Budget Battles and the Growth of the Administrative State

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As seen in the recent government shutdown and the showdown over the debt limit—the latest in a long series of such crises in Washington—the federal budget stands at the heart of American politics. With few exceptions, the budget has formed the battleground between the political branches of the government—the executive and the legislative—in every administration since LBJ’s Great Society. That starting point is not a coincidence: The Great Society marked the beginning of an expansion of the federal government and a centralization of political and administrative power in Washington that had long been the domain of local and state governments. In addition to destroying the fabric of federalism, this centralization had the effect of undermining the separation of powers, making it difficult if not impossible for Congress, the president, and the bureaucracy to function amicably in pursuit of a national interest.
What we have seen in subsequent decades is the steady expansion of a modern administrative state that is distinctively American in that it coexists with a limited government Constitution.

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In America, the administrative state traces its origins to the Progressive movement. Inspired by the theories of the German political philosopher Georg Wilhelm Friedrich Hegel, Progressives like Woodrow Wilson believed that the erection of the modern state marked an “end of History,” a point at which there is no longer any need for conflict over fundamental principles. Politics at this point would give way to administration, and administration becomes the domain not of partisans, but of neutral and highly-trained experts.

America’s Founders shared a radically different understanding, an understanding based not on history but on nature. James Madison wrote in The Federalist Papers that factionalism is “sown in the nature of man”; thus there will always be political conflict—which at its starkest is a conflict between justice, the highest human aspiration concerning politics, and its opposite, tyranny. This conflict between justice and tyranny occurs in every political order, the Founders believed, because it occurs in every human soul. It is human nature itself, therefore, that makes it necessary to place limits on the power of government.

Progressive leaders were openly hostile to the Constitution not only because it placed limits on government, but because it provided almost no role for the federal government in the area of administration. The separation of powers of government into three branches—the executive, the legislative, and the judicial—inhibited the creation of a unified will and made it impossible to establish a technical administrative apparatus to carry out that will. Determined to overcome this separation, one of the chief reforms promoted by early Progressives was an executive budget system—a budget that would allow Progressive presidents to pursue the will of a national majority and establish a non-partisan bureaucracy to carry it out. Congress was initially reluctant to give presidents the authority to formulate budgets, partly because it infringed on Congress’s constitutional prerogative—but also because it was still understood at the time that the separation of powers stood as a barrier to tyranny and as a protection of individual freedom. Eventually, however, Congress’s resistance weakened.

For several decades after a federal budget process was put in place, a consensus concerning the size and purposes of the federal government limited the conflict over control of public finances. Administrative functions at the national level were few, in keeping with a system of decentralized administration, an autonomous civil society, and a constitutional system that underscored the limited character of government. This would change in the 1970s, when Congress reorganized itself to become a major player in the administrative
process that had arisen with the Great Society. The public consensus in support of limited government and balanced budgets began to break down. Moreover, Republican presidents representing national majorities and Democratic Congresses organized around private interests became rival forces to an extent incompatible with the pursuit of a long-term public interest. Thus the federal budget, understood as an instrument for fueling or defueling the growth of the administrative state, became the point of control over which the political parties and the political branches fell to fighting. In the 1980s, President Reagan showed that the budget process could be used to limit spending and reduce the burden of administrative regulations. But no one of either political party, including Reagan, has been able to achieve a consensus or a political realignment concerning the purposes and level of federal spending. For much of the last 50 years, an era in which divided government has become the norm, the federal budget process, with its taxing, spending, and regulatory authority, has become the focal point of the American administrative state—the place where political institutions and public bureaucracies accommodate the various interests and constituencies seeking a share of the national wealth. As a result, it became increasingly difficult to recognize the difference between governing—making political choices based on available resources—and budgeting, or simply providing funding for programs.

Over the last decade, Congress has not even been able to pass the 13 or so appropriations bills that constitute a budget. As a result, the ongoing use of Continuing Resolutions allows the bureaucracy to determine its own needs, free from detailed control by the legislative branch. In such circumstances, those supportive of the status quo—those in the bureaucracy, Congress, or the executive branch, who support the expansion of the administrative state—have become a faction on behalf of government itself. Consequently, there has been no effective national political institution that is responsive to the unorganized electorate that has no access to the administrative state—no institution that operates on behalf of the public interest as opposed to organized interests.

In an earlier time, there was widespread agreement that political institutions should tightly control government expenditures. Budgets provided the means of limiting claims based upon available resources in a manner compatible with the long-term public good. This was possible because the federal government’s administrative functions were few. In terms of public finance, limited government meant balanced budgets in peacetime. Public spending and public debt were viewed in moral terms, as evils to be avoided so as to limit the tax burden upon the workingman. This moral understanding of spending and debt receded with the growth of the administrative state, to the point where only the lack of resources seemed to call for any limit on public spending. And in the last few years, even that sense of limitation has fallen away, as supporters of the administrative state have found that printing or borrowing money, in the absence of political constraints, can fuel almost limitless demand for public resources on behalf of their constituencies.

To return to the recent crisis, it is not altogether unreasonable under these circumstances for congressional opponents of unlimited borrowing and printing of money to suppose that the only point of opposition left to them is to refuse to raise the nation’s debt ceiling. But given that this amounts to trying to stop something that has already happened—and has happened with the participation of all the institutions of government—there is also justification for the argument that this tactic is politically illegitimate.

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While it is true that both the executive and the legislative branches have
contributed to the expansion of the administrative state, it is equally true, and worth repeating, that there has been no consensus or political realignment that has succeeded in legitimating the administrative state as a replacement for the Constitution. As a result, that unlimited state still rests uneasily within a constitutional structure of limited government whose political branches were intended to act on behalf of constitutional purposes. Why then has it proven so difficult to reverse the growth of the administrative state?

The political transformation of Congress that occurred in the decade following 1965 was the decisive event in this regard. That transformation has been so complete that it is difficult for us to remember today how Congress used to work, and what were the expectations concerning its role, prior to that period.

Before 1965, when the presidency seemed to dominate the political landscape, conservatives were the great defenders of Congress. In 1959, conservative political scientist James Burnham, in his book *Congress and the American Tradition*, wrote that “the political death of Congress would mean plebiscitary despotism for the United States in place of constitutional government, and thus the end of political liberty.” Burnham attributed the decline of the legislative body to the fact that “Congress has let major policy decisions go by default to the unchecked will of the executive and the bureaucracy.” In order to retain its status of first among equals, he insisted, “Congress must find a way to concentrate on essentials. . . . Its principal energies must go to deciding major issues of policy, not to the critique of details.” In making this argument, Burnham assumed that legislative assemblies “by their very nature, cannot be bureaucratized in the modern mode.”

More than 50 years later, Burnham’s worry that Congress would decline into obsolescence is barely comprehensible, because Congress, when it is united, seems to have more than ample power to defend itself against the other branches. But its resurgence of power has not come *at the expense* of the administrative state, or what Burnham called the bureaucratic welfare state. Rather Congress has become an integral part of that state.

In hindsight, Burnham was wrong to assume that legislative assemblies cannot be “bureaucratized in the modern mode.” It is true that constitutional assemblies cannot be bureaucratized, because deliberation and general lawmaking remain their fundamental political purpose. What Burnham did not foresee is that Congress could surrender its lawmaking power, delegating that power to the bureaucracy, and still maintain its authority over the bureaucracy. It is in this way—by reorganizing itself to be not a legislative, but an administrative oversight body—that Congress established itself as a major player in the politics of the administrative state.

In the course of this reorganization, individual congressional committees and members were empowered to oversee the various departments and agencies of the executive branch, making Congress—in the words of political scientist Morris Fiorina in 1977—the “keystone of the Washington establishment.” Under the Constitution, the separation of powers and the politics of federalism had inhibited Washington from achieving such centralization of power. Progressive intellectuals had criticized the Constitution and advanced the doctrine of the administrative state, and the New Deal had attempted to put Progressive theory into practice. But the administrative state was not institutionalized within the framework of American politics until Congress reorganized itself in the late 1960s and early ’70s, fundamentally altering the separation of powers and the federal system.

Many in Congress at the time objected to the transformation. Congressman Gillis Long put it
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this way: “We [congressmen] were turning ours from an institution that was supposed to be a broad policy-making institution with respect to the problems of the country and its relationship to the world, into merely a city council that overlooks the running of the store every day.” But such objections were ineffectual and short-lived. Members of Congress soon came to prefer administration and regulation to deliberation and legislation. “The smartest thing we ever did,” said Representative Jamie Whitten, “was to throw the weight of the federal government behind local problems.”

Once the characteristic activity of the federal government became the regulation or administration of the details of the social, political, and economic life of the nation, organized special interests and their ties to the legislature and the bureaucracies were strengthened. In the words of James Sundquist, a sympathetic observer of Congress,

As members become managers of professional staffs, the chambers disintegrate as “deliberative bodies” in the traditional sense of legislators engaged in direct interchange of views leading to a group decision. . . . With each passing year, the House and Senate appear less as collective institutions and more as collections of institutions—individual member-staff groups organized as offices and subcommittees.

Moreover, political parties were diminished in importance, because bureaucratic patronage would become more important than party patronage. The function of the judiciary was transformed as well: In the
行政管理部门，其权力没有宪法权威，但它获得了巨大的政治权力。因此，法院被要求进入政策制定领域，作为最后的仲裁者在行政过程中的争议案件。* * *

如果国会对公共利益感到满足，它主要是为了扩大行政管理部门。国会通过了一项似乎是一项一般性法律，关于医疗保健改革的《平价医疗法案》，更常被称为《奥巴马医改法案》——但这是从宪法角度来看的，它只在行政管理部门的权力和法治的背景下才有意义。当它被通过时，它有超过2,500页，它所做的只是赋予行政管理部门权利和权力在全国范围内形成规则和规定。这种扩大政府权力，或者更准确地说，无选举的官员的权力，与行政管理部门兼容，但不与宪法政府的信条或精神兼容。

约翰·洛克，美国建国时期最重要的政治理论家，将法律描述为“共同体的不变规则，对所有人平等，相同的规则。”这些元素在《平价医疗法案》中都没有。查尔斯·凯斯勒在《克莱蒙特评论》中指出，这样的法律从平等的权利，而从平等（或不平等）的特权开始，政府可以给予或不给予其客户。整个目的就是赋予政府官员，通常是无选举的、不负责任的官僚，根据他们对法律的专家性，指导他们制定如此庞大、复杂和任意的法律，它可能在同一起诉中证明一百种不同的结果。

当法律不再是共同的标准和正确的标准，不再是一个共同的衡量标准来决定所有争议时，法治就不再共和，而成为专制。自由本身就不再是权利，而成为礼物，或腐败交易的果实，因为这样的统治制度中，那些接近和连接到统治阶级的人有特别的特权。

总之，国会通过放弃其宪法目的和停止捍卫有限政府，成为行政管理部门的主要参与者。因此，行政管理部门自1965年大幅增长，而它只继续守护和扩大它的领地。政治反对意见偶尔会在白宫或国会中出现，但到目前为止没有成效。

尽管它在两党中都得到了扩张，但行政管理部门尚未取得合法性。宪法本身是反对行政管理部门的权威和反对它的人的障碍，也是支持它的人的障碍。除非行政管理部门或宪法被彻底谴责，否则政府和选民之间的关于联邦政府的大小和范围的斗争，包括政府停摆和债务上限的争议，将会继续下去。

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