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THE JUSTICE DEPARTMENT AND AMERICAN POLITICS:
Functions, Process, and Question About Current Politics

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by

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Introduction:

I am deeply obliged and grateful for this invitation. I understand, from the schedule, that tomorrow I will be in a setting to make some comments about Northwestern about the world of my youth, and to learn about Northwestern as it now. My self-appointed function today is what you do not often see in political science. I choose to be a self aware intellectual missionary.

I will emphasize the vast opportunity, and the social need, for new work on what otherwise I call “the politics of prosecution.” In order to separate it from the well developed subject of judicial politics, **I particularly invite attention to the United States Department of Justice.**

I want to plead for new work- -all the way from high class undergraduate papers to doctoral dissertations, finished books, scholarly and popular, and high class journalism- - all of this directed to the executive-bureaucratic process in law. The deficit of knowledge is very great. There really is a need and the knowledge really is not being developed.

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The American Political Science Association has a number of sub-groups called Organized Sections. One of them is the Law and Courts Section, which has a listserv with something over 800 participants and they regularly discuss all sorts of pertinent intellectual and practical issues related to their studies. The overwhelming body of studies and discussions relates to judicial decision-making, not to pre-judicial decision-making, local, state, or Federal.

It is not imperative to wait until one is writing a Ph. D. dissertation to begin some of the mapping. Eric Redman's The Dance of Legislation began as an undergraduate thesis as did Jeffrey L Pressman's The Appropriations Committee and the Political System.

MELODRAMA ABOUT THE DEPARTMENT

There have been, during the Administration of President Bush II, some very melodramatic situations that many people know.

1. Within the past two or three days, The Washington Post, the intra-office memorandum of the political information class, has reported in some detail on the legal theory of the Department that there is virtually no legal restraint on a wartime President's power to authorize torture.

2. Within this year, John Ashcroft has published his autobiographical account, primarily emphasizing his time as Attorney General of the United States. He confirms the trip to his hospital room, by White House Chief of Staff Andrew Card and White House Counsel Alberto Gonzales, to secure his approval of a legal instrument that the Acting Attorney General, would not sign.

3. The prolonged hearings and reports in 2007 on the removal of certain United States Attorneys, led principally to the deterioration of Attorney General Alberto Gonzales and his reputation. These cases involve a great deal of melodrama and they are mixed in with very mundane events.

In the combination of the melodramatic and the mundane, I want to emphasize four functions of the Department of Justice, to suggest some considerations about Department of Justice functions, to make some exploratory suggestions about its process and leave you with a question about current politics.

The Department of Justice is a crucial institution of power. William French Smith, Reagan's first Attorney General, referred to the Department as "one of the most powerful [institutions] in Washington and one of the least understood." (Smith, 1991, xvii.)

THREE PRINCIPLES: Moley, Wallace, and Frank Miller

As a preface, let me state three points that I will call “principles.” They are empirical findings from work by Raymond Moley, Schuyler Colfax Wallace, and a lawyer named Frank W. Miller. In 1927 Moley, later one of Franklin Delano Roosevelt’s prime advisors, wrote a book entitled Politics and Criminal Prosecution.

The Moley Principle emphasized the broad reach and essentially unreviewable discretion of the prosecutor.

In 1930, Wallace conducted the first mail survey in political science that I know to have been addressed to executives. The Wallace Principle emphasized that prosecutors not only have wide discretion (which is what the Moley Principle says), but exercise their own value judgments in making their decisions.

The Frank Miller Principle specifies four considerations that prosecutors say they take into account in making these value judgments. I say “take into account,” but I do not say “measure” and I do not say “define clearly.” What is the “strength of the evidence”? What is the character of the accused? What is the attitude of the community? What are the costs and benefits of carrying something to prosecution?

I should tell you that I get some assent from some practicing (and thinking) lawyers on these criteria, and I get scorn from others whom I also regard with respect. (One of these is Robert Sheridan and the other is Lief Carter, about each of whom I may be able to say more in the Q. and A.) This Miller Principle does not apply only to criminal action, but run through the civil and the advisory processes in government as well. I adopt these principles not only for local and state actions but as applying to the United States Department of Justice.

THE FOUR FUNCTIONS

There are recurring problems in government, and they are dealt with somehow. Here is where I think we will make progress to identify four functions of the Department of Justice.

(1) The Justice Department as the institutional monitor of loyalty, patriotism, and system security; (2) the Justice Department and the policing of election practices; (3) the Justice Department and the policing of officials’ ethics; (4) the Justice Department and more or less “ordinary,” but very important, substantive policy.

After that, we will comment a moment on Justice Department process, and on Justice Department structure or the Department as a working system.

Function 1. **We should all pay some attention to the actual functioning of the Department of Justice as the police of loyalty and patriotism.** That is not a pleasant subject to discuss, especially from a civil libertarian point of view. But almost any review of the Department's history will take us back to some consideration of the Palmer Raids during World War I. It will take us to some consideration of struggles between the legendary J. Edgar Hoover and one or more Attorneys General, and of the cooperation that he received from Presidents Franklin Delano Roosevelt and Lyndon B. Johnson.

I have not dedicated sufficient time to the subject of "torture" to have any properly informed comment. But in the context of today's agenda I would have to point out that it is within the Office of Legal Counsel that the intellectual work was done to validate the power of the President, under claims of "the Executive Power," to decide what practices shall and shall not be permitted, and to shield those claims against challenge in either the courts or the legislative process. What is most worthy of note is that the legal work itself is, to an extent that we cannot know, done in secret. Even Jack L. Goldsmith, who signed on with the intent to support the authority of the President, and who found it too much to take, upon leaving referred to his inability to discuss what he knows.

Function 2. **The Justice Department is increasingly important in the policing of election practices.** One of the things that we should all recognize is how deeply involved the Department of Justice is, and how much more likely it is to be, in the regulation of election practices. There are many dimensions of this, but today I want to emphasize a special situation under the Voting Rights Act, as variously interpreted and amended since 1965.

This was a Federal case called US v. Ike Brown () that concerns Noxubee County, Mississippi. The case was brought, by the Civil Rights Division, under the Voting Rights Act, Section 2, alleging racial discrimination by black officials against white voters in Noxubee County. (There is a portrait of Noxubee County as of some years ago, when there was a big local dispute about a proposed commercial waste site in Crawford, Uproar at Dancing Rabbit Creek [1996].)

This case comes under the Voting Rights Act, Section 2. Some of the Voting Rights specialists commented informally on an announcement of the Department's interest in the case. They seemed shocked, as if this DOJ action was a departure from normal practice on Voting Rights Act issues.

The case caught my attention because I was familiar with the history of the Mississippi Constitutional Convention of 1890. The 1890 Constitution was the legal vehicle by which disfranchisement of black votes was accomplished. The chairman of the Franchise Committee had been one R. C. Patty, Chancery Clerk of Noxubee County. It seemed profoundly ironic that Noxubee County should produce a Justice Department law suit based on the claim of black discrimination against white people.)

In formal terms, here is how the Department of Justice summarized its complaint.

In this complaint , the United States alleges that the practices of local election and party officials discriminate against whites in violation of Section 2 of the Voting Rights Act. This is the first case filed by the Department of Justice in which it alleges that whites are being subjected to discrimination in voting on the basis of their race. Further, it is alleged that officials have coerced, threatened, and intimidated voters in violation of Section 11(b) of the Act.

There was a consent decree with certain local officials prohibiting a wide range of practices said to be illegal and discriminatory. Personally, I think the consent decree a shadow. If the Government had a case where the “strength of the evidence” justified the benefits of it on to trial, it would have done so. The local officials had no incentive, since their pockets were by no means as deep as those of the Department, to say “oh no, just try me in court.”

The remaining defendants were the Noxubee County Election Commission and the local Democratic Executive Committee and its chairman, Ike Brown, who were the real targets in any case. (United States v. Ike Brown and Noxubee County (S.D. Miss. 2005.) The case could only come with initiative from the Department of Justice. What did they say (or think) were the costs and benefits? The Government spent two years of effort on this case. Th financial costs had to have

been considerable. The matter could have come into the Division and ascended to the Assistant Attorney General (AAG) level because someone, committed to the Division's normal practices, deemed it to be a compelling injustice worthy of prosecution.

I do not find the compelling injustice hypothesis persuasive. The best interpretation is that this was a case where the political appointees in the Department exercised their authority to override career line lawyers who denied the legitimacy of the case.

This particular county has never escaped its Black Belt plantation heritage. Even the judge, who ruled for the Government, says "The court does not doubt that similar discrimination against blacks continues to occur throughout this state, *perhaps routinely*. (Italics added. MH) And it may be true, though the court makes no judgment about this, that the Justice Department has not been responsive, or fully responsive, to complaints by black voters."

Indeed, the judge says "the *politics* (italics added, but it is his word) of the decision to prosecute this case . . . cannot be a factor in the court's decision." The case's being brought was an abuse of prosecutorial discretion in a Department of Justice under severe pressure from outside.

How did it come to command the attention of the Department's leadership? Persons and groups who are defeated in one political arena to call upon those to whom they have access in some other arena. This probability is likely to be high where exclusion and inclusion (Holden, 2006, 177-180) is a significant issue.

As an explanatory principle, one should also ways to estimate the probability of counter-attack (Holden, 2006). Hypothesis: If it were possible to have unedited and unexpurgated logs from the White House, or from other external communications, we should find that the Noxubee County Republicans, white people, were able to get their matter into the Division through its political participants rather than its career participants.

My belief is that the Noxubee County Republicans were able to get their case into the Department as an matter for attention at the level of the Attorney General

or those with whom the Attorney General daily consults. The interpretation is that it subsequently was transmitted from then top level to become an intra-Civil Rights Division matter.

The evidence, after two years of preparation, was not compelling. (I personally sat through about half of the two week trial and read reports on the rest.) Some matters, publicly reported, would surely have activated such a referral if it were correct. For instance, it was reported that the Democratic Chairman (Brown) had published a list of white persons who would not be permitted to vote. The testimony in court showed that this report was not true.

What was true? There were persons, *believed to be Republicans*, whom it was said *might be challenged* if they attempted to vote *in the Democratic primary*. The public reports have not dealt with the question of how people might overcome any such challenge. When the election came, according to the testimony that I heard in court, no one was actually challenged.

Lawyers like to lead with strong witnesses. Specifically, the Department of Justice led off with testimony by an incumbent, and white, Prosecuting Attorney. This Prosecuting Attorney claimed that a black attorney was recruited to run against him. He challenged this candidate's eligibility on residency grounds. There were no black attorneys in the county, the man had come in from the Jackson metropolitan area, some two hours drive away. He said the Noxubee Democratic Executive Committee never acted on his challenge. The Prosecuting Attorney did what would have been forecast as second nature to a lawyer. He went to court and got the other person disqualified on the ground that the residency requirement had not been met. He was reelected without anyone running against him. He has in any event been in office 23 years and is in office today. *He exercised his procedural rights, remained on the ballot, and was re-elected with no challenge.*

The Government's expert witness was a political scientist long active in Republican politics in North Carolina. He testified that there is black discrimination against whites that such discrimination is a mirror image of past discrimination against blacks by whites. This "mirror image" language indicates a claim that black officials in Noxubee have used their powers to do the very same things to white voter as once were done to blacks.

The Government prevailed in this case as of a decision issued on June 29, 2007. (U. S. v. Ike Brown, U. S. District Court, Southern District of Mississippi, Eastern Division, Civil Action No. 4:05 CV 33TSL-LRA, Document 214, Filed 06/29/07.) Memorandum Opinion and Order, page 103.)] In a hearing on recommendations to implement the June 29 decision, the Government further proposed that “Ike Brown and his associates” be barred from participating in the electoral process for the next four years. (The Government has prevailed, at least to the extent that the administration of elections for the next four years has been placed in the hands of a referee-administrator appointed by the U. S. District Judge. One law professor, who says he worked in the Civil Rights Division for more than twenty years, said on an election law list serv that he had never known so drastic a remedy.)

My view is that, in fact, there is virtually nothing in the case that deserves to be called “intimidation,” and most of what the judge finds “discrimination” is trivial or explainable in other terms. The case should never have been brought, though, a gratuitous report by the New York Times disguises that reality from the reader beyond Mississippi, and misleads the outside reader into believing that the blacks were doing to the whites what the whites used to do to them.

The political significance of the case is that in the many, many Southern counties where local politics is a racial political struggle. When black majorities finally prevail at the county level, they will then be faced with the weaponry of the Department of Justice, if the opposite party controls the national government. The Civil Rights Division, under new political leadership, is now being redefined under a new conception that the original race relations and civil rights purpose is no longer so necessary. In effect, this is the retrenchment that one could forecast for agencies seeking to minimize constituency dispute. (Holden, 1966.)

Function 3. **We should also expect the Justice Department to play an increasingly large role in the policing of officials’ ethics** because the teletronic error feeds on drama. Anything identified as “bad” also requires correction by “whatever means.” The Department has, from time to time even in the more remote past, brought various criminal cases against state and local officials. We should expect this to become intensified due to the theatrical effect of teletronic coverage. This subject is wide open to new study. Since March , when Governor Eliot Spitzer’s misadventures, potential Federal indictment, and resignation came

into public view, one discussion on the listserv involved the idea of “selective prosecution.” Basically, selective means that Republicans running the Department of Justice selected Democrats whose official and political careers could be embarrassed, and sometimes destroyed, by being prosecuted.

Some people explained that they thought Spitzer just got caught because the new anti-terrorism laws, plus advanced electronic technology, make it extremely easy for anybody’s bank account transactions to be identified, reported to Federal authorities, and made the basis for some more specific investigation and possible indictment. Others thought Spitzer had, as Attorney General of New York, had “done it to others” and deserved no sympathy. Others thought he was stupid and had it coming.

One person (call her Commentator 1) brought onto the listserv information, that soon was also in print (New York Times,) that an active Republican had said he had informed on Spitzer. This comment was taken by another commentator as implying some sympathy or belief Spitzer had been unfairly targeted.

Commentator 2:

But don't we often rely on base political motives to supply the oversight of our leaders? The grim reality is that Spitzer, for whatever psychological reasons, knew he was playing with fire, with regard to violating a number of laws, and left the evidence all around him. the lead story in tomorrow' Times suggests that he was far more involved in trying to get Joe Bruno (a New York state senator with whom the Governor had been in some controversy) than he has admitted to. What would we be saying, incidentally, if (the informant) had made his disclosures to NY legal authorities (most of them Democrats)? Would we expect them to wave the charges aside, even if there is evidence that Spitzer broke variety of (rarely enforced) laws.

This produced an immediate response from Commentator 1.

My argument is not that Spitzer wasn't stupid or that he didn't do it. Or even that he should not have been caught. . . . My concern here is that once criminal investigation becomes a site for political payback in some cases, it's hard to believe that justice can be even-handed in others. . . . To legitimately wield the power they do, they must rely on trust from a public that believes they have a dispassionate commitment to truth and even-handedness. And that's what has been badly shattered in the current Justice Department.

I do not wish to discuss whether Governor Spitzer was behaving stupidly or not. Nor do I wish to jump into the fray over whether selective prosecution explained his situation.

Instead, I pose a question which I still believe essential. The action that puts one under the cloud is not so much an overt action such a prosecution, though that is bad enough, but the covert stuff that you may never be able to correct or rebut in the course of an investigation. I did, in fact, pose the generic question.

. . . Who, on this list, has developed a methodology for studying "investigations" and for studying the process of turning "investigations" into indictments, etc. This is not taught in political science. Is it taught in law school? I doubt it but I wait to be instructed.

No one offered an answer. It will be methodologically difficult to deal with the problem. The function of methodology is to exclude outright fraud and minimize logical error. The trouble is that methodology also serves to suppress or minimize deep study of important questions, forcing people to seek the safe haven

of the more obvious and manageable questions. But that is not where the most significant problems of politics and society are to be met.

Without spending more time, I should notice that Donald Cragan and John Shields appear to be much more definitive have written an extensive study of Federal prosecutions during the Bush Administration in which they will leave no doubt as to their conclusion. Their claim will be that the Bush Administration's Department of Justice has targeted Democrats and has prosecuted seven times as many Democrats as Republicans.

These problems of prosecuting people who may well be convictable, but of choosing those who are politically inconvenient are not new.

Function 4. **Departmental discretion is also exercised to sustain value judgments in ordinary policy, although these value judgments may not be compelled by "the law."** There is also accordingly a need for study of Department of Justice discretion where issues of policy are more ordinary. If we have any Federal law that is enforceable by Federal penalties, then the Department of Justice is the agency ultimately interprets what Federal law means. Other Federal agencies may be more immediately involved, but for them Federal law is what the Department says it until some Federal court says otherwise.

This work is largely the function of "the litigating divisions." These units are headed by Assistant Attorneys General, roughly parallel to the assistant secretaries in other departments and to commissioners in the independent regulatory agencies. They are presidential appointees. At present, there are seven litigating divisions. The question is what degree of substantial stabilization exists in the environment. From that viewpoint, the issue also is how stable or unstable the constituency interest may be. The divisions can probably best be ordered as followed: National Security Division, a product of the Patriot Act under circumstances that need no further exploration. The Civil Division, which (from its origins in the handling of claims against the Government) is an outgrowth of the basis of protecting the Treasury against extravagant demands. But Civil Division litigation about such things as medical benefits reaches far beyond simple ideas of "the law." So does the Criminal Division, in which negotiated settlements with major automobile companies may involve great intrusion in the historic right of the right to express an opinion that has not been precleared by the Department.

The most significant factor about the litigating divisions is whether its constituency structure (Holden, 1966, 843-851?) involve conflictual matters that the Attorney General has to be particularly concerned about or whether they can be left to run by themselves.

The Anti-Trust Division once had an anti-monopoly conception. The victory of Chicago School Economics not makes unnecessary the conception of anti-monopoly as central to anti-trust policy.

The Environmental and Natural Resources Division, with the specially turbulent problem of the Environmental Crimes Unit (Lochner,) and a Congressionally mandated rewriting of the pertinent parts of the DOJ Manual, is built on the history of the Land Division. Robert Duran pointed to the administrative politics that could influence this Division. He said“. . . for instance, appointees (meaning ‘political appointees’)effectively diminished the status, organizational independence and enforcement zeal of hazardous waste personnel bymerging this unit with the Division’s environmental enforcement section .” (Durant, 1992, 34.)

You might find particular interest, here in the this university, since it involves the politics and economics of “natural resources” issues, principally in the trans-Mississippi West, which long ago became a strong interest of your own Professor Paul Friesema, who was a graduate student at Wayne State when I first began to teach there.

In this era when all politics is also influenced by the concept of terror, students and faculty of political science need to study more deeply the advisory process. You will told a great deal about the importance of the Solicitor General’s office, which controls the Government’s approach to the Supreme Court. I personally think far more should be said about the Office of Legal Counsel. This office tells the Executive Branch what “the law” is and that is what the Government acts on. In this present Administration, where the term “signing statements” has taken on great emotive power, and tells the agencies what the President wants them to do with the laws confided to them. The small Office of Legal Counsel, with about twenty-some people, is the interpreter, and broadly the advocate, of the most extensive powers that can be claimed by a President.

Finally, in trying to think through the working system, some students could undertake a mapping of Congress and the Department of Justice. Legislation, appropriations, and oversight are all part of what has to be studied more closely. This means, incidentally, that someone should pay extremely close attention to everything that can be learned about the Assistant Attorney General for Legislative Affairs.

Congress does act in a decision-making and authoritative capacity. The oversight function has increased in importance due to the presence of television, and the application of other electronic modes that allow visual images to be sent from one person to another and to the whole world. Oversight means hearings and hearings become theatrical displays.

Some refinement of the term “oversight” is needed. There is intermediation, where Representatives or Senators seek something good for (or protection against something bad for) a client, a constituent, or other favored interest. There “true” oversight where the intent is more or less objectively to improve some aspect of the administrative process or policy. There is legislation, where the intent - - often hard to achieve - - to make a substantive change in the content of legislation. Finally, there the intent to inflict punishment, which was the process being visited upon Attorney General Gonzales.

One question is how does the oversight process get started. The oversight process regarding the removal of the United States Attorneys seems to have begun with complaints out “in the field” that members felt they had to take seriously. It may well have been intermediation. Senator Domenici’s active interest the case of Iglesias was one example.

Very soon the oversight process shifted to harassment and something akin to punishment, although punishment is a double edged sword. (In some political conditions, the members of Congress seen to inflict punishment may suffer damage to their own reputations and need to protect themselves.) The intervention, in late November 2004, by Ed Cassidy, chief of staff for Representative Doc Hastings (R-WA) was related to punishment.

<http://www.tpmuckraker.com/archives/002689.php>.)

The demand for punishment came from prominent Washington businessman Tom McCabe, disappointed with McKay's handling of voter fraud allegations. He demanded that Hastings "ask the White House to replace Mr. McKay," for not adequately pursuing the voter fraud allegations. Hastings said "I flat out refused to do so, which Ed Cassidy told him in the bluntest of terms."

There were similar interventions in California, distinguished only the fact that the U. S. Attorney Carol Lam was assailed by a coalition of eighteen Republican lawmakers, led by Representative Darrell Issa (R-CA) sign a letter criticizing Carol Lam's "lax" handling of immigration cases, and defended by Democratic Senator Dianne Feinstein.

In the end the much cited oversight capacity (McGeary, 1929), is far less potent that teletronic drama may suggest.

Congress sometimes acts in an advisory capacity, as do some other representative assemblies. And it acts expressively, offering of praise, pledges or promises to those in highest authority, presenting petitions for assistance or relief, and sometimes protesting the action of the executive's servants or, ultimately, the executive's policies and actions.)

Only when Congress acts authoritatively does it impose significant limitations upon the Department of Justice, and only then in extraordinary situations. Most members of Congress, most of the time, do not have jurisdictional access to influence the Department. Moreover, members of the President's party will tend, unless they have compelling reasons, act expressively to support DOJ, if only to shield the President. This means that most of the time, controverted matters within the scope of DOJ will be determined by the working system of the DOJ.

CONCLUSION

The political science task is explore and explain how and when that is so, and how it should be taken into account in political reasoning. It is to encourage you, my colleagues of all levels, faculty and student, to join in a serious effort to bring the Justice Department from the shadows of folklore into the light of sustainable empirical knowledge. I will emphasize the vast opportunity, and the social need, for new work on otherwise I call "the politics of prosecution."

I reiterate virtually the same language as I used in beginning. I do earnestly plead for new work- -all the way from undergraduate papers to doctoral dissertations, finished books, scholarly and popular, and high class journalism- - all of this directed to the executive-bureaucratic process in law. The deficit of knowledge is very great.¹ It is not imperative to wait until one is writing a Ph. D. dissertation to begin some of the mapping. Eric Redman's The Dance of Legislation began as an undergraduate thesis as did Jeffrey L Pressman's The Appropriations Committee and the Political System. I will simply restate the four functions that seem to me particularly worth attention.

- (1) The Justice Department as the institutional monitor of loyalty and patriotism;
- (2) the Justice Department and the policing of election practices;
- (3) the Justice Department and the policing of officials' ethics;
- (4) the Justice Department and more or less "ordinary," but very important, substantive policy;

In dealing with these matters, political scientists should be very alert to the imperative loyalties that are present. Officials have wide official latitude, but they are constrained by imperative loyalties that are active pressures or political demand that other people will enforce or attempt to enforce, whether the person upon whom they seek to act likes it or not. They can be reduced to four: (1) party, faction, or clique, or ideological linkage— despite constant professions that nothing "political" should be taken into account;² (2) public opinion and culture; (3) the legal profession itself; and (4) cooperation and coordination with other agencies, especially in the world of "law enforcement." We should also expect to find as internal beliefs and emotional commitments about how judgments should be made stand as latent pressures.]

In dealing with such questions, there are two other matters of process that we need to understand better. One is the simultaneity of **bargaining and command**. The Department does not, nor does any department, contrary to common belief, operate in an

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². Some forms of politics may be excluded, but the idea of all politics being excluded is, by the present author's assumption, an illusion by some and a pretense by others. The really significant question is what forms of politics should be excluded, what can be excluded, and to what degree.

undivided command system in the President commands and all others take his/her commands as decision premises to which they will always comply and from which they will never deviate.

There is command from above and there is bargaining from below, which is sometimes accepted and sometimes not. Whether simultaneous bargaining (explicit or tacit) between higher and lower authorities and command at the same time that is desirable or not, the messier reality is that is the way the system will work.

Bargaining and command come into play as we discover the paths by which praises, reassurances, demands, complaints and threats from the world outside the Department get into the Department, and as we discover what the Departmental actors do in relation to these signals and results, favorable and unfavorable, come in its exchange with the rest of the world.

I appreciate your invitation and courtesy.
REFERENCES (Incomplete and unedited)

Crawford, Uproar at Dancing Rabbit Creek
Matthew Holden, Jr., 1966. “‘Imperialism’ in Bureaucracy,” *American Political Science Review* 60:4 (December), 943-951?

Jeffrey L Pressman’s The Appropriations Committee and the Political System. I will simply
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