

July 7, 2013

There's a new "insiders" book in DC. Since it might figure in this morning's talk show fest we have a review from the [Washington Post](#).

Mark Leibovich toyed with several titles for his new book on self-interest, self-importance and self-perpetuation in the nation's capital. "Suck-Up City" was one. "The Club" was another. Finally, he settled on "[This Town](#)," a nod, he explains, to the "faux disgust" with which people here refer to their natural habitat.

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*Leibovich, chief national correspondent for the New York Times Magazine and a former reporter at The Washington Post (where we overlapped briefly but never met), is a master of the political profile, with his subjects revealing themselves in the most unflattering light. That talent becomes something of a crutch in "This Town," which offers more a collection of profiles and scenes than a rich narrative. Still, his characters reveal essential archetypes of Washington power.*

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**John Fund** deals some Valerie Jarrett dish from the book. This is important, because Valerie is running the country for President Bystander.

*Valerie Jarrett, the White House senior adviser who mentored both the president and first lady at the start of their careers in Chicago, usually stays out of the news. In Washington, that is taken as a sign she is far more influential than she or the White House lets on.*

*So when Jarrett does briefly become the news it's significant, because it may provide a window into how the Obama White House really works.*

*This week there were several sightings of Jarrett in the media. She popped up as the chief defender of the White House's sudden decision to delay enforcement of a key Obamacare mandate requiring employers to offer health insurance or face stiff fines. "As we implement this law, we have and will continue to make changes as needed," Jarrett wrote in a post on the White House blog. In other words, continue to keep in touch with my office as we figure out how to manage this train wreck.*

*Another pair of Jarrett sightings came from Mark Leibovich's new book *This Town*, a takedown of insular, status-conscious Washington. The New York Times writer reports that Jarrett was resented by several top Obama aides for getting her own full-time Secret Service detail of six agents. She apparently felt threatened by the fact that fellow Obama adviser David Axelrod had been given protection after a gunman who opened fire at people at the U.S. Holocaust Memorial Museum was found to be carrying personal data on Axelrod. "While a high-profile White House official — especially an African-American woman, such as Jarrett — could legitimately be considered a more likely target than most, several West Wing officials I spoke to were dubious there had been any special threats against her," Leibovich writes. "They suspected, rather, that Jarrett asked the president to authorize a detail out of 'earpiece envy.' 'The person Valerie felt threatened by was Axe,' quipped one top aide."*

*Jarrett goes to extraordinary lengths to manage her image in the few articles that do mention her. Leibovich writes that "a top Obama aide forwarded me a set of confidential talking points that were circulated through the West Wing when Becker was reporting her story. The memo,*

written by deputy press secretary Jamie Smith, was titled 'The Magic of Valerie.' It included an unrelenting 33 talking points" that praised her intelligence, empathy, life experience, and work ethic. "My personal favorite 'Magic of Valerie' bullet point is the one where we learn that 'Valerie is someone who other people inside the building know they can trust (need examples.)'"

Truth be told, Valerie Jarrett is indeed trusted by President Obama and Michelle Obama, who have complete confidence in her loyalty and ability to get things done. As for the rest of the White House, the seething tension about her behind-the-scenes power and self-aggrandizement continues to build. Witness the number of leaks that are starting to flow out of the White House challenging the myth of her "magic."

And more from [WaPo's Reliable Source](#).

... But the most scathing assessments from Leibovich (a New York Times reporter and former Washington Post colleague of ours) are of people who are famous only within the intimate confines of D.C.'s media-political complex — folks whose names probably won't ring a bell for even the most devoted "Morning Joe" groupies outside the Beltway. (\*\*See also: ["This Town," review of Mark Leibovich book](#))

Ken Duberstein: Ronald Reagan's last White House chief of staff and "a vintage Washington character in his own right. . . riding the D.C. carousel for years, his Rolodex flipping with billable connections," though it's often said of him "it isn't clear what he does," Leibovich asserts — not an unusual condition among Washington "formers." Leibovich writes that Duberstein "talks constantly on the phone to his close friend Colin Powell, and even more constantly to everyone else about what 'Colin was just telling me,' and loves to read his name in print. Finally: "The standard line on Duberstein is that he spent six and a half months as Reagan's chief of staff and twenty-four years (and counting) dining out on it." ...

... But the cruelest part of all? The 386 pages of "This Town" features no index. For Beltway players horrified by the idea they might be mocked — or even worse, left out — the only way to find out is to read it.

There actually is some serious news, what with Egypt, obamacare delay, and the like. [Rich Lowry](#) writes in Politico about the administration's decision to delay the employer mandate of the "affordable" care act until after next year's election. So, now the white house decides what parts of the law should be followed as President Bystander becomes President Pick-and-Choose.

... Explaining the decision, Obama apparatchik Valerie Jarret issued a stalwart communiqué from Central Command that should take an honored place in the annals of blatant, unembarrassed hackery.

Her message: All is well. Nothing to see here. Yes, maybe we've delayed implementation of the (hilariously euphemistic) "employer responsibility payments" (aka fines), but don't worry: it's "full steam ahead" with the health-care exchanges this October. Never mind that determining eligibility for the exchanges depends on employers reporting their insurance offerings — reporting that now won't happen.

Jarrett portrayed the decision as about “cutting red tape.” But if you pass a horrendously complicated law placing new burdens on employers, you aren’t cutting red tape, you are adding to it. And a delay doesn’t cut red tape — it only delays it.

“As we implement this law,” Jarrett explained, “we have and will continue to make changes as needed.” But the law is supposed to be the law, not optional suggestions from Congress. In Jarrett’s view, Obamacare is little more than warrant for the Obama administration to decide how it wants to run the American health care system, one executive decision at a time.

It has become a trope among defenders of the law that its flaws are the fault of Republicans because they don’t want to fix them. They must have seen their own peculiar version of “School House Rock”: The first step in making a law is jamming a 2,000-page bill down the opposition’s throat. The second is whining that the opposition won’t fix problems inherent in the bill jammed down their throats. ...

More on this mess from [Yuval Levin](#).

Until yesterday, the administration had basically put on a brave face about the difficulties arising in its implementation of Obamacare. With a few minor exceptions (now especially notable among them the one-year delay of key requirements for the new small-business exchanges), they have pretended everything was fine, and have enabled a chorus of defenders on the left to do the same. Last night’s announcement of a one-year delay in the implementation of the employer mandate is the first serious indication that the administration sees that the wheels are coming off the bus, and is very worried about it.

Attempts to downplay the significance of this decision fail, I think, to reckon with how very difficult and embarrassing it must have been for the administration. You don’t announce something like this just before the start of a long holiday weekend while Congress is out of town if you’ve got a good case to make for yourself. The administration presumably intended to announce the decision after business hours tonight (**Wednesday**), not last night, but the news leaked to two Bloomberg reporters and they had to scramble some. The formal announcement came through a “Treasury Note,” essentially a blog post by the Assistant Secretary for Tax Policy at Treasury, which had the hilariously Orwellian title of “Continuing to Implement the ACA in a Careful, Thoughtful Manner.” The post mostly discussed the administration’s decision to delay employer reporting requirements for a year (and more on that below), and toward the end noted in passing that this also meant the employer mandate would be delayed. That’s a very odd way to break news like this. It seems clearly to be a move the administration did not want to make.

This would have been a very tough decision to come to for several reasons. Not least of them is that, as I say, it is the first major acknowledgement of a serious problem implementing this law, and it is a problem with an element of the law that is by no means the most difficult to implement. If they’re actually telling the truth that they can’t handle getting employer reporting requirements into place, how are they doing getting the exchange system into place? But perhaps more troubling for the law’s defenders, this decision is even more likely an acknowledgement of some of the economic irrationality of the law. I doubt that just implementing reporting requirements is the issue here. More likely, the administration agrees with some of its critics who have argued that this element of the law would hurt the economy, and especially employment. And they probably also saw that the pressure from employers to avoid both the

*reporting requirements and the mandate was going to create huge problems for their PR effort in the fall. That would make this decision a little easier to understand, but there must be more to it to explain the enormous costs and risks they're taking by doing this.*

*For one thing, they run the risk of badly dispiriting their supporters going into the fall. The administration's brazen disregard for and denial of plainly evident problems with Obamacare has been absolutely central to sustaining the morale and dedication of the law's defenders. If that mask is dropping, they could be in for serious trouble. ...*

**Craig Pirrong** sums this up well at Streetwise Professor

*... there is the Constitutional issue. Article II, Section 3 of the Constitution directs the President to "take care that the laws be faithfully executed." For worse or worst, Obamacare is law-at Obama's insistence. It is his Constitutional duty to execute the law. He should not be able to walk away from this duty, just because it is politically expedient to do so. That would be true if he hadn't pushed the measure into law, but it is all the more necessary because he did, to hold him accountable for the consequences of his political choices.*

*Obama is the Chief Executive. He needs to perform his Constitutional duty. His black letter Constitutional duty. His duty to execute the laws faithfully. To fail to do so is to undermine the Constitutional order, in particular by respecting the separation of powers between the legislative and executive branches. The blending of such responsibilities is a recipe for tyranny.*

More tomorrow on the continuing excitement of a country run by law school faculty. What could go wrong? They've done such a great job with their own institutions.

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## Washington Post

### [Review of Mark Leibovich's 'This Town'](#)

by Carlos Lozada

Mark Leibovich toyed with several titles for his new book on self-interest, self-importance and self-perpetuation in the nation's capital. "Suck-Up City" was one. "The Club" was another. Finally, he settled on "[This Town](#)," a nod, he explains, to the "faux disgust" with which people here refer to their natural habitat.

It's not bad, but the longer I roamed around "This Town," the more I thought Leibovich should have borrowed Newsweek's memorable post-Sept. 11, 2001, cover line: "[Why They Hate Us.](#)" His tour through Washington only feeds the worst suspicions anyone can have about the place — a land driven by insecurity, hypocrisy and cable hits, where friendships are transactional, blind-copying is rampant and acts of public service appear largely accidental.

Only two things keep you turning pages between gulps of Pepto: First, in Leibovich's hands, this state of affairs is not just depressing, it's also kind of funny. Second, you want to know whether the author thinks anyone in Washington — anyone at all? — is worthy of redemption.

Leibovich, chief national correspondent for the New York Times Magazine and a former reporter at The Washington Post (where we overlapped briefly but never met), is a master of the political profile, with his subjects revealing themselves in the most unflattering light. That talent becomes something of a crutch in “This Town,” which offers more a collection of profiles and scenes than a rich narrative. Still, his characters reveal essential archetypes of Washington power.

First, there is longtime NBC news reporter Andrea Mitchell — a conflict of interest in human form. Married to former Federal Reserve chairman Alan Greenspan, Mitchell has specialized in covering administrations and campaigns that “overlapped considerably with her social and personal habitat,” as Leibovich puts it.

There are those weekend getaways at George Shultz’s home. And dinner with Tipper and Al. And that surprise 50th-birthday party for Condi. And what do you do when you’re reporting on the 2008 financial crisis and many people are pointing at your husband as a chief culprit? NBC tossed up a fig leaf: allowing Mitchell to cover the politics of dealing with the financial crisis, but not the conditions that gave rise to it. Such hair-splitting becomes inevitable, Leibovich writes, because Mitchell trying to avoid conflicts of interest is “like an owl trying to avoid trees.”

Next up is superlawyer Bob Barnett — if he doesn’t represent you, you must not be worth representing. He negotiated Hillary Clinton’s \$8 million book advance (not to mention the \$10 million he reeled in for Bill), plus eight-figure deals for Sarah Palin in book, speaking and television gigs. “The degree to which so many elite D.C. players stream to a single superlawyer cash redemption center is striking,” Leibovich notes, “even by the parochial standards of the ant colony.”

Yet, for all his antique cuff links, Barnett longs for the very thing he delivers for his clients: a reputation upgrade. “He hates being called an ‘agent,’ ” Leibovich explains, “with its hired-gun connotations.” Barnett’s desire to be considered a Washington wise man is evident in his desperate quest to join President Obama’s presidential debate prep team. When he finally broke in, before Obama’s last debate with Mitt Romney, he prefaced one of his suggestions to the president by explaining the “conventional wisdom” on an issue. Obama cracked, “Bob, you ARE the conventional wisdom.”

Tammy Haddad — “a human ladle in the local self-celebration buffet” — is another only-in-Washington personality, and embodies one of Leibovich’s rules for success here: If no one’s sure exactly what you do, you’re doing it right.

“My job is to be around the most successful people, the most up-and-coming people, and the people who have impact,” Haddad told Leibovich. A former producer for “Larry King Live” and “Hardball,” Haddad is a mix of journalist, businesswoman, philanthropist and, as Leibovich puts it, a “full-service gatherer of friends of different persuasions unified by the fact that they in some way ‘matter.’ ”

She’ll tote around a video camera (the Tam Cam!) and do ambush interviews of Washington notables. She’ll broker an Obama interview for a news weekly aboard Air Force One. And although she’s best known for her exclusive party marking the White House Correspondents’ Dinner every April, Haddad will fete you whether you want it or not — “party rape,” as the friend of one victim called it.

Haddad, no surprise, was well aware of “This Town” as a work in progress, and Leibovich shoehorns in passages of her and others discussing it. “He’s writing a book about how Washington works and trying to get me to participate,” the Tamster confides to Gordon Brown at a book party (presumably consensual) for the former British prime minister.

Stoked by Politico, speculation has centered on who will be mentioned and what scores might be settled. For this reason, “This Town” contains no index; bold-face Washingtonians can’t just find their pages, see how they’re depicted, and read no more. These sorts of readers are the people Leibovich refers to as Leading Thinkers, Political Washington, People Who Run Your Country. (Yes, Leibovich is fond of Ironic Capitalizations Implying the Banality of Things Others Consider Important; sometimes phrases are not only ironically capitalized but *ironically italicized* as well, which I will always think of as a Double Leibo.)

Here’s how some Leading Thinkers came out: In “This Town,” we’re told that Chris Matthews and Matt Lauer have joked that David Gregory would rub out a few colleagues to advance his career. That Bill and Hillary Clinton are convinced that Tim Russert disliked them, and that they’re not wrong. That Harry Reid has “observed privately to colleagues” that John Kerry has no friends. That West Wing types suspected Valerie Jarrett had “earpiece envy” after David Axelrod got Secret Service protection, and so arranged the same for herself. And that when a national security official suggested that Obama shouldn’t skip the 2011 White House Correspondents’ Dinner on the weekend of the Osama bin Laden raid because the media might get suspicious, Hillary Clinton looked up and issued her verdict: “[Expletive] the White House Correspondents’ Dinner.”

It’s all quite fun but, beyond Washington, will many people care? I suspect most Americans can make it through their days without knowing what Tammy Haddad is up to. And Leibovich notes that, outside of “Game Change” and Bob Woodward tomes, political books like this one rarely achieve commercial success. “This Town” is as insidery as “Game Change,” but with lower stakes, and it lacks the historical import of Woodward’s deep dives into the White House. But it’s not trying to be a book for the ages — it’s a book for the moment, and it captures it well.

That moment begins with stories of frantic networking at Russert’s memorial service at the Kennedy Center in June 2008, and ends with Leibovich’s musings on Inauguration Day 2013. Other than the calendar, there is no clear arc to the tale, and by the 2012 campaign, “This Town” has lost some steam. If there is an underlying theme, one that Leibovich returns to between parties, it is Team Obama’s transformation from an above-it-all, apolitical wonkfest, at least in self-perception, into just another administration, where conflicts of interest are rife, lobbyists proliferate and outgoing staffers quickly sell out (although no one in Washington sells out anymore; they monetize their government service).

Leibovich recalls Obama’s attacks on lobbyists during the 2008 campaign, including the promise to keep them out of the White House. “It’s not who we are,” top aides intoned.

But it is who they became. In a near-parody of Washington’s revolving door, administration honchos joined up with some of the biggest corporate villains of recent years. Leibovich highlights the “unholy triplet”: Pentagon spokesman (and George W. Bush holdover) Geoff Morrell became BP’s head of U.S. communications, Treasury counselor Jake Siewert started spinning for Goldman Sachs, and OMB director Peter Orszag cashed in at Citigroup. (Morrell’s deal was negotiated by Barnett. Obviously.) And whenever lobbyists joined the administration, the White House would just “acknowledge the exception, wait out the indignant blog posts and

press releases, and move on,” Leibovich writes. “That lobbying ban was so four years ago anyway.”

This disdain for hypocrisy hints at the only semi-redeeming quality Leibovich finds in Washington. It’s not full-on honesty — no one measures up — but a degree of self-awareness that you’re playing a game, and not pretending otherwise.

So he shows sympathy for Kurt Bardella, an insecure, insufferable Republican congressional press aide who passes Leibovich copies of his e-mails. “I loved the sheer unabashedness, even jubilation, of Kurt’s networking and ladder climbing and determination,” Leibovich writes. The rise, fall and rise again of Bardella in [Rep. Darrell Issa’s office](#) is among the most gripping portions of “This Town.”

A politician-turned-lobbyist such as Trent Lott also earns respect, in part because he doesn’t hide his motivations. “Washington is where the money is,” the former Republican majority leader told Leibovich. “That’s generally what keeps people here.” But Leibovich is scathing with Chris Dodd, who vowed he’d never lobby, right up until the former senator became head of the Motion Picture Association of America.

Leibovich is not all that kind to his colleagues in the Washington press corps, either, lamenting their coziness with authority and obsession with self-branding. Politico — “the emerging company-town organ for Political Washington” — comes in for grief as a trafficker of minutiae and suggestive notions as a means of “driving the conversation.” And Leibovich depicts Politico’s Mike Allen, of Playbook fame, as an “enabler” of journalistic groupthink and the media-political complex.

This broad media attack feels dissonant at a time when the Obama administration is targeting leakers, seizing journalists’ phone records or labeling them “co-conspirators,” and when news organizations are publishing details of top-secret government surveillance programs. Leibovich’s digs seem relevant to a certain kind of Washington journalist — the frenetic political blogger, perhaps — but soirees at Tammy’s don’t seem to be easing the antagonism between the White House and the fourth estate.

Even Leibovich’s critique of Politico, while persuasive, feels familiar. (I mean, didn’t he read that great Leibovich [profile](#) of Allen in the New York Times magazine in 2010?) Politico may have recognized the limits of a “winning the morning” strategy, recently [announcing](#) a push into long-form journalism.

One suggestion to Politico’s editors is to assign a revelatory Leibovich-style profile of Mark Leibovich, and answer the question that hovers over every page of his book: Is it really possible to be the impartial critic of a subculture that is also your own?

Too bad Leibovich can’t write that piece. That would probably be a conflict of interest, and we can’t have that. Not in this town.

*Carlos Lozada is editor of The Washington Post’s Outlook section.*



## The Corner

### The "Magic" of Valerie

by John Fund

Valerie Jarrett, the White House senior adviser who mentored both the president and first lady at the start of their careers in Chicago, usually stays out of the news. In Washington, that is taken as a sign she is far more influential than she or the White House lets on.

So when Jarrett does briefly become the news it's significant, because it may provide a window into how the Obama White House really works.

This week there were several sightings of Jarrett in the media. She popped up as the chief defender of the White House's sudden decision to delay enforcement of a key Obamacare mandate requiring employers to offer health insurance or face stiff fines. "As we implement this law, we have and will continue to make changes as needed," Jarrett wrote in a post on the White House blog. In other words, continue to keep in touch with my office as we figure out how to manage this train wreck.

Another pair of Jarrett sightings came from Mark Leibovich's new book *This Town*, a takedown of insular, status-conscious Washington. The New York Times writer reports that Jarrett was resented by several top Obama aides for getting her own full-time Secret Service detail of six agents. She apparently felt threatened by the fact that fellow Obama adviser David Axelrod had been given protection after a gunman who opened fire at people at the U.S. Holocaust Memorial Museum was found to be carrying personal data on Axelrod. "While a high-profile White House official — especially an African-American woman, such as Jarrett — could legitimately be considered a more likely target than most, several West Wing officials I spoke to were dubious there had been any special threats against her," Leibovich writes. "They suspected, rather, that Jarrett asked the president to authorize a detail out of 'earpiece envy.' 'The person Valerie felt threatened by was Axe,' quipped one top aide."

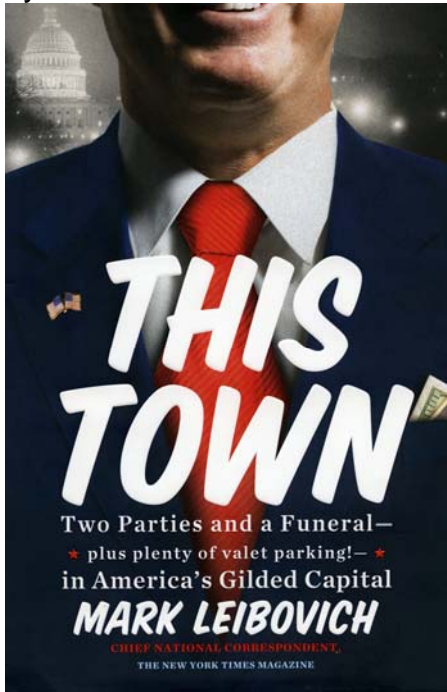
Jarrett goes to extraordinary lengths to manage her image in the few articles that do mention her. Leibovich writes that "a top Obama aide forwarded me a set of confidential talking points that were circulated through the West Wing when Becker was reporting her story. The memo, written by deputy press secretary Jamie Smith, was titled 'The Magic of Valerie.' It included an unrelenting 33 talking points" that praised her intelligence, empathy, life experience, and work ethic. "My personal favorite 'Magic of Valerie' bullet point is the one where we learn that 'Valerie is someone who other people inside the building know they can trust (need examples.)'"

Truth be told, Valerie Jarrett is indeed trusted by President Obama and Michelle Obama, who have complete confidence in her loyalty and ability to get things done. As for the rest of the White House, the seething tension about her behind-the-scenes power and self-aggrandizement continues to build. Witness the number of leaks that are starting to flow out of the White House challenging the myth of her "magic."

Washington Post

[‘This Town’: Who comes off worst in Mark Leibovich’s takedown of insider Washington?](#)

by The Reliable Source



So who comes off worst in [“This Town”](#)?

There are some sharp-eyed digs at the rich and famous in Mark Leibovich’s new takedown of grasping, incestuous Beltway insider culture, a copy of which we obtained in advance of its July 16 publication. Barack Obama, in too-cool-for-school style, telling all his admirers at the 2004 convention that he just wanted to take a nap. Andrea Mitchell shmoozing over dinner with David Petraeus, whose resignation scandal she had just covered. David Axelrod hitting up journalists who cover him for charity contributions. Chuck Schumer at a funeral, “head bowed, conspicuously biting his lips, squinting extra hard for full telegenic grief effect.”

Oh! And can you *believe* the talking points in praise of Valerie Jarrett that the West Wing circulated to staffers while the New York Times was working on a profile of her? Choice bullet point: “Valerie is someone here who other people inside the building know they can trust. (need examples).”

But the most scathing assessments from Leibovich (a New York Times reporter and former Washington Post colleague of ours) are of people who are famous only within the intimate confines of D.C.’s media-political complex — folks whose names probably won’t ring a bell for even the most devoted “Morning Joe” groupies outside the Beltway. (\*\* See also: [“This Town,” review of Mark Leibovich book](#))



*Duberstein*

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*Tammy Haddad*

Tammy Haddad: The veteran cable-news producer turned all-round multi-media consultant/event planner and "full-service convener of the Washington A-list" is a recurring character in the book. The "towering in-your-face presence" is described somewhat fondly as a relentless networker whose great skills are name-dropping and sidling up to power. Leibovich casts a spotlight on her quickly-cultivated friendship with David and Susan Axelrod: Soon after they came to town, Haddad "became a tireless promoter and fundraiser" for their epilepsy charity "though she had no personal connection to the disease" — and then "acquired a coveted mantle of her own: someone who had 'connections to the Obama White House.'" In one of the book's most vivid anecdotes, Leibovich describes a book party Haddad hosted for the son of Michelle Obama's chief of staff Susan Sher: "At one point, Tammy rushed over to me and the guy I was talking to and announced 'ELIZABETH EDWARDS IS DYING! ELIZABETH EDWARDS IS DYING! I JUST GOT OFF THE PHONE WITH HER DAUGHTER!. . . Now, c'mon, come meet the novelist.'"



*Bob Barnett*

Bob Barnett: The Williams & Connolly lawyer, known for brokering big book-deals and media rollouts for the city's A-listers, is described as "a signifier of Washington's special tolerance for conflict of interest," since he sometimes wrangles business deals with people he has also represented. Leibovich calls him "tireless in his self-promotion" and "mercenary in his allegiances"; he lobbied hard for a position on the team prepping Obama for the 2008 debates, though the campaign was suspicious of allying with such an entrenched Washington insider. In the postdebate "spin room," the author recalls, "the only person Barnett appeared to be spinning for was himself."

(We called, but no response yet from Duberstein, Haddad or Barnett)

But wait, there's more! Scads of other inside players, big and small, get more briskly sideswiped. Walter Isaacson, the Aspen Institute president, "always blows right past" the author at parties en route to the more important folks, "and if he greets me at all, he calls me 'Matthew,' which I've never bothered to correct because Walter is so smart, for all I know my name IS Matthew." . . . Ed Henry, the Fox News correspondent, is teased for his giant wedding cake, made to look like the White House, and is portrayed as eagerly sucking up to the French ambassador's deputy in hopes of an invitation to the elite Vanity Fair/Bloomberg party. . . Though White House Press Secretary Jay Carney tried to pretend he was only vaguely familiar with Hilary Rosen after the strategist dissed Ann Romney, Leibovich recalls seeing them dance together at a super-cozy party thrown by lobbyists for "Meet the Press" producer Betsy Fischer.

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## **Politico**

### **[The Obamacare mess](#)**

by Rich Lowry

Washington is riven by conflict and deep-seated division. It is rare indeed that both sides can agree on anything consequential. Therefore it is incredibly heartening that there is now bipartisan agreement that the implementation of Obamacare is a mess.

Republicans have long maintained this of the Affordable Care Act. But now the Obama administration has lent its implicit assent with its astonishing decision to delay by a year the law's employer mandate. This is what the administration calls, via a blog post by the Treasury Department's assistant secretary for tax policy announcing the decision, "Continuing to Implement the ACA in a Careful, Thoughtful Manner."

The administration can call it whatever it wants, but there is no hiding the embarrassment of a climbdown on a high-profile feature of President Barack Obama's signature initiative — although the administration seemed determined to do all it could to hide it. If Bloomberg hadn't broken the news on Tuesday, the administration was apparently planning to announce it on July 3 — only because the day before Thanksgiving and Christmas Eve were too far off.

The reason for the delay, we're told, is incompetence. The administration's story is that it simply couldn't find a way to implement the insurance reporting requirements on employers within the time frame set out in the law. In this telling, the mandate was merely collateral damage — it had to be put off, along with the accompanying \$2,000-per-employee fine on firms with more than 50 employees who don't offer health coverage.

This just happens to be the mandate that is causing howls of pain from businesses and creating perverse incentives for them to limit their hiring or to hire part- rather than full-time employees. And it just happens that 2015 — the new target year for implementation — is after a midterm election year rather during one. It must all be a lucky break.

Explaining the decision, Obama apparatchik Valerie Jarrett issued a stalwart communiqué from Central Command that should take an honored place in the annals of blatant, unembarrassed hackery.

Her message: All is well. Nothing to see here. Yes, maybe we've delayed implementation of the (hilariously euphemistic) "employer responsibility payments" (aka fines), but don't worry: it's "full steam ahead" with the health-care exchanges this October. Never mind that determining eligibility for the exchanges depends on employers reporting their insurance offerings — reporting that now won't happen.

Jarrett portrayed the decision as about "cutting red tape." But if you pass a horrendously complicated law placing new burdens on employers, you aren't cutting red tape, you are adding to it. And a delay doesn't cut red tape — it only delays it.

"As we implement this law," Jarrett explained, "we have and will continue to make changes as needed." But the law is supposed to be the law, not optional suggestions from Congress. In Jarrett's view, Obamacare is little more than warrant for the Obama administration to decide how it wants to run the American health care system, one executive decision at a time.

It has become a trope among defenders of the law that its flaws are the fault of Republicans because they don't want to fix them. They must have seen their own peculiar version of "School House Rock": The first step in making a law is jamming a 2,000-page bill down the opposition's throat. The second is whining that the opposition won't fix problems inherent in the bill jammed down their throats.

Obamacare was sold on two flagrantly false promises: that you could keep the insurance you have and that prices for insurance would drop. But employers will dump significant numbers of employees onto the exchanges to save on their own health-care costs. And the latest indication of the law's price shock came via The Wall Street Journal this week, which reported, "healthy consumers could see insurance rates double or even triple when they look for individual coverage."

The delay of the employer mandate might create political pressure to delay the more important individual mandate as well, on grounds that ordinary people shouldn't face the fines that businesses have been spared. Certainly, the maneuver on the employer mandate is a painful concession and a signal of weakness. Now everyone can now agree: Implementation of the president's proudest achievement is chaotic and off schedule — at best.

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## **The Corner at National Review**

### **Delaying Obamacare**

by Yuval Levin

Until yesterday, the administration had basically put on a brave face about the difficulties arising in its implementation of Obamacare. With a few minor exceptions (now especially notable among them the one-year delay of key requirements for the new small-business exchanges), they have pretended everything was fine, and have enabled a chorus of defenders on the left to do the same. Last night's announcement of a one-year delay in the implementation of the employer mandate is the first serious indication that the administration sees that the wheels are coming off the bus, and is very worried about it.

Attempts to downplay the significance of this decision fail, I think, to reckon with how very difficult and embarrassing it must have been for the administration. You don't announce something like this just before the start of a long holiday weekend while Congress is out of town if you've got a good case to make for yourself. The administration presumably intended to announce the decision after business hours tonight (**Wednesday**), not last night, but the news leaked to two Bloomberg reporters and they had to scramble some. The formal announcement came through a "Treasury Note," essentially a blog post by the Assistant Secretary for Tax Policy at Treasury, which had the hilariously Orwellian title of "Continuing to Implement the ACA in a Careful, Thoughtful Manner." The post mostly discussed the administration's decision to delay employer reporting requirements for a year (and more on that below), and toward the end noted in passing that this also meant the employer mandate would be delayed. That's a very odd way to break news like this. It seems clearly to be a move the administration did not want to make.

This would have been a very tough decision to come to for several reasons. Not least of them is that, as I say, it is the first major acknowledgement of a serious problem implementing this law, and it is a problem with an element of the law that is by no means the most difficult to implement. If they're actually telling the truth that they can't handle getting employer reporting requirements into place, how are they doing getting the exchange system into place? But

perhaps more troubling for the law's defenders, this decision is even more likely an acknowledgement of some of the economic irrationality of the law. I doubt that just implementing reporting requirements is the issue here. More likely, the administration agrees with some of its critics who have argued that this element of the law would hurt the economy, and especially employment. And they probably also saw that the pressure from employers to avoid both the reporting requirements and the mandate was going to create huge problems for their PR effort in the fall. That would make this decision a little easier to understand, but there must be more to it to explain the enormous costs and risks they're taking by doing this.

For one thing, they run the risk of badly dispiriting their supporters going into the fall. The administration's brazen disregard for and denial of plainly evident problems with Obamacare has been absolutely central to sustaining the morale and dedication of the law's defenders. If that mask is dropping, they could be in for serious trouble. Moreover, the central proposition of defenders of the law has been that continued conservative opposition to it is a denial of the basic reality that the law is on the books and will be implemented. But apparently, the administration does not think of the law as a done deal. They believe they can pick and choose elements to implement or to ignore, and think the nature of the health-care system in the coming years is still an open question. Defenders of Obamacare will need to recalibrate their case as a result. It is pretty clear from the reaction on the left today that the administration did not prepare its supporters for this decision, and that could leave them wondering what shoe will drop next.

That question is itself an additional risk of this decision, because it is hard to see how this could be the last concession to reality. The individual mandate, for instance, may now be politically untenable, since, by eliminating the employer mandate but keeping the individual mandate, the administration is freeing large employers but not workers of a burden and would put the government in the position of causing people to be dumped from employer coverage and then fining them for not getting individual coverage in an unfamiliar and expensive new system with lots of growing pains. This is certainly in line with the administration's broader corporatism, but it is a politically uncomfortable expression of that approach and a huge vulnerability. A move to at least delay the individual mandate could be pretty hard for Democrats to resist.

This concession on the employer mandate also makes other concessions more likely: The administration will certainly face added pressure to ignore various taxes, rules, and mandates that can be shown to have detrimental effects on the economy or on some constituency—and pretty much every line of Obamacare falls into that category in one way or another. They have just announced that they can implement or ignore whatever portions of the law they wish, and so will be feeling lots of pressure from lots of people with lots of views about lots of provisions.

Moreover, by announcing that they can implement or ignore whatever portions of Obamacare they want, the administration is also taking even more direct ownership of any other problems that arise with implementation, since this move suggests they believe that implementation is entirely up to them and they are not really bound by the particulars of the law. This greater ownership of troubles to come will be a particular problem for them with regard to employer dumping and the exchanges. Any such dumping (rightly or wrongly, after all some significant dumping was already expected anyway) will be understood as resulting from the special favor the administration has now done for large employers. And since more people will be in the exchanges than otherwise would have been, the difficulties and uncertainties in that system will be a bigger political problem. This amounts to a very risky bet on the viability of the exchanges.

And that points to what may be, as a matter of policy substance, the most serious problem for the administration with this delay of the employer mandate: its effect on the viability of the exchanges. Under the law, eligibility for exchange subsidies depends on an individual not receiving an affordable offer of qualified insurance from an employer. If employers will now not be required to report on their insurance offerings in 2014, I don't see how the government will be able to determine eligibility for subsidies, and therefore how the exchanges will be able to function.

Making subsidies available without proof of eligibility would be very expensive and destabilizing to the insurance system, and would also require the retraction of such subsidies if the employer mandate ever does return. Coming up with other ways to prove eligibility would be very difficult at this late stage (as exchanges are supposed to start operating in three months), and would also be totally lawless—though I recognize that is a rather quaint and old fashioned concern in the age of Obama. Any losers in that process could sue, and the federal courts would have a hard time sustaining the administration's novel approach to executive power. The exchanges are utterly central to the way Obamacare is supposed to function, and the delay announced yesterday leaves the prospects for their proper functioning even more grim than they already were.

In all these ways, I think the administration has just made its Obamacare problems worse rather than alleviating them. But it may have opened a path to alleviating the country's Obamacare problem, by elevating the idea of delay. Opponents of Obamacare should not imagine that the law will just collapse by itself or that as problems arise Democrats will come to them asking for repeal. That's just ridiculous. They should look for ways to make the most of opportunities to avert the implementation of this odious law and advance the cause of ultimately repealing and replacing it. And yesterday's announcement offers such an opportunity. The employer mandate is very bad policy, and its delay (which likely means its elimination) is a good thing. But the rest of Obamacare is very bad policy too. The delay of the employer mandate by a year highlights the irrationality of the larger law and exacerbates its instability. It does not seem to be sustainable as a discrete measure. It calls at the very least for a broader delay.

The law will not be any better a year from now, but since Democrats remain staunchly opposed to any talk of repeal yet now have to be open to talk of delay, Republicans should move to delay implementation of the entire law by a year. I've argued before (as others have) that delay offers both sides some near-term benefits—though in the long run I think it advances the cause of replacing this law with real health-care reform. With yesterday's announcement, the administration has once again proven that near-term benefits are all the president cares about. So fine—let's delay, let's use the time to better frame a serious alternative for the country, and let's see where we are a year from now.

### **Streetwise Professor**

#### **[Take Care to See That the Laws Be Faithfully Executed](#)**

by The Professor

The Obama administration has announced the delay of the implementation of the Obamacare employer mandate. There are at least three aspects of this that deserve comment.



First, the practical impact. Some have argued that this will undermine the other part of Obamacare-namely, the individual mandate and insurance “exchanges”. Namely, it will induce firms to dump their corporate coverage, and force people onto the exchanges. This will happen only because of other provisions of Obamacare that increase the cost of employer coverage. Firms that currently provide insurance without the mandate cannot be constrained by it, so relaxing this constraint will not induce them to change their behavior except to the extent that other aspects of Obamacare increase the cost of providing employer coverage. That is, it would be the selective enforcement of various provisions of Obamacare that will lead to these perverse effects. Obamacare is barely coherent, but mandates are an important part of maintaining that coherence that it possesses. The law is rife with cross-subsidies and taxes, and mandates to purchase coverage are necessary to force the net payers to remain in the system and thereby subsidize the net recipients.

Second, the political impact. This is obviously intended to push the implementation of a big part of Obamacare past the midterm elections. Some firms would likely have responded to the mandate, with its various restrictions, by dropping coverage. Especially given the unpreparedness of the exchanges, and the high costs that the young and healthy will incur buying coverage on exchanges, this would have been a major source of anger.

Third, there is the Constitutional issue. Article II, Section 3 of the Constitution directs the President to “take care that the laws be faithfully executed.” For worse or worst, Obamacare is law-at Obama’s insistence. It is his Constitutional duty to execute the law. He should not be able to walk away from this duty, just because it is politically expedient to do so. That would be true if he hadn’t pushed the measure into law, but it is all the more necessary because he did, to hold him accountable for the consequences of his political choices.

Obama is the Chief Executive. He needs to perform his Constitutional duty. His black letter Constitutional duty. His duty to execute the laws faithfully. To fail to do so is to undermine the Constitutional order, in particular by respecting the separation of powers between the legislative and executive branches. The blending of such responsibilities is a recipe for tyranny.



