

## The Countering America's Adversaries through Sanctions Act 2017, the Trump Administration and Bureaucratic Drift

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The American legislative system is characterized by checks and balances, but also by individual interests that make preservation of that balance essential. In this paper, I will discuss the Countering America's Adversaries Through Sanctions Act, or CAATSA, the Trump administration's reaction to it, and why the resulting actions by the governmental agencies charged with implementation constitutes bureaucratic drift. After proposing a modification on McNollgast's original theory of bureaucratic drift to represent the situation, I will examine implications of the theory and its political desirability.

In an article titled "Timeline of Trump's delay on Russia Sanctions" published in ABC News, Conor Finnegan details the history of CAATSA, meant to punish Russian intelligence and defense sectors for meddling in the 2016 American presidential election.<sup>55</sup> After U.S. intelligence discovered Russian interference, the Obama administration imposed new sanctions on Russian individuals and entities at fault, freezing their assets in the United States (or denominated in dollars) and preventing them from entering the country. But in light of new information concerning the depth and breadth of the intrusion, Congress wanted to go further. In June of 2017, the Senate passed a bipartisan bill targeting Iran and Russia with new sanctions that expanded the Obama era decision the previous year—the Trump administration immediately voiced opposition, claiming that the pieces targeting Russia were too harsh and would limit diplomatic possibilities. However, that opposition was ignored with the passage of the House version of the bill, which significantly impacted Russia and Iran and added in sanctions on North Korea as well. Both chambers then collaborated on North Korea additions and produced a final version, passed in the House by 419-3 on July 25 and in the Senate 98-2 on July 27.

Following the legislation's passage by Congress, Trump had one week to veto the bill, sign it into law, or take no action and allow it to become law automatically. On August 2, Trump grudgingly signed CAATSA into law, but released blistering statements in tandem, calling the bill "significantly flawed" and "clearly unconstitutional," and insisting that he could make "far better deals with foreign countries than Congress."<sup>56</sup> Despite the administration's view of the law as unconstitutional, it also pledged it

55 Conor Finnegan, "Timeline of Trump's delays on Russia sanctions," *ABC News*, Accessed December 13, 2017, <http://abcnews.go.com/Politics/timeline-trumps-delays-russia-sanctions/story?id=50733408>.

56 "Statement by President Donald J. Trump on Signing the 'Countering America's Adversaries Through Sanctions Act'," The White House, August 02, 2017, Accessed December 13, 2017, <https://www.whitehouse.gov/the-press-office/2017/08/02/statement-president-donald-j-trump-signing-countering-americas>.

would implement the law: on August 3, State Department spokesperson Heather Nauert made a statement affirming that they would absolutely follow and implement the Congressional mandate.<sup>57</sup>

The bill set incremental deadlines for sanction implementation, the first being for the Russia portion on October 1. The White House was scheduled to have authorized governmental agencies to identify Russian entities subject to sanctions, but the deadline came and went without much progress. Shortly before October 1 the Trump administration gave the authorization, but the requested list of Russians remained missing for weeks. The State Department claimed progress was slow because it was working with the Treasury to develop guidance for allies and private companies to help them navigate the new sanctions: Nauert is quoted saying that the process is “pretty complicated” and that this type of work can “take some time.”<sup>58</sup> However, apparently this bottleneck only slowed down the Russia portion, as the requirements for the Iran piece of the same bill were completed on time.

The list of Russians and accompanying guidance was eventually sent to Congress on October 26, but not without prodding and foot dragging. The original intent of the bill was to enact swift and decisive action against hostile foreign powers, but our response has been anything but swift or decisive. In fact, there has not been any action on Russia sanctions since the list was sent to Congress at the end of October, and this paper will explain how bureaucratic drift could be to blame.<sup>59</sup>

Bureaucratic drift is a theory proposed by Matthew McCubbins, Roger Noll, and Barry Weingast, collectively known as McNollgast.<sup>60</sup> Contrasting other theorists on bureaucratic behavior, they take the principal-agent perspective, which suggests that any imbalance in the relationship between bureaucrats and politicians favors the politicians rather than the bureaucrats. Within this framework, the politicians act as the principals, picking the agents they want in bureaucratic positions at governmental agencies and sustaining them with power and resources in order to get the job they want done according to their agendas. Policies are created by politicians, but implemented by bureaucrats, who enjoy a certain amount of freedom to pursue their own interests through that power of implementation. Bureaucratic agents can further their own policy priorities by changing from the politicians’ ideal implementation of a law, and

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57 “Department Press Briefing - August 3, 2017,” U.S. Department of State, August 03, 2017, Accessed December 13, 2017, <https://www.state.gov/r/pa/prs/dpb/2017/08/273018.htm>.

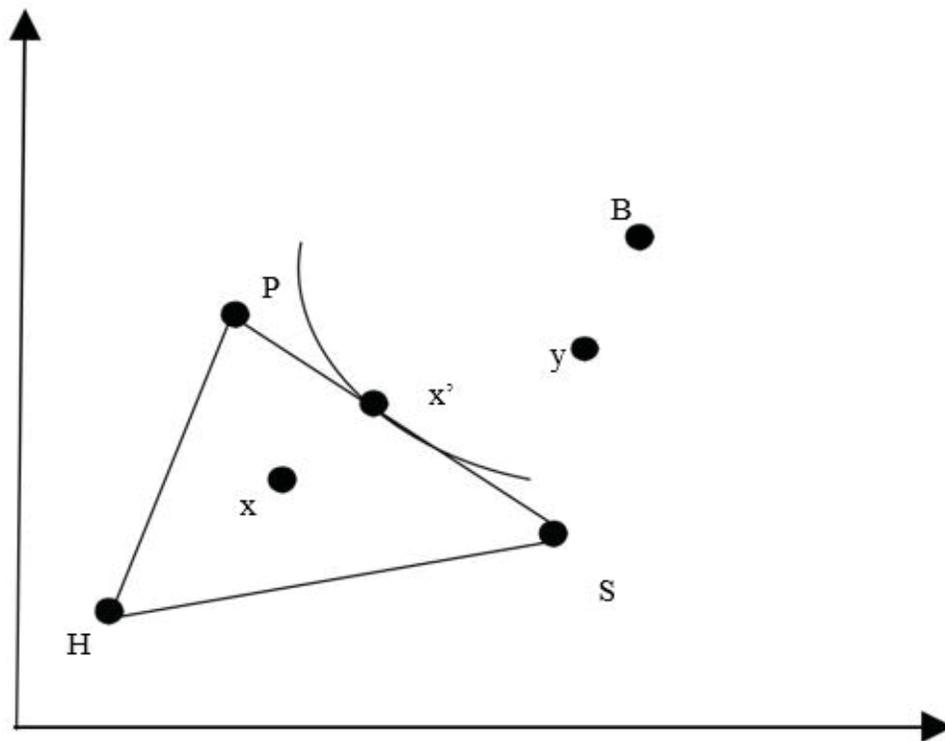
58 “Department Press Briefing - October 24, 2017,” U.S. Department of State, October 24, 2017, Accessed December 13, 2017, <https://www.state.gov/r/pa/prs/dpb/2017/10/275068.htm>.

59 “Why Haven’t Russian Sanctions Been Implemented?” *KJZZ*, November 17, 2017, Accessed December 13, 2017, <https://kjzz.org/content/568155/why-havent-russian-sanctions-been-implemented>.

60 Matthew D. McCubbins, Roger G. Noll, and Barry R. Weingast, “Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies,” *Virginia Law Review* (1989).

avoid punishment by deviating just shy of far enough that no alternative is preferred by all component members of the enacting coalition—in this case, the House, Senate, and President. In his book *Analyzing Politics: Rationality, Behavior, and Institutions*, Kenneth Shepsle compares divergent governmental agencies to a dog on a leash that wants to go in a different direction than its master: “as long as the dog makes sure the leash is not taut, it can wander around as it pleases.”<sup>61</sup> This is essentially what a rogue agency can do; after a policy is decided on politically and delegated for bureaucratic implementation, they are free to tilt the scale a bit more in their preferred direction as long as they remain within acceptable bounds, which can lead to a policy “drifting” away from the letter of the law once carried out.

McNollgast demonstrates this concept with the figure below.<sup>62</sup> The points labelled H, S, and P represent the legislative interests of the House, Senate, and President, respectively. Each has their own priorities and ideal versions of any given bill depending on those priorities (the House and Senate points are realistically 435 and 100 dots clustered around each, but represented as one average for each), and x represents the compromise made to meet somewhere within those three points in order to pass the bill into law. McNollgast’s visual model of bureaucratic drift:



61 Kenneth A. Shepsle, *Analyzing Politics: Rationality, Behavior, and Institutions* (New York: W.W. Norton, 2010).

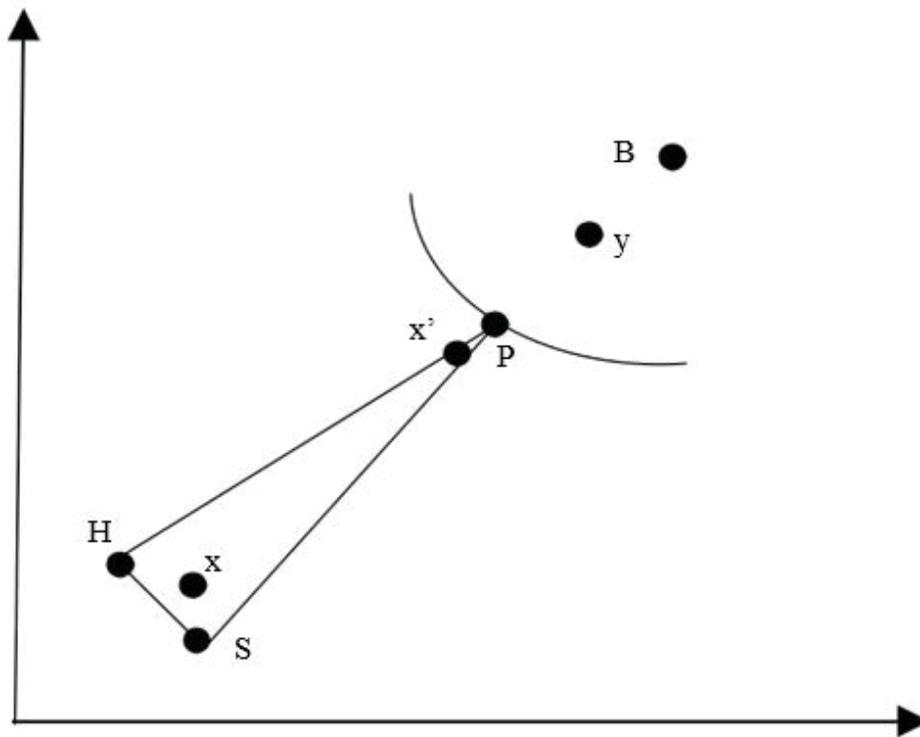
62 Matthew D. McCubbins, Roger G. Noll, and Barry R. Weingast, “Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies,” *Virginia Law Review* (1989).

B represents the interests of the bureaucratic agency responsible for implementing the legislation agreed on at  $x$ , and  $y$  represents that agency's ideal version of the bill according to those interests. In theory, anywhere within this triangle would still be within acceptable bounds for all three. However,  $x$  is the Pareto efficient outcome where no one can become better off without making another worse off. Therefore, the  $x$  agreed upon has to be somewhere around the center of the triangle to be signed into law, but can shift once out of the legislators' hands. Point  $x'$  represents where the policy could end up once passed to a bureaucratic agency for implementation. Once in their control, an agency can "drift" the law more toward its preferred version, as long as it remains within the bounds of the original triangle. The eventual "bureaucratic drift" is represented by the difference between  $x$  and  $x'$ .

This is Shepsle's "dog on a leash" effect at work—B drags  $x$  only as far as  $x'$  because if it attempted to get to its true preference,  $y$ , which lies outside the triangle, it risks being overruled by new legislation or losing their position as a bureaucrat, as there are policies that original acting coalition unanimously prefers to it. In addition, while pulling legislation in one way or another but still remaining inside the triangle, the bureaucrat is always acting in the interest of at least one of the members of the enacting coalition, and thus gains an ally that will protect the agency's pull in the event that the others protest.

The State Department and Treasury's treatment of the Countering America's Adversaries Through Sanctions Act illustrates an example of bureaucratic drift. In the diagram below representing the situation, the House, Senate, and President are again labelled as H, S, and P. The H and S points are relatively close to each other because their policy priorities were very similar (as were 435 and 100 individual dots clustered around each), with a few small differences. In contrast, P is much further away because Trump was vehemently opposed to the bill throughout the whole legislative process, and argued against sanctions altogether. The bill passed the House and Senate with such an overwhelming (and veto-proof) majority that they essentially forced Trump's hand, ensuring that a version close to their own interests, and very far from his, became law.

The figure on the next page demonstrates modification of McNollgast's model of bureaucratic drift to represent the positions of the House, Senate, President, and relevant bureaucratic agencies as they pertain to passage and implementation of the CAATSA:



Based on the State Department and Treasury's treatment of the matter, it is clear that since the bill has passed, they adopted Trump's opposition and have been pulling the policy in the president's preferred direction. After missing implementation deadlines, both departments claimed that they were "trying" to complete the process, but complained that it was complicated and would take some time.<sup>63</sup> However, they had no problem getting the Iran portion done on time, which points to the possibility that they are intentionally slow-walking the bill. Members of Congress agree—as the first deadline in October came and went, Senators McCain and Cardin penned a letter to the White House criticizing the administration's failure to enforce the sanctions.<sup>64</sup> In a joint statement released on October 11, McCain and Cardin expressed concern about the status of the new law that they had both had a hand in creating: "The delay calls into question the Trump administration's commitment to the sanctions bill which was signed into law more than two months ago, following months of public debate and negotiations in Congress...they've had plenty of time to get their act together."<sup>65</sup>

63 Conor Finnegan, "Timeline of Trump's delays on Russia sanctions," *ABC News*, Accessed December 13, 2017, <http://abcnews.go.com/Politics/timeline-trumps-delays-russia-sanctions/story?id=50733408>.

64 Natasha Bertrand, "They've had plenty of time to get their act together': Top senators slam Trump for failing to implement Russia sanctions," *Business Insider*, October 12, 2017, Accessed December 13, 2017, <http://www.businessinsider.com/trump-russia-sanctions-mccain-cardin-letter-2017-10>.

65 United States Senator John McCain, "Press Releases," SENATORS MCCAIN & CARDIN QUESTION ADMINISTRATION DELAY IN RUSSIA SANCTIONS IMPLEMENTATION - Press Releases - United States Senator John McCain, Accessed

The White House declined to respond to the criticism directly, but had already made clear their opposition to the bill and reluctance to cooperate. In response to Trump's continued resistance, the bureaucratic agencies authorized to implement the law are doing everything in their power keep the president happy while remaining within the bounds of the triangle. It is obvious why the State Department and Treasury would want to do this—Trump has a tendency to abruptly fire bureaucratic officials that are not meeting his expectations (FBI Director James Comey, numerous U.S. Attorneys including Preet Bharara, Acting Attorney General Sally Yates, etcetera<sup>66</sup>). Trump has made known that he has no problem getting rid of bureaucrats who displease him, thus, when given the opportunity to maintain good favor, the State Department and Treasury do so. Steve Mnuchin, currently serving as Treasury Secretary, has a history of falling in line behind Trump during his tenure so far.<sup>67</sup> In contrast, Secretary of State Rex Tillerson has publicly feuded with Trump before, once calling the President a “moron”<sup>68</sup> and being challenged to an IQ contest by the President of the United States in retaliation.<sup>69</sup> For either secretary, whether they have had issue with Trump so far or not, it is evident why they would want to do everything in their power to keep the president happy: if they decline to do so, they take the chance that could result in sabotage of their working relationship with him, stunting of their ability to get anything done, losing their jobs, or seeing their reputation destroyed in a public quarrel.

When considering the positions of actors and their interests in this particular case, it is important to consider that the modifications made to McNollgast's model vary significantly from the original, but still preserve the structural integrity of the original. The positions of the House, Senate, and President formed a different shaped triangle than what is normal for bill passage, but they formed a triangle nonetheless, and should generate accurate predictions. This means that the actors in this scenario will abide by the same rules as those in the original, meaning that no matter how forcefully the president pressures the State Department and Treasury, they still can only pull the bill as far as the edge of the triangle in implementation.

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December 13, 2017, <https://www.mccain.senate.gov/public/index.cfm/2017/10/senators-mccain-cardin-question-administration-delay-in-russia-sanctions-implementation>.

66 Nicole Lewis, “Analysis | Here's a list of people Trump has fired or threatened to fire,” *The Washington Post*, July 25, 2017, Accessed December 13, 2017, [https://www.washingtonpost.com/news/the-fix/wp/2017/07/25/heres-a-list-of-people-trump-has-fired-or-threatened-to-fire/?utm\\_term=.012130c6e638](https://www.washingtonpost.com/news/the-fix/wp/2017/07/25/heres-a-list-of-people-trump-has-fired-or-threatened-to-fire/?utm_term=.012130c6e638).

67 Alan Rappoport, “More Classmates of Treasury Secretary Hound Him to Quit Trump Post,” *The New York Times*, September 15, 2017, Accessed December 13, 2017, [https://www.nytimes.com/2017/09/15/us/politics/steven-mnuchin-trump.html?\\_r=0](https://www.nytimes.com/2017/09/15/us/politics/steven-mnuchin-trump.html?_r=0).

68 Kaitlan Collins et al., “Moron' insult ramps up Tillerson, Trump tension,” *CNN*, October 05, 2017, Accessed December 13, 2017, <http://www.cnn.com/2017/10/04/politics/tillerson-trump-moron/index.html>.

69 Katherine Faulders, “Trump challenges Secretary of State Rex Tillerson to ‘compare IQ tests’,” *ABC News*, accessed December 13, 2017, <http://abcnews.go.com/Politics/trump-challenges-secretary-state-rex-tillerson-compare-iq/story?id=50387692>.

The predicted outcome that the State Department and Treasury will only drift the CAATSA so far as the boundaries allowed by the legislative triangle is, for the most part, socially desirable. Some would argue that in this outcome is not socially desirable because in this case, the drift is the result of extreme pressure from the executive branch likely motivated by corruption on some level—it still remains to be seen what, if anything, Trump’s former national security advisor Michael Flynn’s Russia communications<sup>70</sup> or Rex Tillerson’s ties to Russian oil projects through Exxon Mobil<sup>71</sup> have to do with this. However, I would argue against that perspective. Even though one instance of bureaucratic drift results in something other than our preferred outcome, the system as a whole is stable and keeps legislation within acceptable bounds, even in the face of antagonists attempting to pull implementation far outside the bounds of original intent and quite possibly away from America’s best interests.

Bureaucrats retain the power to skew policy in the direction of their interests (or, the interests of those who wield power over them) which can fall anywhere on a scale from intriguing to alarming depending on your stake in the legislation at hand. However, more than anything else, bureaucratic drift speaks to the strength of the Madisonian system in that no one person involved in the process—be it Tillerson, Mnuchin, or Trump himself—has the power to push a policy past a boundary set by the other branches of government, no matter the pressure or incentive.

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70 Mark Mazzetti and Michael S. Schmidt, “Flynn Said Russian Sanctions Would Be ‘Ripped Up,’ Whistle-Blower Says,” *The New York Times*, December 06, 2017, , accessed December 13, 2017, <https://www.nytimes.com/2017/12/06/us/politics/michael-flynn-russia-sanctions-ripped-up-whistleblower.html>.

71 Andrew E. Kramer and Clifford Krauss, “Rex Tillerson’s Company, Exxon, Has Billions at Stake Over Sanctions on Russia,” *The New York Times*, December 12, 2016, , accessed December 13, 2017, <https://www.nytimes.com/2016/12/12/world/europe/rex-tillersons-company-exxon-has-billions-at-stake-over-russia-sanctions.html>.

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