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Irregular Order, Part I

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What it will take to break the deep state.

The next America First administration naturally will seek to use the power of the national government for the benefit of the American people. But a ship this big does not change course simply because the captain orders a turn. As we saw during the Trump Administration, the president's directions have no effect beyond the West Wing unless the bureaucracy—including the White House components responsible for

coordinating implementation, such as the Office of Management and Budget (OMB)—*wants* to implement them or *is compelled* to implement them by the president’s appointees.

Fixing Personnel: Necessary, but not Sufficient

Happily, those preparing for the next America First administration understand how the lack of appropriate appointees weakened the Trump Administration. They are identifying and preparing a corps of “politicals” to drive implementation of the next America First president’s program. This effort is necessary and worthy of our support. However, we must recognize its limits.

Quantity has a quality all its own. First, we face a profound problem of numbers. Even if the next America First administration finds high-quality politicals for all of the approximately 8,000 appointed positions that exist now, plus the approximately 50,000 identified in the “Schedule F” initiative, this relatively small cadre will oversee hundreds of thousands of career “feds” who can obstruct the president’s program, whether through active “Resistance” or simple foot-dragging. As we saw during the Trump Administration, politicals cannot trust anything this bureaucratic host does—*everything* must be questioned, double-checked, and re-written. Sustaining this level of vigilance can wear down even the strongest among us.

Unfortunately, we cannot manage our way out of this problem. Disciplining feds is a lengthy and difficult process even for documented misconduct or open insubordination, much less for subtler offenses (e.g., stealth insubordination through playing dumb) or poor performance. Even if the next America First administration has enough politicals to pursue these cases to successful conclusions (and enough aligned human resource officials and lawyers to help), doing so on an individual basis would mire them in the procedural minutiae of human resources—a poor use of their time and talents.

We should reject out of hand the naïve hope that feds can be somehow “converted” or persuaded through good management practices to help implement the next America First president’s program. Their interests are served by the status quo. Nor can we simply fire a few prominent Resisters *pour encourager les autres*. Thanks to the various employment protections feds enjoy and their numbers, the others will think, correctly, “that won’t happen to *me*.” Further, as we saw during the Trump Administration, the “examples” will be lionized by the bureaucracy’s allies in the media and Congress—hardly a discouragement.

The part of the iceberg under the water. Even our analysis above does not fully convey the scope of the problem, because it does not consider the network of external ally and client entities with which the formal bureaucracy shares “governance” and through which it actually *does* much of what offends America First. This network includes state and local governments; “non-governmental” organizations, certain charities, and other “civil society” groups; labor unions, trade associations, and pressure groups; consultants, contractors, and other “implementing partners”; international and multilateral organizations; and academic institutions and think tanks.

These entities usually present themselves as neutral or independent, but that is true only in a formal sense. They rely on the Washington bureaucracy for all or substantial amounts of their funding (through contracts, grants, and cooperative agreements), access in order to influence policy-making (through “stakeholder consultations” or less-formal contacts), or both. Most importantly, the personnel who staff these entities share the worldview, preferences, and prejudices of their allies and patrons in the bureaucracy. They, too, will Resist. But trying to control them (1) means mastering the minutiae of government contracting and procurement policies and (2) is an impossible principal-agent problem.

Further, this network is a key means by which taxpayer dollars are laundered to support the political enemies of America First. Contract and grant recipients technically cannot use government funds for *partisan* political activities, but money is fungible. (In any event, the definition of “partisan” favors certain causes—officially, Black Lives Matter is not a partisan political movement.) For example, a “community-based non-profit” that receives a government grant for “outreach to vulnerable groups” might also file lawsuits to block immigration enforcement. Meanwhile, the “community advocate” it employs donates part of her government-funded salary to bail out Antifa thugs. Simply replacing the boss of the fed who administers the grant program (who, for her part, gives some of her six-figure salary to Planned Parenthood, NPR, and her woke alma mater) does nothing to break this chain.

The structural logic of the machine. Finally, we must recognize that most government activities and programs are not neutral instruments that the right politicals can redirect to serve America First purposes. Rather, they are premised on Left-globalist assumptions about the world’s problems and how to solve them, and they are built to share money and influence with the bureaucracy’s network of clients and allies that share those assumptions. In some cases, the mere existence of a program or activity is anathema to America First.

Overcoming this structural orientation in individual programs is possible, but it is time-consuming work—like managing feds—and cannot be made to last. Even if changes are made in regulation, the bureaucracy will interpret them to suit its preferences. Further, there is no comparable network of “our guys” with whom America First politicals can share money and influence as described above. Consequently, for lack of alternatives, many politicals during the Trump Administration found themselves approving grants for the same odious recipients to keep doing the same offensive things.

Sending high-quality America First politicals into this machine would be a poor use of their time and talents. At best, they will with great effort be able to make some marginal, temporary changes. At worst, as psychological compensation for the inability to do anything, they will “go native” and start peddling the bureaucracy’s nonsense clothed in America First verbiage. (Many such cases!) But, of course, we cannot leave the bureaucracy to its own devices.

Wholesale Approaches Necessary

Tackling these problems on a *retail* basis—i.e., going after individual problem feds or contracts—means fighting in the bureaucracy’s style, on its turf, and by its rules. The next America First administration cannot win such a war—our small cadre of politicals cannot match the bureaucracy’s proficiency, numbers, or patience. Instead, the administration will need *wholesale* approaches to make the best use of its limited human resources while breaking this machine.

Target the bureaucracy’s weakness. Happily, such approaches remain possible, if difficult to pursue, because the bureaucracy has a critical vulnerability: it has not yet discovered a generally-applicable way to fund itself and its clients without the intervention of Congress and the White House. The next America First administration must exploit this. Cutting off funding for whole offices, bureaus, programs, and activities would eliminate them at a stroke—sparing politicals from the procedural minutiae and litigation involved in firing individual feds or ending individual programs, while also starving the bureaucracy’s external clients.

Reduce the size of the problem. Such approaches work in the same way a sculptor creates a statue by removing material from a block. The more the next America First administration can “carve away,” the easier it will be to control the bureaucracy that remains—and the more the political enemies of America First will suffer. To be clear, politicals should not avoid managing—indeed, they must sweat the details for the

programs and activities that matter to America First—but we should seek to reduce *unnecessary* management burdens so they can focus on the president’s priorities.

Abandon regular order. The next America First administration might try to “do it the right way”—i.e., the president would propose a budget that ends non-America First programs and activities, Congress would pass a series of appropriations bills reflecting those proposals, and the president would sign them. However, no one should be surprised when such an attempt fails. Even with Republican control of Congress, there remain too many establishmentarians in the party who are allies of the bureaucracy (e.g., appropriators) or cling to comforting myths about a “non-partisan,” “professional,” or “expert” civil service.

Embrace irregular order. In any event, regular order was long ago succeeded by a practice that mitigates the bureaucracy’s critical vulnerability by raising the stakes for those seeking to exploit it. We mean of course funding the government through huge, “must-pass” appropriations bills that the full Congress and president do not see until the fiscal year is ending—long after any opportunity for meaningful consideration or change. By jamming all appropriations into these consolidated omnibus monsters, the bureaucracy and its allies in Congress set up a dilemma for those who would challenge them: enact the bill or shut down the government.

This practice has reduced the Constitution’s Appropriations Clause to an annual humiliation ritual where the political branches of government publicly declare their impotence (“I don’t like it, but I won’t shut the government down over it”) and submit. Since the bureaucracy and its allies have made it impossible to reassert political control over the bureaucracy the “right way,” the next America First administration will have to do it *ugly*.

Techniques to Enable Irregular Order

Before discussing three approaches to irregular order, we consider some important techniques to control key nodes in the operation of contemporary “governance.” To enable any irregular order approach, the next America First administration should require these techniques across the Executive Branch. But even if it does not pursue irregular order at all, these techniques are worth adopting as “force multipliers” to give the administration’s relatively small cadre of politicals greater control over the bureaucracy.

The buck stops with agency heads. Statutes typically grant authorities to agency heads, who in turn normally delegate the exercise of these authorities to subordinate officials; in this way, agency heads do not have to sign off on *everything* the agency does. To ensure tight control over their agencies’ activities, America First agency heads should withdraw all such delegations of authority except those covering the most routine matters, so the bureaucracy will be unable to make new financial obligations or policies without the agency head’s *personal* review and approval. This will create a massive bottleneck in the agency’s work—a feature, not a bug, as we will see in part II of this Memo. The White House should issue Executive Branch-wide guidance on this point (i.e., the president expects all agency heads to take personal responsibility for everything their agencies do) to give cover to agency heads in dealing with their subordinates, Congress, and their own bureaucracies.

Once they have America First political subordinates in place, agency heads will be tempted to restore some delegations of authority. They must not do so. This is not due to lack of confidence in their subordinates, but rather to protect them. Agency heads are far better situated to avoid or withstand congressional pressure, so they must be their agencies’ sole face and voice before Congress. Likewise, lawsuits against agencies will name agency heads; government lawyers are

certain to defend them, but naturally will be less focused on defending subordinate officials. Agency heads must serve as lightning rods so their subordinates can focus on implementation of the president's program.

One might ask here: Will politicals take positions at agencies if they cannot put their names on their decisions? We appreciate that high-quality politicals are not likely to have small egos. However, their job is riding the bureaucracy to implement the president's program. Signing things simply makes them targets for congressional and legal entanglements, which are personally expensive (in terms of both money and time) distractions. They should seek recognition within the administration; public recognition only comes with victory.

Give the boss some help. Agency heads cannot personally review everything, of course. Each will need the help of an agency coordination cell to review requests and proposals from the bureaucracy in an orderly (but not rapid) fashion, prioritize the ones that need action (i.e., those serving America First purposes), ignore the rest, and give sound advice. The cell should have extensive, *informal* communication with OMB and other White House components to ensure consistency with the president's program; and with politicals in the agency, to inform the agency head's decisions and coordinate its implementation. The cell also must serve as the agency's single point of contact for *formal* interagency coordination; feds must be excluded from all interagency processes.

The coordination cell's name and administrative "address" will differ by agency; for example, the attorney general might use his counselors as his cell, while the secretary of state might use the Office of Policy Planning. More important than its place in the organizational chart is its composition: (1) the White House (not agency heads) must choose cell members who are (2) personally and absolutely committed to the America First agenda and (3) have the stomach to say "no" and stick with it, even under intense pressure from Congress, media, bureaucracy, and even erstwhile political allies.

Keep the money close. Some appropriations are made to officials below the level of agency head or require the approval of such subordinate officials for obligation. The next America First administration should treat such provisions as unconstitutional. Further, it should disregard the various “soft earmarks” in committee reports and explanatory materials—these are not law, and the current practice of treating them as law only serves the bureaucracy and its allies and clients. The administration also should ignore the notification and consultation requirements written into appropriations laws—if the president does not have a line-item veto, it is hard to see why certain congressional committees should have a soft veto by putting “holds” on spending through the congressional notification process. OMB should issue government-wide guidance on these points to give cover to agency heads in dealing with Congress and their own agency bureaucrats.

Deal with Congress. Having delegated most of its law-making powers to the bureaucracy, Congress does not *do* much that the next America First administration would need, except appropriations and appointments. However, members can greatly distract political through kayfabe “oversight.” Therefore, interaction with Congress should be strictly minimized and strictly transactional. Centralized control of such interaction (at the level of the White House or the agency head, depending on the approach selected) will protect political, ensure unity and consistency in messaging, and make it easier to disown the inevitable and abundant informal communication between the bureaucracy and its allies in Congress.

This centralization also is necessary to implement the most important rule of congressional relations: *everything is a negotiation, and nothing is free*. Even for “routine” oversight requests, only the agency head is available, and only for a formal hearing. Scheduling the hearing should be difficult (agency heads are busy people, of course), and the agency head should demand action on administration desires (e.g., advancing nominees) before agreeing to a date. Then, the terms of the hearing

(especially its length and the scope of permissible questions) likewise are subject to negotiation. All of this will infuriate members of Congress, but the most they will do in response is to spend the hearing berating the agency head for the benefit of the cameras and their fundraising efforts. Sticks and stones.

Starve the media. As with congressional relations, all interactions with the media should be controlled centrally—to the extent there are any. The legacy media have *even less* that the next America First administration would want or need and are allies of the bureaucracy. Long gone are the days when the government needed the media to help inform the public; now, the media need the government to provide “content.” Politicals should recognize they have the upper hand and start acting like it—this is as much a matter of attitude as anything else. America First politicals simply should stop caring about the requests, needs, or opinions of those who hate America First.

Concretely, this means treating journalists as private citizens who merit no special access, protection, or concern. The administration should not opine officially, at media demand, about every little thing that happens in the world. Agencies should end routine press briefings—this supply creates its own demand. (The bureaucracy loves to shape policy through talking points, which become reified as “cleared guidance.”) The administration should shut down all government social media accounts, most of which are followed only by bureaucracy’s external allies and clients; the president is the only one who gets to tweet. Government websites are more than sufficient to distribute official information and give the media fewer opportunities for “takes.”

Minimize “stakeholder engagement.” This term is a meaninglessly elastic synonym for “talking with interested parties” and has become fetishized as a pillar of modern “governance.” The bureaucracy uses this practice to (1) justify its own preferences by hearing its external clients and allies echo them and (2) resist political direction, as if such

“engagement” somehow trumps the voters’ will as expressed in election results. America First political must understand their authority derives (indirectly) from the voters, not from interested parties who happen to have access based on some personal connections, no matter how “inclusive,” “broad-based,” or “grassroots” they claim to be.

Except in certain technical contexts (e.g., the Federal Aviation Administration might need industry data in order to regulate effectively), meeting with interested parties is neither necessary nor harmless. Even if “just for show” or “to be polite,” it wastes time, opens one to unhelpful political pressure (including from erstwhile political allies), and generates billings for swamp lobbyists involved in procuring participation. (America First political who wish to make contacts or friends should do so at happy hour.) Stakeholder events should be strictly limited to what is required by law or regulation; in those cases, political must select the participants or carefully arrange the process for selecting them to ensure the presentation of desirable views.

In the second part of this Memo, we will consider three approaches to irregular order. All target the bureaucracy’s critical vulnerability—funding—but at different points in the government funding process.

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