

# Congress Wrestling with the Rise of the Administrative State During the 20th Century

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This book first published 2025

Cambridge Scholars Publishing

Lady Stephenson Library, Newcastle upon Tyne, NE6 2PA, UK

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

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ISBN: 978-1-0364-1789-5

ISBN (Ebook): 978-1-0364-1790-1

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Congressional Appropriations for DOD Legislative Relations, FY 1958–FY 1990

**Table 17.1**

Results of Key Congressional Efforts to Control Agency External Communication in the Twentieth Century



## MAJOR ABBREVIATIONS

AP	Associated Press (newswire service)
<i>APSR</i>	<i>American Political Science Review</i>
BOB	US Bureau of the Budget (after 1970: Office of Management and Budget [OMB]), an agency in the Executive Office of the President
CLA	Center for Legislative Archives, NA, Washington, DC
<i>CR</i>	<i>Congressional Record</i> (official gazette of the US Congress)
<i>CT</i>	<i>Chicago Tribune</i>
FDR	Franklin D. Roosevelt, president (1933-1945)
FDRL	Franklin D. Roosevelt Presidential Library, NA, Hyde Park, New York
FY	Fiscal Year. <i>Note:</i> Fiscal years are named by the year they end in. The traditional fiscal year in the US public sector began on July 1 and ended on June 30. Hence, FY 1974 began on July 1, 1973 and ended on June 30, 1974. In 1976, Congress bumped the federal fiscal year forward by a quarter. After that, federal fiscal years begin on October 1 and end on September 30. Most state and local governments stayed with the traditional July-June fiscal year.
GAO	US General Accounting Office (after 2004: Government Accountability Office), an agency in the legislative branch
GPO	Government Printing Office, an agency in the legislative branch
NA	National Archives
NA II	National Archives II, College Park, Maryland
n.t.	No title, such as for a document or the name of a congressional subcommittee
<i>NYT</i>	<i>New York Times</i>

<i>PAR</i>	<i>Public Administration Review</i>
RG	Record Group (agency-based collections), NA
<i>WP</i>	<i>Washington Post</i>
<i>WS</i>	<i>Washington Star</i>

# PREFACE

As a legal construct, the epithet “administrative state” has been used to describe and critique the federal executive branch. The term flowered into vivid colors in the 2020s and entered common political usage. The conservative majority of the US Supreme Court began issuing a series of decisions that consciously sought to reduce the powers of federal agencies and tilt federal law to those opposing decisions by the bureaucracy. Support for these efforts came from business, political conservatives, and ideological antagonists of a powerful bureaucracy. Some of the relevant court decisions included:

- Repealing the legal presumption that agency decisions were to be deferred to due to the agency’s expertise (aka the “Chevron deference”)
- Repealing one of the enforcement institutions of federal regulatory agencies known as in-house tribunals and instead forcing agencies to sue in federal court in front of a lay jury
- Permitting challenges to not-yet-issued agency regulations known as the “major questions doctrine”
- Expanding the time limit for corporations to sue federal agencies

A headline in the *New York Times* captured the trend: “Weakening agencies will be a legacy of the Roberts Court” (Savage 2024). In their totality, this series of decisions was a major development in the power equation between the federal bureaucracy and private sector corporations. Whether stated directly or indirectly, the court was shifting power from the administrative state to the lawmaking branch of government, Congress. An essential through line of these and many other major decisions meant that federal agencies could only do what Congress explicitly authorized them to do. This largely ended the pattern of the twentieth century when Congress would delegate to a federal agency the power to pursue a general goal, such as EPA’s “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters” and “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” Similarly, OSHA’s mission “to assure safe and healthful working conditions for working men and women” and the FCC’s goal of regulating the airwaves based on “the public interest, convenience or necessity.” These general missions were no longer enough. An agency could promulgate a regulation (that would have the force of law)

*only* if Congress authorized it to regulate a very specific and explicitly stated law-based subject matter. A larger question, if broad delegations of authority are even constitutional, was also under attack (Liptak 2024).

These anti-administrative state developments in the 2020s were a bookend (or at least pivot) in the evolution of the federal government during the twentieth century. To identify the counterpart bookend (or starting line) one can point to how the federal government operated in the late nineteenth century. In 1885, Woodrow Wilson, before his rise to prominence as a professor of political science at Princeton University, authored a book with his view of the national government. Looking for a term that would capture the status quo as he saw it, he titled the book *Congressional Government*. This phrase conveyed how the federal government functioned at the time with Congress at its apex. He described “Congress as the central and *predominant* power of the system” and claimed that “congressional government is Committee government” (1956, 23-24, emphasis added). That meant a president was merely “the *servant* of Congress” (177, emphasis added). At the time, the presidency was, with some exaggeration, little more than a glorified clerk and federal agencies in the executive branch were modest in size and scope. Wilson sought to promote a more vigorous presidency vis-à-vis Congress.

Fast-forward to the mid-twentieth century and the picture had been transformed from what Wilson described. The president as chief executive was now a kind of king of the hill and Congress was in a relatively subordinate role. The mantra that “the president proposes and Congress disposes” captured this new reality. Yet the US Constitution during this period had changed little in terms of the powers and roles of the legislative and executive branches. What changed? The rise of the administrative state.

During the twentieth century, the federal executive branch expanded many times over in size, operations, responsibilities, staffing, budgets, and powers. In short, the twentieth century saw the rise of American bureaucracy (Lee 2023). How did Congress deal with this radical change? It tried its best to hold back the flood, sometimes winning, often losing. This book recounts how Congress struggled with the rise of the administrative state by trying to retain its own centrality and power. It identifies specific events and controversies that tell the story of Congress’s rearguard efforts to hold back the administrative state in the twentieth century. Even if in some cases it seemed to be overwhelmed, Congress was nonetheless laying the groundwork for the conservative effort in the twenty-first century to overturn the administrative state and restore the centrality of Congress and,

to a lesser extent, the president.

This book presents my original academic research into the twentieth-century history of the power struggles by Congress to assert its dominance over the bureaucracy. Why the importance of history? It can play a role in four ways. First, as so-called “pure history,” it is valuable for its own sake because it fills in missing gaps in knowledge. Second, even though history never quite repeats itself, lessons from the past can often be applicable to the present. Third, even though American culture and values are sometimes quite ahistorical, the status quo that we face now is often rooted in historical events and decisions. According to Kruse and Zelizer, “We need to see the past clearly in order to understand where we stand now and where we might go in the future” (2022, 11). Because history influences our lived experience, we also need to know the past. Finally, the book serves a specific purpose given the contemporary attention to the administrative state (usually as a negative). For those interested in the latest developments in public affairs on this subject, the book provides an introductory overview about the evolution of the American public sector during the twentieth century. In that sense, this is a “before” book that is intended to help readers see and understand what preceded the evolution of this story in the twenty-first century into a de facto war on the administrative state.

A study of the conflicts between Congress and the administrative state encompasses multiple academic fields, including political science, American history, public administration, law, and management history. The book is an effort to contribute to the increasing level of academic interest in the emergence of the American administrative state. (The term was originally coined by Dwight Waldo as an academic concept in his 1948 book, *The Administrative State* [see chap. 1]. It was my good fortune that he agreed to chair my dissertation committee at Syracuse University in 1975.)

This book can be used in three ways. First, it presents a comprehensive and integrated overview of the subject for use as a textbook and as a reader. By being subdivided into five parts, this structure enables a detailed examination of discrete subtopics (or silos) within the broad scope of the struggles between Congress and the bureaucracy in the twentieth century. I expect that this volume will be useful to practitioners-in-training, such as students working toward graduate degrees in political science, American history, public administration, and law. They would benefit by having a more in-depth perspective on some of the prominent issues relevant to their chosen professions as well as the historical context of those developments. Similarly, the book should also be a good fit for advanced courses of upper-

class undergraduates (juniors and seniors) majoring in those fields. The reason for presenting references at the end of each chapter is to permit a chapter to stand on its own as a complete whole. This format can be particularly useful when assigned readings do not cover the whole book but rather specific chapters and perhaps even in an entirely different sequence than presented here.

Second, the book is intended for those with a more advanced academic and research interest in the subject, whether they are based—again—in political science, American history, public administration, or law. Hence, it would be useful to graduate students and doctoral candidates in these fields. For advanced researchers, the book is intended to be beneficial both to current faculty and to faculty-in-training who have an interest in this subject.

Third, as a comprehensive volume of peer-reviewed research in this topic, the book would likely appeal to academic libraries that seek to develop and enhance their collections in such disciplines as history, political science, public administration, and law.

My thanks to Cambridge Scholars Publishing for providing this opportunity to pull together my research on Congress vis-à-vis the rise of the federal bureaucracy that I had written and published during the twenty-first century. I have selected sixteen pieces that present a *tour d'horizon* of the subject. This volume is also the fourth in an informal tetralogy of my research that Cambridge Scholars Publishing has published. The other titles of the quartet that were published in 2023-2024 are *A History of Public Administration in the United States: The Rise of American Bureaucracy*, *The Emergence and Scope of the Voice of Government*, and *A History of the American Nonprofit Sector*.

The research methodology I used generally involved mainstream historical research techniques (Lee 2023, chap. 18). In particular, I found triangulation to be an exceptionally useful methodology for reconstructing the record of a historical event, particularly because reliance on multiple independent sources helped fill in a lacuna for any individual source. Triangulation can also be helpful in identifying discrepancies about those unfolding events. For example, McNabb noted that archives “are particularly valuable as a source for cross-checking interview and narrative study data. In this way they contribute to improved validity through triangulation—using several approaches in a research study” (2021, 256). One benefit of this approach is building “a chronological reconstruction” of events and developments (van Thiel 2014, 149). For historical studies of American government, three

high-quality primary sources for triangulation are archival materials (such as presidential libraries), contemporaneously published government documents (such as congressional hearings), and print media coverage. Admittedly, newspapers could be deemed secondary sources. However, given that the reporter did not know how events would turn out and was limited to how things looked at the moment, journalism has much to contribute to watching history unfold in the present tense. Individually, these three sources each have strengths and weaknesses. Triangulation helps overcome the demerits or bias of one source through the strengths of other sources. Riccucci described this approach to triangulation as mixed-methods research based on qualitative methodologies (2010, 114-15).

A note on the referencing style used here. Generally speaking, parenthetical references are the most concise for traditional published sources, such as academic articles and books. They are also effective for journalism, whether the article was bylined or not. For non-bylined newspaper articles, I have presented a truncated version of the headline of the article or editorial for the in-text parenthetical reference. However, the parenthetical referencing style is very cumbersome when sources are unpublished materials, such as archival documents, online sites, and interviews. Citations for such sources would be quite prolix in parenthetical referencing. Therefore, to save such excessively long references within the text of a chapter, I have instead used endnotes in those situations. Endnotes are much more concise and less verbose for these sources.

Some chapters are a mix of, on one hand, conventional published sources and, on the other, archival documents and other unpublished sources. Therefore, for those chapters I used a dual referencing style. The eighteenth edition of *The Chicago Manual of Style* (2024) gives authors and publishers a specific guideline in this situation: “As long as a consistent style is maintained within any one work, logical and defensible variations on Chicago-style source citations are acceptable” (§13.4). Cambridge Scholars Publishing permitted me to use this dual approach in my three preceding titles in the series. I have again used this mix of both referencing styles in half (8) of the chapters: 2-8 and 11. The numbered endnotes are located after the conclusion of the text. They are then followed by a customary listing of the sources for in-text parenthetical references from conventional academic and other published material.

In general, I revised and updated all the chapters as appropriate. For example, reflecting current style, I adapted references to be as succinct as possible. The goal is to provide the reader with sufficient information to

locate the cited source, but otherwise to avoid cluttering sourcing with excessive detail or with dense and distracting punctuation. Some chapters needed more updating than others. For example, if a cited book had since been reissued in a later revised edition, I cited the most recent edition. Similarly, if a cited book had been republished (even without changing the original text), I cited the most recent republication because its rerelease conveyed the continuing relevance and importance of the book. In an effort to reduce the number of references at the end of each chapter, per *Chicago* §13.62, I inserted into the text a full citation from such sources as federal laws (e.g., 39 *Stat.* 15) and the *Congressional Record* (e.g., *CR* 59: 5 [April 1, 1920] 5091).

Many changes were made to ensure a consistent style throughout the volume, which would be advantageous to the reader. Some of these relatively nonsubstantive and modest changes included assuring standard citation formats and spelling in order to have a uniform style throughout. In another effort to assure that the book would be as up to date as possible, I reviewed the URLs that had been cited originally and modified them as necessary so that those that are still online continued to be accessible with the most current URL. Similarly, I routinely deleted anachronisms or substituted more current published discussions and references (sometimes a later writing by the same author) for older ones that seem to have already passed their freshness date. Hence, the oddity of a chapter in this volume containing sources that had not yet been published when the original piece had appeared.

I edited the chapters so that each can stand on its own without one, for example, having read any preceding chapter first. That required a modest amount of repetition, but not significantly so. That also justified providing references at the end of each chapter, instead of presenting an exceedingly long, integrated bibliography at the end of the book. This formatting style makes it easier for a reader to locate a source cited in the chapter.

Finally, given that the book seeks to integrate various aspects of the subject into a whole, in many chapters I inserted a note flagging for the reader instances where the text refers to a subject covered in more detail in a different chapter of the book. Those cross-references are presented this way: “(see chap. \_\_).” I hope this will help readers gradually see how the various parts of the book are related pieces that comprise a bigger picture, components that synthesize well into a whole.



The plan of the book is to pull together into a more coherent telling of the relatively haphazard and ad hoc efforts by Congress to resist the encroachment of the nascent administrative state during the twentieth century. History permits us to see trends and themes that probably were not as clearly apparent at the time of these congressional initiatives vis-à-vis the federal bureaucracy. The book begins with an introductory sketch of the history of the executive branch from the beginnings of the country through to the final decades of the twentieth century (chap. 1). Part I presents four case studies of relatively explicit efforts by Congress to retain its centrality. This included creating a new agency to provide Congress with expert advice and asserting that it belonged to the legislative branch rather than the executive (chap. 2) and then how Congress used the new agency in fact-finding and decision-making (chap. 3). Other cases included shutting down an executive branch's public library (chap. 4) and micromanaging FDR's own efforts to oversee the bureaucracy (chap. 5).

During the twentieth century, Congress tried to establish some rules of the game for how federal agencies could interact with it (Part II). This included criminalizing agencies' lobbying of Congress (chap. 6), as well as prohibiting efforts to lobby Congress indirectly through public relations campaigns (chap. 7). Part III presents a series of initiatives by Congress to muzzle the public voice of federal agencies. This began with banning the Panama Canal Commission from employing a press officer to professionalize its media relations (chap. 8), trying to control the number and use of mimeograph machines (too many press releases!) (chap. 9), arguments about the PR of the federal Prohibition Bureau (chap. 10), and efforts to use the power of the purse to limit Pentagon PR (chap. 11). However, Congress's relatively consistent hostility to agency PR had at least one exception, the case of Federal Information Centers (chap. 12). In an effort to draw historical generalizations, I have tried to codify for current and future federal managers what the "do's and don'ts" are of Congress's hostility to their external communication (chap. 13).

In contradistinction to its war on agency external communication, Congress has been relatively self-serving when it came to agency liaison with itself (Part IV). This included permitting the establishment of an assistant secretary for legislative relations in the State Department, which was followed by the gradual spread of this unprecedented subcabinet officer throughout most of the executive branch (chap. 14). Similarly, when some budget cutters on Capitol Hill aimed to reduce the Pentagon's spending on legislative liaison, other institutional power nodes intervened to protect the funding that the military expended so that Congress would be served to its

own satisfaction (chap. 15).

Finally, in a lighter vein, Part V takes a different point of view. The preceding chapters were based on laws that Congress considered and/or passed in its efforts to stand up to the rising administrative state. The last substantive chapter (16) examines how Hollywood has depicted that same process, often referred to in the classic civics lesson of “how a bill becomes a law.” A passel of movies have presented pop culture’s visualization for the public-at-large about the lawmaking process in Congress. Some movies have been relatively accurate, while others wildly not.

The conclusion (chap. 17) seeks to draw generalizations about Congress’s confrontations with the administrative state during the twentieth century. This history is prefatory to having a historical perspective on the full-blown contemporary efforts to reverse the standing and powers of federal agencies in the twenty-first century. These emerged to be central themes of the conservative political movement and the subsequent precedent-reversing decisions by Congress and the US Supreme Court against the administrative state.

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# INTRODUCTION

## CHAPTER ONE

# FROM WHENCE CAME THE ADMINISTRATIVE STATE? ITS GERMINATION FROM LITTLE GOVERNMENT TO CIVIL SERVICE TO BIG GOVERNMENT

go·lem (gō'lēn) n. In Jewish folklore, a clod; someone who is all thumbs, poorly coordinated. (Rosten 2001, 129)

To understand the story of Congress wrestling with the rise of the administrative state during the twentieth century, we need to be sure we can see the larger arc and context of American governmental history. After all, it's not like everyone woke up one morning and—surprise, surprise—we were living under the thumb of the administrative state, of a runaway bureaucracy that was out of control. Something(s) came before that, of course. This chapter focuses on an introductory historical sketch of the American public sector. The starting line is, of course, the founding of the United States. Given the book's focus on the conflicts between a growing executive branch vis-à-vis Congress, this overview then shifts its focus to the major trends and events that occurred beginning in the late nineteenth century and takes us through to the final decades of the twentieth. The scope of this introduction helps us locate and understand the context of Congress's institutional perspective when it faced a growing and quasi-autonomous bureaucracy in the twentieth century. The legislative branch was wrestling with the executive branch over a phenomenon that came to be called “the Administrative State.” Congress sought to retain its centrality and predominance in the constitutional structure. The chapters that follow will then delve into the details of the story, but first we need to keep in mind what the big picture was and how it gradually changed.

*(Note:* For purposes of this historical overview, I'll be using the term “public administration” as a relatively neutral characterization of governance by the executive branch. Other terms, such as “bureaucracy,” “federal leviathan,”

and “the administrative state,” are somewhat more tilted to a presumption of some negativity. Nonetheless, if only for some variety in the text, I’ll be using all of them in the chapter, unless a specific term is called for. )

## The Creation Story

In the beginning, there was King George’s tyranny. The Founders looked down in 1776 and saw that it was bad. They said, “Let there be independence.” And there was. But there was no order. So, in 1789 they said, “Let us create a government in our image.” And they created a golem of a government, slow-moving, awkward, and uncoordinated. The people saw that it was good. They said to the golem, “Be fruitful and multiply!” And it begat many more golems, until a multitude covered the face of the land, from sea to shining sea. Then, everyone rested. And they lived happily ever after. The end.

Everything else is commentary. Americans don’t want efficient and professional government (Wills 2002). They have gone to great pains for two and a half centuries to assure that. More importantly, this is still essentially accurate. The American public sector in the twenty-first century continues to be a lumbering golem, albeit much bigger. More precisely, thousands of golems, little different in principle from the eighteenth-century founding template. Given that history is a good predictor of the future (Raadschelders 2010), this is likely to be largely correct during the twenty-first century.

However, one important detail *has* changed. The conservative backlash against bureaucracy slowly gained momentum in the last quarter of the twentieth century, symbolized by the election of President Reagan in 1980. According to Redman, “with the 1980 elections, the fire of the Progressive Era and the New Deal—the confident use of governmental power in an effort to help those whom our private enterprise system leaves in need—did not merely flicker, but flickered to an end” (2001, 299). Then, during the first quarter of the twenty-first century, the hostility to big government coalesced around a political epithet hurled by conservatives against it. In their view, “the Administrative State” was an out-of-control bureaucracy with too much power to intervene in all aspects of American life: too many regulations, too many major policies never approved by Congress, too much interference in business, too much quasi-judicial power, and a consistent leftish viewpoint of the role of government. Rolling back big government and bureaucracy was the central effort of this political, ideological, and legal movement. They were essentially calling for regime change. But how did we get to this point? To understand the present, we need to see the historical

trends that brought us to this juncture.

## **Creating a Permanent Template for American Government: The US Constitution, 1789**

The Congress that declared independence on July 4, 1776, was something of an ad hoc body improvising its way through unpredictable events. For example, this Congress was a decision-making institution that had both executive and legislative powers (and, impliedly, judicial as well). It was not undergirded by any administrative infrastructure. The only department was the Continental Army, led by General George Washington. Within a year, the national government was somewhat institutionalized by the signing of the Articles of Confederation. While not formally ratified by the states until 1781, the confederation structure of the Articles governed the activities of the national government on a de facto basis immediately upon signing, throughout the revolutionary war, and for the initial postwar years of the new country.

History has generally condemned the Confederation as a failure due to its weakness and lack of major central powers. Still, it is important to emphasize that the Confederation reflected the political consensus at the time. The predominant sense of allegiance by citizens was to their colony-cum-state, not to any unitary national identity. However, it gradually became apparent that the Confederation was too weak to deal with the problems it faced. Some felt it needed to be strengthened. But the significance of what replaced it was, contrary to the conventional narrative, not a strong centralized national government. Rather, only a modestly less weak one from the Confederation, but still not too strong, too powerful, nor too efficient.

The central theme of American administrative history is embedded in the US Constitution, signed in 1787 and, upon ratification, implemented in 1789. This, truly, was “year zero” in American administrative history. Some common terms characterizing the Constitution only came into use later. Notwithstanding being neologisms, the terms “separation of powers,” “checks and balances,” and “judicial review” well summarize the American approach to government. It is important to emphasize that the Constitution created a golem of a government: clumsy, uncoordinated, and slow moving. The president had executive power, but the Congress had the power of the purse. The president oversaw the departments, but the Congress had to authorize their existence. The president named the senior managers of his administration, but the Senate had to confirm them. All along, the Supreme



Court could insert itself with authoritative interpretations of vague constitutional terms and could even declare a law unconstitutional. This was a premeditated formula for inefficient government and, consequently, inefficient public administration. Civil servants would have three bosses, not one. Bertelli and Lynn called them “Madison’s managers” (2006) for the chief drafter of the Constitution (later president), James Madison, although Madison was hoping for better than that. For example, he wanted the federal government to have the power to veto any *state* law.

These principles in the US Constitution subsequently served as the model for all other American governments. In today’s American public sector, nearly every state has patterned its structure after the federal design. Hence, fifty state golems of separately elected chief executive officers (governors), legislative branches (state legislatures, forty-nine of them bicameral), and judicial branches (unlike the feds, usually elected). States also have other independently elected administrative officers, most commonly a lieutenant governor (sometimes elected separately from the governor), attorney general, often a state treasurer, and sometimes a secretary of state. The pattern for incorporated municipalities (about thirty thousand of them) is largely similar, with an elected chief executive (mayor), legislative branch (common council or board of alders), and judicial branch (municipal court). Like states, many municipalities have other elected administrative officers such as city attorney, comptroller, and treasurer.

County governments (about 4,700) generally emerged with a unitary body that was both legislative and executive (board of supervisors or commissioners). But contemporary trends for higher population counties have been to separate those duties, with about seven hundred having an elected chief executive officer (county executive, sometimes called judge). County governments, like state and city governments, also have other elected administrative officers, almost universally a sheriff and district attorney, and usually others.

Paralleling the traditional unitary structure of county government are unincorporated township governments (about 16,500) and public school districts (about 13,500). Both usually elect a multiple-member body that has legislative and executive responsibilities (town board and school board). Other independent entities in the public sector include tribal governments (about 550) and special purpose districts with taxing powers (about thirty-seven thousand), some of which are elected, others appointed. The latter were largely a twentieth-century development that gained momentum over time. Peters estimated that about five hundred new special purpose districts

were being created every year (2022, 29). Finally, there is a highly heterogeneous category of quasi-governmental entities, sometimes known by the acronym quangos (Moe 2001)—numbers unknown.

So, there are roughly one hundred thousand autonomous governments in the United States, each exercising the authoritative and compulsory powers of the state. This is golem government in extremis and a sure formula for inefficient public administration. Just about anything an American governmental manager tries to accomplish entails intergovernmental relations with other autonomous governments. James Lynn, briefly President Nixon's White House-based super-secretary for community development in 1973, testified before Congress that coordination between separate cabinet departments within the federal executive branch was "extremely difficult" (Lee 2010, 136). Imagine between separate governments.

This government of golems is why it is so hard to conduct public administration in the United States. The structure is intended to obstruct efficient management. Simon (1997) suggested that managers could only hope to satisfice in their decision-making, i.e., trying for outcomes that were merely satisfactory and sufficient because maximizing was truly unrealistic. This is the central theme of the history of American public administration: doing as well as possible under the circumstances, inevitably following an expedient path of least resistance, and trying to herd multiple governmental entities in the same general direction. America's much-vaunted ahistorical culture of pragmatism and business efficiency does not apply to its government(s).

A macro-developmental framework for the rest of the story identifies three main eras: little government, civil service, and big government's bureaucracy—aka the nascent Administrative State. Three major historical markers help distinguish them. First, the 1883 Pendleton Act, the seminal law creating a national civil service. Then FDR's New Deal. Finally, a pair of two sequential events: the 1978 Civil Service Reform Act followed by the presidency of Ronald Reagan (1981-1989), which ever-so-partially tried to undo what came before it.

### **Before the Emergence of the Administrative State: Little Government, 1789-1883**

After the Constitution went into effect, American administrative development at all levels substantially lagged behind Western Europe. In part, this reflected the widely shared historical "lesson" that equated active and thick

government with tyranny, or, at least, its potential for that. This led to the seemingly modest role the Constitution assigned to the president and executive branch. Second president John Adams concluded that the prosperity of the country depended “very little on anything in my power” (McCullough 2001, 527). This constrained view was reinforced by the ostensible administrative philosophy of third president Thomas Jefferson and his political heirs. Seemingly as a confirmation of that, the federal government had 153 employees the capital when Jefferson took office and only about double that number three decades later (Balogh 2009, 112).

However, it would be erroneous to conclude that this administrative apparatus was so modest as to be nearly nonexistent or that Jefferson et al. governed as they professed. For example, “federal customs officers were among the most visible agents of the federal government,” but only in port cities (LaCroix 2024, 349). The Post Office was the major federal presence nationally. According to John, “for the vast majority of Americans the postal system *was* the central government” (1995, 4, emphasis in original). It also was a driver of congressional funding for a modest transportation infrastructure, such as postal roads and harbors. The ongoing calls by white settlers for a military to suppress Indigenous tribes led to some relatively major federal activities. Jefferson also articulated the case for state-sponsored public education (Newbold 2010). Other major manifestations of government administration included the taxation and revenue collection system, patent registration, and foreign treaties.

A significant factor in the gradual thickening of government was to support slavery. Usually ignored in American administrative histories, Jefferson was committed to the maintenance of slavery, even if it contradicted his philosophy of limited government (Kennedy 2003). Slavery necessitated new territory for expansion and an army to clear it of threats, such as from Indigenous tribes who either occupied territory slaveowners wanted for plantations or who harbored runaway slaves.

Hoffer (2007, 199) called this era the first state, because it was “a small, lightly staffed, largely amateur, and highly politicized administrative apparatus.” President Andrew Jackson is most prominently identified as justifying “rotation in office” rather than any permanent public servants. This was, literally, “democratic” public administration. He believed that most anyone (such as his supporters) could hold a position in a federal agency and competently conduct business. Public administration was not so complicated that laymen (as they were all men) couldn’t do it.

Later, at mid-century, a modest “second state” gradually emerged. It was largely shaped by the lawyers who dominated politics. They were comfortable with a form of government that somewhat reflected their legal experience with estate administration. Specifically, “administration of estates required a light touch . . . to sponsor various projects for the good of the estate; . . . supervise the assets’ use to ensure that they were not wasted [and] . . . eliminate the danger of misuse of the assets” (Hoffer 2007, 7). This gradually expanded the role of government, initially as a sponsor of deserved projects, then as a supervisor of them, and finally as a standardizer of federal actions and national policies. These included creating a Department of Agriculture (in 1862) to promote productive farming techniques and Land Grant universities that provided agricultural extension programs. States took on expanded roles even earlier, such as New York State’s construction of the Erie Canal in the 1810s and 1820s (Koeppel 2009).

Still, this continued to be generically small government. Surveying all levels of government in the South before the Civil War, Blackmon characterized them as “unimaginably sparse by modern standards” (2008, 61). Elected officials such as sheriff, district attorney, clerk, and treasurer often had no employees. They were one-man government agencies.

No American history can ignore the Civil War (1860-1865). Yet, it was such an anomalous event in public administration that—oddly—little of permanent importance was created during the war. Rather, its eventual consequences prompted the need for some new administrative capabilities. According to Faust, the aftermath of the war was “a vast expansion of the federal budget and bureaucracy and a reconceptualization of the government’s role. National cemeteries, pensions and records that preserved names and identities involved a dramatically new understanding of the relationship of the citizen and the state” (2012, 268). Notwithstanding these developments, historian Henry Adams described the postbellum Congresses as having “contempt for matters of mere administration as of trifling importance” (quoted in Wills 2005, 73). So, at that point, any seemingly pell-mell expansion of federal responsibilities was not accompanied by any perception of the need for professionalizing the management of the government.

In the second half of the nineteenth century, the country was in the midst of transforming from rural and agricultural to urban and industrial. Political machines emerged in those big cities. If immigrants voted for machine candidates, then the machine would provide them with services and

assistance that traditionally were not provided by government. Largely a perversion of what President Jackson envisioned, when urban machines won elections, they gave patronage jobs to their members. Sometimes no-show government jobs, sometimes real but untaxing, the main responsibility of the beneficiaries of this largesse was to keep the machine in power by helping it win future elections. The spoils system of rewards and punishment led, of course, to government agencies being staffed sometimes by an incompetent and disincentivized workforce. It also led to the granting of contracts for goods and services based on political graft and kickbacks, often at inflated prices and with shoddy products.

In summary, from the adoption of the Constitution until the late nineteenth century, the United States underwent major demographic, social, economic, geographical, technological, and military changes. These inevitably affected the scope and size of all governments. Yet the basic constitutional framework of golem government was fixed. Political leaders responded to new public needs on an ad hoc basis, gave little thought to governance issues, and staffed this growing government largely with patronage appointments or Civil War veterans. Hence, it was a century of (relatively) small government and lay administration.

### **Seminal Historical Development (I): Government by Nonpolitical Civil Servants, 1883-1933**

Second only to the Constitution in importance to US administrative history was the establishment of civil service systems. This was, incredibly, a moment when public administration was of broad-scale public interest. According to Morris, “It is difficult for Americans living in the first quarter of the twenty-first century to understand the emotions which Civil Service Reform aroused in the last quarter of the nineteenth. . . . The fact remains that thousands, even millions, lined up behind the banner, and they were as evangelical (and as strenuously resisted) as any crusaders in history” (2010, 404-05). It was an authentic mass movement that had significant political appeal and greatly influenced legislative and executive decision-making.

The corner-turning event at the federal level was the 1883 Pendleton Act, creating a formal civil service. Its origin was the British Civil Service (Van Riper 1976, 63-64). (But the sequence was different. In Western Europe, bureaucracy preceded democracy, while in the United States it was the other way around [Nelson 1982].) The UK’s merit-based and permanent workforce was very appealing, as was the clear differentiation between

politics and administration, typified by each cabinet department having a permanent undersecretary who was a civil servant. Ministers would come and go, but the staffing and leadership of the department would not. Continuity and in-house expertise were the underlying themes of this structure.

In 1880, the nonprofit National Civil Service Reform League was established to advocate for federal legislation establishing a civil service system. Its goals were open recruitment, merit-based examinations, hiring limited to qualified applicants, evaluations and promotions based on merit, permanence in office, exclusion of civil servants from the political process (such as mandatory donations), and an independent bipartisan commission to oversee and implement these goals.

Finally, in late 1882, Congress passed the Pendleton Act creating an authentic civil service system. President Chester Arthur signed it into law in early 1883. As with most major historical developments, there is no single explanation for the success of the reform movement in 1882-1883. Besides the league's lobbying, other factors were public opinion's revulsion at the assassination of President Garfield in 1881 by a disappointed office seeker, partisan competition (Republicans did poorly in the 1882 congressional elections and wanted to regain public favor), and the inefficiencies of the spoils system—namely that patronage decisions consumed an inordinate amount of politicians' time and attention. Theriault concluded that “public pressure is at least as important in establishing the merit system as spoils system inefficiencies and party politics” (2005, 50).

The adoption of the Pendleton Act in 1883 was a kind of big bang moment, with energy from the center expanding outward long afterward. At first, the act initially covered only 10 percent of the federal workforce (Ingraham 1995, 27). There was fierce rearguard resistance by the ancien régime that was benefiting from it. Half a century later, expanding the federal civil service system throughout the executive branch was still controversial. As part of the recommendations of the 1937 Brownlow Committee, President Franklin Roosevelt still needed to urge expanding the classified service “upward, outward, and downward to cover practically all non-policy-determining posts.” The death knell for federal patronage finally occurred in 1969, when newly elected President Nixon decided that local postmasterships would no longer be given out to reward party activists, such as those who helped him win election. He professionalized the Post Office.