

President Trump and the Republican Party remain committed to redeploying State power even in a domain long associated with state and local control, public education. After Congress enacted No Child Left Behind (NCLB), a leading priority of the George W. Bush administration, in 2002 with bipartisan support, a battle soon erupted over how to administer the controls it imposed on elementary and secondary education. Even though NCLB's legal authority expired in 2007, the Obama administration capitalized on the broad acts of discretion given to the Department of Education, and through a combination of waivers, bureaucratic regulations, and an innovative grant program, Race to the Top, redefined the federal approach to education policy, with virtually no consultation with Congress.

Although Congress attempted to reassert its authority under the 2015 Every Student Succeeds Act, a partisan battle continued into the first year of the Trump administration over what objectives these unprecedented federal government interventions in public education should serve. Trump's choice to head the Department of Education, Betty DeVos has long been an advocate of local discretion; but once ensconced, DeVos began to pursue an aggressive federal policy that stressed the "privatization" of public education, by expanding charter schools and vouchers aided by the Department of Education.<sup>21</sup> Inside the department, DeVos has weakened the authority of some divisions, while retooling and empowering others. Not surprisingly, the Department of Education's Office of Civil Rights has lost much of the independent regulatory authority it built for itself over the last decade. Trump issued an executive order in April, 2017 that called for a review of the department's regulations and guidance documents; four months later, DeVos rescinded the controversial Obama-era "dear colleague letter" that universities and colleges used to adjudicate Title IX complaints.<sup>22</sup> While DeVos has curbed the Office of Civil Rights' authority, she has creatively used the department's student loan division to support for-profit colleges and universities, and to protect student loan providers. By rewriting the gainful employment regulations and contracting with private collection agencies to more aggressively

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<sup>21</sup> Erica L Green, "DeVos's Hard Line on Education Law Surprises States," New York Times, July 7, 2017. Retrieved August 26, 2017 (<https://www.nytimes.com/2017/07/07/us/politics/devos-federal-education-lawstates.html?mcubz=0> ).

<sup>22</sup> U.S. Department of Education, "Department of Education Issues New Interim Guidance on Campus Sexual Misconduct," September 22, 2017. Retrieved January 3, 2018 (<https://www.ed.gov/news/press-releases/department-education-issues-new-interimguidance-campus-sexual-misconduct>).

recoup student loan debt, the Department has not been weakened; rather, it has been retooled to serve conservative objectives.<sup>23</sup>

### **The Hazards of Executive Partisanship**

It remains to be seen how Donald Trump's celebration of acting alone will affect the Republican party and the executive office. In the immediate term, however, it seems to have fostered a destructive working arrangement in the White House Office, the hollowing out of regular departments and agencies, and limited his support to hard core conservative Republicans who represent roughly 40 percent of the electorate. Even as the White House let loose a fuselage of executive orders, memoranda, and waivers that threatened and, in some cases, redirected Obama-era policies on almost every front, Trump's progress was hobbled by internecine fights in the West Wing that precipitated the exits of National Security Advisor, Michael Flynn, whose rapid departure foreordained the scandal over Russia's interference in the 2016 election that has plagued – and badly agitated -- Trump from the start; his Chief of Staff, Reince Priebus; Press Secretary, Sean Spicer; his chief strategist – and principal conduit to his “alt-right” constituency -- Stephen Bannon; his iconoclastic foreign policy advisor, Sebastian Gorka; his Secretary of State, Rex Tillerson; the head of the National Security Council, H.R. McMaster; and White House chief economic advisor, Gary Cohn . Moreover, chaos at the center of the administration has severely hampered the process of staffing important positions in the departments and agencies. A report from the White House Transition Projects shows that the Trump administration has the worst record in 40 years in staffing its political appointments. The blame for this failure to fill critical leadership positions does not lie with Congress, as the pace of Senate confirmations matches the past three presidential administrations. Rather it seems to be symptom of Trump's mischievous attempt to task the White House as the vanguard of an effort to “drain the swamp” and rebuild the executive branch in his own image.<sup>24</sup>

Trump's remarkable and troubling rise to the White House has frequently been viewed as idiosyncratic – a cult of personality that will not leave a deep imprint on governing institutions or parties. However, his iconoclastic executive-centered partisanship represents but a new stage – perhaps a final reckoning - of a development that has become deeply interwoven in the fabric of American politics. Ronald Reagan, George W. Bush and Barack Obama each demonstrated that modern presidents, especially when motivated by programmatic incentives, can exploit national administrative power for partisan purposes. With partisan loyalties weakening, if not displacing institutional attachments, Congress and, even the courts, have for the most part provided tepid resistance to the onward march of presidency-centered partisanship.

In the face of the Trump reckoning, there have been some signs of life in the “Madisonian System.” The Courts did slow, and cause modifications to, the provocative refuge order; and in response to the ongoing scandal over the Trump campaign's possible collusion with

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<sup>23</sup> Michael Stratford, “Education Department Forges Ahead with Loan Servicing Overhaul.” Politico, May 9, 2017. Retrieved August 26, 2017 (<https://www.politico.com/tipsheets/morning-education/2017/05/education-departmentforges-ahead-with-loan-servicing-overhaul-220209>); Daniel Douglas-Gabriel, Danielle, “Trump administration welcomes back student debt collectors fired by Obama,” Washington Post, May 3, 2017. Retrieved August 26, 2017 ([https://www.washingtonpost.com/news/grade-point/wp/2017/05/03/trumpadministration-welcomes-back-student-debt-collectors-fired-byobama/?utm\\_term=.7bc1472cd35d](https://www.washingtonpost.com/news/grade-point/wp/2017/05/03/trumpadministration-welcomes-back-student-debt-collectors-fired-byobama/?utm_term=.7bc1472cd35d)).

<sup>24</sup> *White House Transitions Project*. September, 2017. “Special Analysis on Pace of Confirmations.” URL: <http://www.whitehousetransitionproject.org/appointments/>.

Russia during the 2016 election, Congress passed tough sanctions, marking the first time that Congress had forced Trump to sign a bill over his objections by passing it with bipartisan, veto-proof majorities. The measure, which imposed a waiting period of 30 days on the White before it could renegotiate any sanctions, expressed the deep skepticism among lawmakers in both parties about Trump’s “bro-mance” with Putin. In particular, the legislature’s unusual incursion into the president’s authority in national security seemed like an effort to prevent Trump from overlooking the Kremlin’s annexation of Crimea, sustained military intervention in Ukraine, and its meddling in the 2016 American election.

That the Russian government’s retaliation -- seizing two American diplomatic properties and ordering the United States to reduce its embassy staff members in Russia by 755 people -- occurred before Trump signed the law might have signaled its intention to target Congress rather than the White House. Indeed, although Trump reluctantly signed the legislation, his approval came with an important caveat -- a signing statement that judged those parts of the law that proscribed his discretion to make deals with a foreign nation unconstitutional.<sup>25</sup> Signing statements had become an important weapon in the president’s administrative arsenal during the George W. Bush administration; yet such executive assertion was unlikely to work in the face of almost unanimous congressional opposition. Trump’s estrangement from the “establishment,” therefore, aroused Congress to assert its prerogative in commercial transactions -- and to put a serious crimp in Trump’s determination -- shown most dramatically in his message of congratulations to Putin on the Russian president’s re-election in what was widely viewed as a rigged contest -- to reach a rapprochement with an authoritarian regime. Significantly, under pressure from Congress and perhaps the America’s closest ally, the United Kingdom, the White House expelled 60 Russian diplomats in March, in retaliation for the Putin regime’s allegedly employing a nerve gas to assassinate a Russian double agent who lived in London. This action occurred just 11 days after the Trump administration imposed its first sanctions against Russia in pursuance of the Congress’s 2017 legislation.

Yet the constitutional principles and institutions remained under siege. Feeling trapped between his determination to pursue an American First policy abroad and Congressional opposition to the threat this posture poses to the country’s liberal principles and long-standing alliances, Trump has increasingly surrounded himself with loyalists who share his bellicose positions in national and homeland security. The growing palace guard mentality reared its head as the president unilaterally imposed tariffs on steel and aluminum, risking a trade war with China and stirring agitation among Republican leaders in Congress who were especially anxious to discourage this strain of Trump’s America First program. Trump’s estrangement from Congress was dramatically demonstrated in an eyeball to eyeball confrontation a few weeks ago. Pushed by Republican leaders Paul Ryan and Mitch McConnell to enacted a bipartisan agreement that would prevent another government shutdown, Trump, fumed that the bill, which he reluctantly signed, did not contain the immigration deal he favored: the reauthorization of DACA for two and a half years in return for a substantial appropriation of 25 billion dollars to build an immense wall along the nation’s Southern border. Although no one can be certain how the competing demands pertaining to DACA and the border will be resolved, Trump’s unwillingness to separate deportation relief for the Dreamers from the glaring symbol of a harsh immigration policy makes a legislative solution unlikely. Taking account of the strong sympathy for the Dreamers, who even have significant support among some ardent conservatives such as

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<sup>25</sup> “Statement by President Donald J. Trump on the Signing of H.R. 3364.” August 2, 2017. *The White House: Office of the Press Secretary*.

the Koch brothers, it seemed that congressional Republicans' uneasy alliance with Trump suffered one of the hazards of executive-centered partisanship: their president has sought to fulfill his own ambition at the cost of denigrating his party as a collective organization with a past and a future.

Although Trump's harsh position on immigration, trade and national security might not have won over Washington, he has forged strong ties with GOP's base through tweets, mass rallies and administrative action. A March NBC News/Wall Street poll found that 59 percent of registered Republican voters considered themselves more a supporter of Trump than the Republican Party. Confirming the executive-centered character of contemporary partisanship, a Quinnipiac University poll revealed that 58 percent of the Republican voters supported imposing tariffs on steel and aluminum, a powerful example of how Trump had transformed Republican loyalists position on trade policy during the 2016 campaign.<sup>26</sup>

Consequently, beyond the political intrigues of the moment, Trump's embrace of unilateral executive power has dramatically exposed the fault lines between the promise of presidential leadership, administrative aggrandizement, and the institutional weakness of political parties. Far from transcending the divisiveness and sectarian interests that form the core of party politics, presidents are now expected to take center stage in the fight over the services for the American state. The Reagan, Bush and Obama presidencies raised a concern that has become a glaring alarm during the Trump's presidency: the joining of presidential prerogative and partisanship creates the false illusion that the executive of a vast bureaucratic state, even with the tools of instant communication and social media, can truly function as a representative democratic institution with meaningful links to the president's party and the public. Instead, we have learned the hard lesson that executive partisanship leads to a plebiscitary politics, which exposes the American people to leaders who scorn the institutional restraints that are a vital ingredient of constitutional government as well as the collaboration that is the sine qua non of organized party politics. Recent developments herald a clarion call, as Hugh Heclo has wisely counseled, for people and their representatives to "think institutionally."<sup>27</sup> But those who would seek to restore the restraints or refinements of institutions must face the imposing obstacle of a government that for years has sacrificed responsible leadership to aggressive and resolute partisan administration. For better or worse, appeals to patience and acts of forbearance have become frail vestiges of a polity once praised – or blamed – for its pragmatic centrism.

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<sup>26</sup> During the 2016 presidential campaign, Pew tracked a massive drop in the share of Republicans and Republican-leaning independents claiming that free trade agreements had been a "good thing" for the United States from 56 percent in early 2015 to 29 percent in October 2016. Ashley Parker, "A Study Plank in the GOP Platform: Trumpism," *Washington Post*, March 25, 2018, A1, A21.

<sup>27</sup> Hugh Heclo, *On Thinking Institutionally* (Oxford, UK: Oxford University Press, 2008).