"Whose Bureaucracy Is This, Anyway?" Congress' 1946 Answer

David H. Rosenbloom, *American University*

> "Nor should we omit in our study [of public administration] the problem of legislative-administrative relations, in view of the increasing role of the public servant in the determination of policy, through either the preparation of legislation or the making of rules under which general legislative policy is given meaning and application" (Gaus 1931, 123).

In the title of his 1993 Gaus Award Lecture, Francis Rourke posed the deceptively simple question, "Whose Bureaucracy Is This, Anyway?" His subtitle was "Congress, the President, and Public Administration." Rourke, a pioneer in the field of bureaucratic politics, concluded that federal administration was constitutionally and politically under the "joint custody" of Congress and the president. Clearly, Congress has formidable constitutional authority and responsibility for the structure and operation of the executive branch. A great deal of political science research demonstrates that the legislature and its committees are a major political force in federal administration. Even as the older "iron triangle" model gives way to newer approaches, no one (other than misguided reformers) could reasonably answer Rourke's question and exclude Congress. Its oversight, influence, and intervention in agency operations on behalf of policy objectives and incumbency are central features of contemporary federal administration.

What has been less appreciated—indeed, almost ignored—is that Congress's institutional role in federal administration did not just happen or develop haphazardly in a separation-of-powers contest with the president, nor did it evolve in a singular quest for electoral advantage. It was thoroughly discussed and designed in 1946 in the course of enacting the Administrative Procedure Act (APA), Legislative Reorganization Act (LRA, which included the Federal Tort Claims Act [FTCA] and General Bridge Act among its titles), and the Employment Act. The result was an institutionalized vision of "legislative-centered" federal administration in which Congress treats the agencies as its extensions for legislative functions, supervises them, and intervenes in their decision making through casework and other forms of constituency service.[1]

Why 1946?

In the wake of the New Deal and World War II Congress had lost its sense of institutional role. Congressman Estes Kefauver (D-TN) seriously asked, "Is Congress Necessary?" (Kefauver and Levin 1947). He claimed that some members thought, "Congress might not survive the next 20 years" (Kefauver and Levin 1947, 5). Senator Robert M. La Follette Jr. (Progressive-WI), a leading legislative reformer, claimed that Congress's institutional failings fostered "a widespread congressional and public belief that a grave constitutional crisis exists" (U.S. Congress 1946, 6344). The legislature had been overwhelmed by rapid growth in the federal government's role in the economy and society; the concomitant expansion of federal administration, and years of budget deficits that helped drive the federal debt held by the public to a whopping 109% of GDP (Rosenbloom and Kravchuk 2002, 295). (In 1999, by comparison the publicly held debt was less than 40% of GDP.) Unable to keep up, Congress delegated legislative authority to the agencies on an unprecedented scale, failed to exercise meaningful oversight of administration, and effectively lost control of the power of the purse.

There was general agreement in Congress that its organization, equipment, and processes were "antiquated" and, at best, brought "the horse-and-buggy days . . . up to date, but still using the horse and buggy" (U.S. Congress 1946, 10016). The need for institutional redefinition was evident, as was Congress's need to engage the major change that had taken place in the federal government since the 1930s: the development of a large-scale, powerful administrative component. Administrative agencies had become central to government and politics, and in the process, as the Supreme Court noted in 1952, had "deranged our three-branch legal theories" (*Federal Trade Commission v. Ruberoid* 343 U.S. 470, 487 [1952]).

With the Great Depression and WWII over, the time was right to institute a good deal of the spade work on reform already underway. The average length



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of service in each house was just under eight years, and some members, such as Senator William Fulbright (D-AR), doubted the continuing utility of "old procedures and old rules" (U.S. Congress 1946, 6531). I discuss below the three key components of Congress's redefinition of its relationship to federal administration. These were debated more or less concurrently by different leaders in separate committee forums. However, through extensive floor debate, the members were aware of the connections between the components and voted overwhelmingly in favor of each.[2]

Component One: Redefining Agencies as Extensions of Congress for Legislative Functions

The APA, FTCA, and General Bridge Act hinge upon the idea that federal agencies can serve as extensions of Congress for legislative functions, primarily rule making. When Congress debated the Walter-Logan Act (1940), a precursor of the APA, the general consensus deemed it improper to delegate broad legislative authority to the executive agencies. Several members believed that delegation shirked legislative responsibility, violated the separation of powers, and led the agencies to usurp congressional authority. However, by 1946, the members accepted delegation as an unavoidable necessity.

The APA's provisions for rule making rely wholly on the belief that the complexity of public policy requires Congress to use the agencies as extensions for carrying out its legislative functions. The point was to force administrators to adhere to legislative values when making rules. As Representative Francis Walter (D-PA) put it, "Day by day Congress takes account of the interests and desires of the people in framing legislation; and there is no reason why administrative agencies should not do so when they exercise legislative functions which the Congress has delegated to them" (U.S. Congress 1946, 5756). Earlier, in 1940, Senator William King (D-UT) made the same point, "These appointed legislators [administrators] now strenuously object when it is proposed that they shall hold hearings and listen to those who will be affected by their legislation—a practice which the elected representatives in Congress have followed for 150 years" (U.S. Congress 1940, 13672). Until 1946, rule-making procedures were not standardized. Some rules were made with little or no public consultation. Many were not publicized and existed only as letters or in mimeographed form as "mims" (American Bar Association 1934, 228).

By contemporary standards, the APA's original provisions for rule making were rudimentary. However, its central premise—rule making is a legislative function—has served as a platform for much additional legislation forcing rule-makers to adhere to legislative values. Most notably, subsequent Congresses pursued representativeness through the Federal Advisory Committee Act (1972), which seeks to make the advisory-committee system more representative and transparent; and the Negotiated Rulemaking Act (1990), which authorizes rule making by negotiation with potentially affected parties.

The APA was also intended to improve transparency, another legislative value. In this context, it was augmented by the Freedom of Information Act (1966) and major amendments thereto (1974, 1986, 1996); the Government in the Sunshine Act (1976), the original version of which would have applied to congressional committees as well as to federal boards and commissions; and the Privacy Act (1974), intended to balance the desire for transparency with protection against administrative invasions of personal privacy.

Another concern in 1946 was that agencies had become too intrusive and prone to placing heavy burdens on businesses. The APA's rule-making provisions were intended to curb this tendency, though the act contained no special features for doing so. Rather, these concerns were subsequently addressed directly by the Regulatory Flexibility Act (1980), the Paperwork Reduction Acts (1980, 1986, 1995), and the Small Business Regulatory Enforcement Fairness Act (1996). The latter parallels a proposal made by Kefauver in 1947 for treating the agencies as extensions. It requires formal congressional review of major rules prior to their issuance, in order to ensure that they are congruent with legislative intent (Kefauver and Levin 1947, 151).

In addition to the APA, the 1946 FTCA and General Bridge Act embraced the view that legislative functions may appropriately be vested in the agencies. The FTCA allows agencies to settle tort claims against the government, which previously was done through private bills—a cumbersome process and generally a losing proposition for the members who introduced them. The General Bridge Act relieved Congress of the need to grant legislative permission for the construction of every bridge over any navigable stream in the U.S. by transferring this authority to the Army Corps' Chief of Engineers. Discussion and debate on these measures made it clear that an overwhelmed Congress could reasonably shed historic legislative functions to administrative agencies, which could act as extensions or adjuncts of Congress.[3] They might be called executive agencies, but their functions were neither exclusively executive nor solely within the domain of presidential authority.

Component Two: Supervising the Agencies

It is axiomatic in U.S. constitutional government that if agencies engage in legislative functions, they should be subject to congressional supervision. But, as La Follette explained, Congress was well behind the curve in this area as well:

> Keeping a watchful eye on the administration of the laws it has enacted is another important function of our National Legislature. But Congress lacks adequate facilities today for the continuous inspection and review of administrative action. The time has long since passed when we could anticipate every situation that might arise and provide for it in minute regulatory legislation.
>
> With the expansion of Federal functions during the twentieth century, Congress has perforce created many commissions and agencies to perform them and has delegated its rule-making power to them. But it has failed to provide any regular arrangements for follow-up in order to assure itself that the administrative rules and regulations are in accord with the intent of the law (La Follette 1946, 45).

Correcting this failing was a major purpose of the 1946 LRA.

The act was designed in part to enable Congress to supervise the agencies effectively. It radically revamped the committee structure in both houses, and severely reduced the number of standing committees. House and Senate committees received parallel jurisdictions, and, most importantly for oversight, the overall committee structure followed the organizational structure of federal administration. For the first time in the nation's history, the standing committees had responsibility for exercising "continuous watchfulness" over the agencies.

That term, continuous watchfulness, does not fully convey the scope of supervision many members had in mind. Ke-

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fauver favored a fusion of legislative and administrative operations. He wanted the agencies to "enlarge the number of departmental offices in the Captiol . . . [and] locate these offices next door to the rooms of the committees having jurisdiction over them," because, "This would save much leg work, promote closer cooperation between the legislative and executive branches, and facilitate committee work" (U.S. Congress 1945a, 16). These offices would "provide continuous service to the committees and to individual members," and "should be headed by a top official of the particular executive unit with authority to speak for the proper Cabinet member or the agency director" (Kefauver and Levin 1947, 149). Fulbright, La Follette, and others joined Kefauver in favoring parliamentary-style arrangements that would make the agencies more responsive to Congress.

To facilitate supervision, the LRA authorized the standing committees to hire professional (as opposed to clerical) staff, and set the number at four for all but the Appropriations Committees, which could employ more. It was fully anticipated that the staff would work "in close contact with executive agencies" (U.S. Congress 1946, 10060).

The LRA also contained a number of provisions intended to enable Congress to gain greater control over federal budgeting. It called for a "legislative budget" and related procedures. These measures failed almost immediately but were forerunners of the 1974 Congressional Budget and Impoundment Control Act.

Like the APA, the LRA and its underlying logic provided a platform for future legislation. The 1970 Legislative Reorganization Act strengthened the standing committees' oversight mission by requiring them to "review and study, on a continuing basis, the application, administration, and execution of those laws, or parts of laws" under their subject-matter jurisdictions. The number of committee staff has fluctuated over the years, but even after periods of contraction there have been substantially more staff than in 1946. Although assessments vary, Joel Aberbach's comprehensive empirical study concludes that "the nature of congressional oversight is rather impressive" (Aberbach 1990, 198).

The Government Performance and Results Act (GPRA, 1993) harkens back to Kefauver's suggestions in the 1940s. It requires the agencies to adopt multi-year strategic plans, with specific objectives, in consultation with Congress. They must also provide Congress with annual performance reports, preferably using quantitative indicators to measure success in achieving their goals. The act invites (sub)committees to steer agencies and programs and in some respects provides a mandate for legislative micromanagement.

Additional measures for strengthening congressional supervision that fit the 1946 framework include: upgrading the Legislative Reference Service (created in 1946) into the Congressional Research Service (1970); the Inspector General Act (1978); a variety of improvements in the General Accounting Office's capacity to evaluate administrative performance; and the Chief Financial Officers Act of 1990.

Component Three: Intercession in Agency Decision Making to Promote District and Constituency Interests

By 1946 Congress had also failed to keep up with two additional historical functions: the allocation of federal public works projects and constituency service. The members well understood that pork and casework were crucial to incumbency. In some respects, 1946 marks the beginning of the "career Congress" (Bullock 1972; Fiorina 1989; Hibbing 1991; Mayhew 1974; Polsby 1968). Long tenure would bring the degree of specialization that continuous watchfulness required. The LRA sought to make legislative careers more feasible by establishing a retirement system for the members. By today's standards, incumbents did not do particularly well in the 1946 and 1948 elections, but a rich political science literature attests that incumbency subsequently became one of Congress's defining characteristics (e.g., Fiorina 1989; Hibbing 1991).

The 1946 Employment Act was intended to put Congress firmly in control of public works. The idea of providing each member with a high-level assistant to shoulder the casework burden was discussed as part of the LRA, but was ultimately rejected due to cost and the members' reluctance to provide themselves with another benefit.[4] Nevertheless, such assistants eventually became standard.

Public Works

The Employment Act sought to coordinate federal spending, primarily on public works, with the business cycle. The central goal was to maintain a prioritized list of projects that could be undertaken to provide jobs as needed. This would prevent much of the wastefulness associated with New Deal public-works spending on projects of limited long-term value. The act created the Council of Economic Advisers and the congressional Joint Economic Committee (originally the Joint Committee on the Economic Report) to build rationality into public-works decisions. A key point made by several members was that the act would restore Congress's decision-making authority for public works—something Congress had lost during the 1930s. As Senator Joseph O'Mahoney (D-WY) put it, the act "does not authorize the Executive to spend a dime" (U.S. Congress 1945b, 9055).

The act might also turn pork into virtue, as this exchange illustrates:

> Mr. [Brooks] Hays (D-AR): For example, here are two types of public-works programs; one is for flood control, that might be of an emergency character. We want to create these protective levees, and so on, regardless of [economic] conditions. But there are other programs, such as the erection of county agricultural buildings that occur to me as worth-while enterprises.
>
> As one of the proponents of that kind of program, I agree that they ought to be geared to the employment situation. Is it the gentleman's opinion that under this program . . . it would be possible for us to plan . . . the construction of buildings of that kind and other public works so that we would do it in those periods in which it is beneficial from the standpoint of the Nation's economic life?
>
> Mr. [Walter] Judd (R-MN): Yes, precisely.
>
> Mr. Hays: And that we can therefore avoid some of the criticisms of pork-barrel legislation if this developed.
>
> Mr. Judd: That is certainly one of the objectives of this legislation (U.S. Congress 1945b, 12011).

In practice, it is fortunate that monetary policy replaced public works as the major tool for coping with economic downturns. Congress's abiding taste for pork has not been substantially restrained by the business cycle.

Casework

In 1946, the members spent an estimated 80% of their time working on "purely nonlegislative activities," with perhaps as much as 50–75% of the members' time devoted to "running errands and knocking on departmental doors on behalf of constituents" (La Follette 1946, 46). Congressman Judd argued that the reorganization bill's provision to give each member an assistant for "nonlegislative duties" was its most important feature from the "standpoint

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of the Congressman's work" (U.S. Congress 1946,10084). Such assistants, it was agreed, could deal with casework, a word that apparently had not yet entered the congressional lexicon; Kefauver referred to constituency service as acting as a "W.R.—Washington Representative," as opposed to an "M.C.—Member of Congress" (Kefauver and Levin 1947, 10, 186).

Although the House defeated the provision, 93 senators employed such assistants in 1947 and representatives eventually followed suit (Fox and Hammond 1977, 22). Casework may have been "drudgery," as Senator Alben Barkley (D-KY) claimed in 1946, but it was also a prized congressional activity (U.S. Congress 1946, 6537). A proposal by Representative Robert Ramspeck (D-GA) in the 1940s to have "one half of each state delegation serving as errand boys and Washington contact-men, and the other half serving as real legislators . . . met with no favor from the members . . . for all realized that the service-giving branch would find reelection easy, while the voting member, without the contacts, would find election almost impossible" (Monroney et al. 1949, 30).

The public has increasingly demanded that its senators and representatives provide casework; some members solicit it; and the proportion of "caseworkers" stationed in the home districts has increased dramatically (Ornstein, Mann, and Malbin 1996, 127, 135). The agencies, which tended to treat casework inquiries begrudgingly in the 1940s, came to accept them as routine (Gellhorn 1966, 77–78). Today, as in 1946, casework, like pork, is considered a staple of incumbency (Rosenbloom 2000, 106–8, 115–20, 127–29).

It is tempting to dismiss congressional intercession in agency decision making as simply self-serving. Pork is partly a collective-action problem and has questionable legitimacy. In the absence of effective controls, however, the members feel an obligation to bring a "fair share of the benefits" to the home district (Kefauver and Levin 1947, 9–10). The voting public probably agrees. Americans find it easy to "love our congressmen but not the Congress" (Parker 1989, 54). Casework provides an ombudsman-like service that is otherwise unavailable and sometimes serves as a significant corrective for maladministration. Both of these functions have become major features of the U.S. administrative culture and are clearly a part of the members' jobs.

Conclusion: Legislative-Centered Public Administration and Reform

Congress's 1946 framework for legislative involvement in public administration, and its subsequent development, yield a theoretical construct appropriately called, "legislative-centered public administration." Although W. F. Willoughby and Lewis Meriam introduced the idea for such a construct in the 1920s and 1930s (Meriam 1939; Willoughby 1927, 1934), their approach prescribed Congress's role in federal administration based on constitutional and managerial principles. In contrast, the construct I present encapsulates the role Congress consciously developed for itself.

The following are legislative-centered public administration's major tenets:

1. Administration is not solely an executive endeavor, as it includes legislative functions.

2. When agencies engage in legislative functions they serve as extensions of Congress.

3. There can be no strict dichotomy between politics and administration. Therefore, American public administration should be informed by the democratic-constitutional values that apply to the exercise of political authority (i.e., representation, participation, transparency, fairness, and avoidance of intrusions on personal privacy and autonomy).

4. Congress has broad supervisory responsibility for federal administration.

5. Intercession on behalf of constituency and district interests is a legitimate representational function.

6. The role of the president and political executives in federal administration is to implement legislative mandates, coordinate actions government-wide, manage agencies on a day-to-day basis, and exercise discretion in pursuing the public interest when Congress has not provided specific direction.

7. The primary role of the federal courts with regard to federal administration is to provide judicial review of agency actions under the terms and conditions established by Congress through administrative law.

The legislative-centered vision contravenes the dominant executive-centered perspective that has informed American public-administrative thought since the 1880s. It defines for Congress a federal-administrative role that reformers from Louis Brownlow in the 1930s to Al Gore in the 1990s have rejected (Gore 1993, 13, 20, 34; President's Committee on Administrative Management 1937, 22, 49–50). It is oriented towards the values of democratic-constitutional government rather than "results."[5] It is not mission-based in the typical sense. It may have a tendency to excess, as is often claimed. It does not deny, but rather emphasizes that federal administration is under joint custody. It is constitutional and perduring. Reform prescriptions that fail to take it into account—and there are already many decades worth—are likely to fail.[6] As a field of study, public administration will remain incomplete if it fails to understand the legislative-centered vision and take it seriously.

Notes

1. This lecture is based on Rosenbloom 2000, which marshals the historical evidence for the conclusions in text.

2. See Rosenbloom 2000, 35–41, 65–75, 110–15, 120–24. Initially, the Employment Act was more controversial than the APA and LRA, but it eventually gained broad bipartisan approval (Bailey 1950).

3. The terms "extensions" and "adjuncts" are intended to convey a closer relationship to Congress than the more commonly used concept of the agencies as "agents" of the legislature. Principals do not ordinarily regulate the procedures, general transparency, ethics, and modes of external participation by interested parties in agents' operations and decision making. Nor do they typically have as much authority as Congress does over the agencies with regard to agents' budgets, organizational structure, legal powers, personnel systems, and size.

4. In addition to the retirement system and professional committee staff, the LRA increased congressional salaries.

5. Even one of Congress's more results-oriented administrative law statutes, GPRA, specifies that agency strategic planners "shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan" (section 3 [d]).

6. Hoover Commissions (1940s and 1950s), Ash Council (1970s), Grace Commission (1980s), and National Performance Review (NPR) (1990s) come to mind immediately. See Shafritz 1985 and Gore 1993. Thompson (2001, 250) finds that, "Contrary to expectations of [several] observers . . . the NPR has served to strengthen the congressional role in administrative matters in important ways." This was fully predictable from the legislative-centered perspective (Rosenbloom 1993).

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