Commentary

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Grappling with the True Nature of the Administrative Presidency

Presidential oversight is necessary for effective coordination of rulemaking. In his article “The Administrative Presidency as Reactive Oversight: Implications for Positive and Normative Theory,” William F. West stresses that it is “the most important mechanism for direct influence by the Executive Office of the President (EOP) over policy making by the domestic bureaucracy.” He argues, however, that oversight is primarily reactive and thus can create delay and result in inconsistent policy decisions. His concern that “scholars have given insufficient attention to its implications for our understanding of the administrative presidency” warrants special attention because coordination among agencies is a valuable tool for decreasing the cost of rules and because President Barack Obama has taken steps to increase international regulatory coordination. Ineffective and inconsistent coordination wastes resources, a special problem at a time of decreasing appropriations. A better understanding of how the president does or can use his oversight authority may help devise methods for increasing effectiveness and efficiency.

Cooperation among agencies in developing standards can be very beneficial. For example, the National Highway Traffic Safety Administration (NHTSA) is required to set automobile fuel-efficiency standards. For gasoline-fueled vehicles, efficiency is measured by the greenhouse gas emissions from the vehicle’s tailpipe. The Environmental Protection Agency (EPA) regulates the emission of those gases. Shortly after taking office, as West notes, President Obama directed the two agencies to work together, with significant White House involvement, to significantly increase automobile fuel economy and decrease emissions. Although it can sometimes be difficult for agencies to coordinate effectively, they did so here, ensuring that their standards are neither conflicting nor duplicative.

Examples also exist at the international level. A number of years ago, the U.S. Department of Transportation successfully worked with its Canadian counterpart to develop uniform standards for parking permits for people with disabilities so that the permits would be accepted in all of the U.S. states and across Canada. In 2012, to increase the use of this type of cooperation, President Obama issued Executive Order 13609 on “International Regulatory Cooperation.” This foreign agency coordination would still include any necessary coordination with other U.S. agencies as well as agencies such as the U.S. Trade Representative. This could raise complex practical and legal issues, the types of issues for which agencies may need the help of the EOP to resolve disputes or address obstacles.

I agree with West that the president’s role in the rulemaking process is more reactive than proactive. It can be very difficult to get a reluctant agency to act, but when an agency wants to or must act, there are many opportunities to control or direct that action. Moreover, it is not always clear whether the president is acting to implement his own overarching policy or simply responding, as West notes, to “the ‘discrete policy goals’ of individual advisors.”

In the NHTSA-EPA rulemaking on motor vehicle fuel economy/environmental emissions, the president appeared to have an overarching climate change policy, and the domestic rules he sought could help get more worldwide support for action. The NHTSA-EPA initiative was announced very early in his administration and had significant involvement from White House and Office of Management and Budget staff. Very tight deadlines were set, and announcements were made by the president. But EPA rulemaking is unique in some respects. There is a White House Council on Environmental Quality. President Obama also added an office on the environment to his staff and appointed a former EPA administrator to head it. Moreover, a recent U.S. Supreme Court decision compelled the EPA to act on the emissions. It is not always clear where the impetus for action is coming from or whether it is intended to be part of an overarching policy.
However, understanding the impetus for an action is not necessarily as important as knowing that it has support at the highest levels. If it must be done, agency staff do not want to waste time and resources while doing it. As West emphasizes, we need to “refine our understanding of the administrative presidency” and “grapple[e] with its true nature.” Understanding how it works will help government officials do a better job working with it and, possibly, figure out how to use it effectively.

The international regulatory cooperation effort is a good example. West stresses that presidents rarely get involved in domestic administration. If domestic rules help achieve foreign policy objectives, will this increase the likelihood of the president’s involvement? He has issued an executive order on international cooperation, but does that mean the EOP will be available to help address the many complicated, legal, practical, and political obstacles while it is being implemented? What can agencies do to keep the EOP focused on the implementation details? If done well, regulatory cooperation could reduce costs without reducing benefits. That kind of result has been a goal of Republican and Democratic administrations. Would this encourage EOP involvement even though the involved senior officials or the president may leave office before the initiative is completed? Is the NHTSA-EPA coordination described here a model for the type of domestic programs that can be accomplished effectively with significant White House involvement because it affected foreign policy, or is this a unique situation? Agencies have engaged in significant international regulatory coordination for many years. They understand the benefits but may not want increased coordination because it may interfere with their “turf” or compel them to take actions with which they are not comfortable. How can they be assured that their concerns will not just be vetted but will be objectively addressed? There are actors on the stage who are not involved in domestic issues, such as the U.S. Trade Representative and the Departments of State and Commerce. Does that help or simply increase the turf battles? Who will resolve disputes? Can all of this be done without adversely affecting the need for openness?

West’s article pushes us in a direction that could increase the effectiveness and efficiency of the rulemaking process by helping us develop answers to questions such as these.