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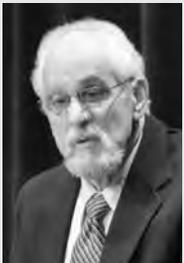
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Budget Battles and the Growth of the Administrative State

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Congress: Crisis in the Separation of Powers and *The Politics of Budget Control: Congress, the Presidency, and the Growth of the Administrative State*.

The following is adapted from a speech delivered on September 26, 2013, at Hillsdale College's Kirby Center in Washington, D.C., sponsored by the AWC Family Foundation Lecture Series.

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.

* * *

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

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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.

* * *

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. . . . [I]ts principal energies must go to deciding major issues of policy, not to the critique of details.” In making this argument, Burnham assumed that the legislative bodies of Congress—the House of Representatives and the Senate—“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

administrative state, the bureaucracy has no constitutional authority, but it is given enormous power by the political branches. Consequently, the courts have been required to enter the policy-making arena, as the final arbiters in the adjudication of cases arising in the administrative process.

* * *

Insofar as Congress is still tempted to make general laws on behalf of a perceived public good, it does so primarily on behalf of the expansion of the administrative state. Congress passed what appeared to be a general law concerning health care reform, the Affordable Care Act, more commonly known as Obamacare—but this is clearly not a law in constitutional terms, and makes sense only within the context of an administrative state. When passed it was more than 2,500 pages long, and all it did was provide the administrative apparatus with the right and power to formulate rules and regulations governing health care nationwide. This extension of governmental power, or more precisely the power of unelected bureaucrats, is compatible with the administrative state, but not with the letter or the spirit of constitutional government.

John Locke, the most important political theorist of the American Founding era, described laws as a community’s “standing rules, indifferent, and the same to all parties.” None of these elements are to be found in the Affordable Care Act. As Charles Kesler noted in the *Claremont Review of Books*, such laws

start not from equal rights but from equal (and often unequal) privileges, the favors or benefits that government may bestow on or withhold from its clients. The whole point is to empower gov-

ernment officials, usually unelected and unaccountable bureaucrats, to bless or curse your petitions as they see fit, guided, of course, by their expertness in a law so vast, so intricate, and so capricious that it could justify a hundred different outcomes in the same case. When law ceases to be a common standard of right and wrong and a common measure to decide all controversies, then the rule of law ceases to be republican and becomes despotic. Freedom itself ceases to be a right and becomes a gift, or the fruit of a corrupt bargain, because in such degraded regimes those who are close to and connected with the ruling class have special privileges.

In summary, Congress has become a major player in the administrative state precisely by surrendering its constitutional purpose and ceasing to defend limited government. As a result, the administrative state has grown dramatically since 1965, and it only continues to defend and expand its turf. Political opposition occasionally arises in the White House or in Congress, but thus far with little effect.

Despite its expansion under both parties, however, the administrative state has not attained legitimacy. The Constitution itself remains the source of authority for those in and out of government who oppose the administrative state, and a stumbling block to those who support it. Until either the administrative state or the Constitution is definitively delegitimized, the battle

within both government and the electorate over the size and scope of the federal government—including government shut-downs and show-downs over the debt limit—will inevitably continue. ■



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