

Chapter 2

The American Administrative State: Development and Political Environment

Key Points

1. The growth in public employment and development of large administrative components in all levels of government are generally referred to as the “rise of the administrative state.” In the United States, our economy and society are permeated by public administration.
2. The sources of public administrative growth include increasing complexity of modern society, economic development, defense, and protection, regulation, promotion of the public interest, and the use of overhead agencies.
3. The federal government often seeks to fulfill objectives indirectly through grants, the tax code, loans, and administration by other jurisdictions. This approach is broadly called third-party government or indirect government because it involves states, cities, banks, industrial corporations, hospitals, nonprofit organizations, and a host of other public and private entities.
4. Public administration combines functions that are executive, legislative, and judicial in character. Rather than neatly fitting into one of the domains of the constitutional separation of powers, it is influenced by and is accountable to these three influences. The demands from executive, legislative, and judicial branches are often competing and conflicting, making the life of the public administrator challenging. The public must be aware of the values, rules, and/or laws of each branch if they are to function effectively.
5. The policy (or legislative) mandates given to public administrative agencies are often vague because (1) decision makers often give deference to administrative expertise, (2) public administrative directives are much more flexible than legislative directives and can be changed or abolished through a far less elaborate process, and (3) it is often politically expedient to delegate controversial or divisive decision making authority to public administrators. Because of this arrangement, public administrators often become influential policymakers.
6. It is a mistake to think of public administration as simply controlled by any one branch of government. Each branch has developed some structural arrangements and procedural techniques for influencing public administration.
7. In general, the President is held responsible and accountable for the performance of the executive branch, but he has limited means of controlling it as many of his powers are shared with the Congress and the courts.
8. The Reagan administration had greater success in controlling the bureaucracy than did other recent presidencies. Reagan used political executives relatively well for this purpose. The Clinton administration attempted to steer the bureaucracy through the National Performance Review (NPR). George W Bush pushed for downsizing, but was derailed by the events of September 11. President Obama’s approach to management continues the theme of adopting best practices, especially those focused on leveraging information technologies, throughout the federal government to reduce costs and improve effectiveness through the President’s Management Council.

9. The tools/powers that the president can utilize to manage the administrative state include the Executive Office of the President, political appointments, formal coordination instruments, veto power, impounds and rescissions.
10. Congress' institutional response to the administrative state included (1) the Administrative Procedure Act of 1946 to regulate agency rule making, adjudication, enforcement, and transparency; (2) the Legislative Reorganization Act of 1946 to enhance its capacity to oversee and supervise agencies; (3) steps to professionalize and increase committees' staff as well as personal staff; and (4) the Legislative Reference Service (now the Congressional Research Service) to enhance its capacity to deal with legislation and administration. The 1993 Government Performance and Results Act (GPRA) requires agencies to "consult with the Congress" when formulating their strategic plan and greatly enhanced Congress' capacity to regulate and supervise federal administration.
11. The judicial response to the administrative state involves (1) strengthening individual rights vis-à-vis public administrative action, (2) stricter scrutiny of administrative decisions, (3) the development of a new type of lawsuit, the "public law litigation" (or remedial law) model, and (4) the abandonment of absolute immunity from civil suits for damages in favor of "qualified" immunity for public administrators.
12. Interest groups have also reacted to the rise of the administrative state. Numbering in the thousands, these groups promote the specific interests of their well-defined population segment through advisory committees, negotiated rule making, legislative review of rules, and other pressure techniques. Public employee unions and contractors' associations differ from most interest groups in that besides focusing on administrative policies, they also attempt to impact the way agencies do business through collective bargaining.
13. The public has reacted to the rise of the administrative state in an often conflicting manner. Though the public recognizes the important role played by agencies, a common criticism is that there is an excess of red tape. Most people holding this view would not, however, support the discontinuation of agencies that protect public safety, for example. Administrators are both stimulated and constrained by public opinion.
14. Political parties capitalized on the spoils system era of favoritism and political bosses but have experienced a reversal of fortunes since the civil service reform era. Modern times are in favor of a politically neutral public administration personnel.
15. The impact of administrative growth on the structure and policy making of state and local governments shows clear parallels to the responses to the federal administrative state, but there are also key differences which include: strengthening of the gubernatorial office as a means of providing governors with greater managerial and policy direction over administrative agencies, reorganization of state governments with a view toward the consolidation of functions and reduction in the number of administrative units, variation in legislative oversight of administration and delegation of authority to it, considerable differences in the impact of state courts on administration.
16. Nonprofits, as defined by the non-distribution constraint (not allowed to distribute excess revenues, profit, to stakeholders), become extensions of the administrative state through the federal tax advantages they receive and represent an instrumental choice to provide levels of public goods or services the market and government are unable or unwilling to provide directly. They can be used to increase the flexibility of government in providing goods/services that meet the values and interests of different groups in American society.

Discussion and/or Test Questions

1. How effective have the presidency, Congress, and the judiciary been in adapting to the growth of public administrative power? What new problems have their efforts created?
2. What roles should political parties play vis-à-vis public administration in the United States?
3. Some policy mandates given to public administrators by legislatures are vague. What are the advantages and disadvantages of such mandates from the perspective of the public interest?
4. What are the advantages and disadvantages of assigning political appointees to a large number of leadership positions in the executive branch? Address this question using the political, managerial, and legal perspectives to public administration.
5. With the chapter in mind, answer the question, “Whose bureaucracy is this, anyway?”
6. Explain how nonprofits extend the reach of the administrative state?

Multiple Choice Questions

1. The immense growth and expansion of government during the twentieth century is known as
 - (A) the third-party government
 - (B) the Civil Service Reform
 - (C) the market-based solution
 - (D) the rise of the administrative state
2. The Administrative Procedure Act (1946) was passed to
 - (A) give agencies greater access to judicial review
 - (B) regulate agency rule making, adjudication, enforcement, and transparency
 - (C) force agencies to establish advisory committees
 - (D) none of the above
3. James Q. Wilson points to regulatory activity as
 - (A) a source of administrative growth in the United States
 - (B) a source of administrative decline in the United States
 - (C) having no relevance to public administration in the United States
 - (D) having no relevance to politics in the United States
4. Regulation best promotes the constitutional value of
 - (A) liberty
 - (B) equality
 - (C) accountability
 - (D) none of the above
5. Which of the following is the best example of an administrative “overhead” agency?
 - (A) the Environmental Protection Agency
 - (B) the Commission on Civil Rights
 - (C) the Immigration and Naturalization Service
 - (D) the General Services Administration

6. Delegations of legislative authority are
 - (A) always unconstitutional
 - (B) never specific
 - (C) reductions of executive power
 - (D) none of the above
7. The constitutional separation of powers
 - (A) prevents the courts from influencing public administration
 - (B) places Congress outside the realm of public administration
 - (C) gives the President authority to create the national budget
 - (D) none of the above
8. Which of the following is a function of the Office of Management and Budget?
 - (A) preparation of the federal budget
 - (B) review of proposed rules of executive agencies and departments
 - (C) advise agencies on good management practices
 - (D) all of the above are OMB functions
9. Some regulatory commissions are called independent because
 - (A) they are not in the courts
 - (B) they are part of the executive branch but not the legislature branch
 - (C) they create their own legal missions
 - (D) they are not clearly within either the legislative, executive, or judicial branches
10. Public employee unions and contractors' associations are examples of
 - (A) "iron triangles"
 - (B) interest groups
 - (C) congressional committees
 - (D) none of the above
11. The growth of the EOP in importance has clarified the role of the President vis-à-vis
 - (A) the federal bureaucracy
 - (B) Congress
 - (C) the federal courts
 - (D) none of the above
12. In recent years the federal judiciary has held that
 - (A) most public employees are absolutely liable for everything they do
 - (B) public employees may be liable for exercising legislative vetoes
 - (C) public employees are absolutely immune from civil suits
 - (D) public employees have qualified immunity from civil suits
13. Which is not part of the Executive Office of the President?
 - (A) White House Office
 - (B) Office of Management and Budget (OMB)
 - (C) Central Intelligence Agency (CIA)
 - (D) National Security Council (NSC)
14. "Public law litigation" most closely refers to
 - (A) suits between public agencies
 - (B) the flood of litigation that has developed in recent years
 - (C) suits brought by lawyers who work for the government
 - (D) suits involving the courts in public administration

15. Interest groups assume that
 - (A) public administration represents the national will
 - (B) public administration promotes the national interest
 - (C) public administration is involved in policy making
 - (D) none of the above
16. Organized interests can influence administrative policy making through
 - (A) advisory committees
 - (B) lobbying
 - (C) negotiated rule making
 - (D) all of the above
17. Third-party government refers to
 - (A) three branches of government
 - (B) federalism
 - (C) indirect public administration
 - (D) the role of the courts in public administration
18. President Reagan's political executives tended to have
 - (A) similar ideologies
 - (B) similar management styles
 - (C) an exceptionally low level of success
 - (D) all of the above
19. The number of executive branch civilian employees in the federal government is about
 - (A) 20 million
 - (B) 6 million
 - (C) 3 million
 - (D) 1.2 million
20. The best example of a "clientele" agency is
 - (A) the Patent Office
 - (B) the Post Office
 - (C) the Treasury Department
 - (D) the Department of Veterans Affairs
21. Congressional casework refers to
 - (A) mobilizing individual voters
 - (B) drafting legislation
 - (C) preparing cases for litigation
 - (D) constituency service
22. Congressional oversight is
 - (A) the failure to pay attention to policy details
 - (B) a check on public administrative activity
 - (C) making sure that agencies follow presidential directives
 - (D) assuring that federal agencies will have as much funding as they require
23. To protect small or weak interests in the formulation of legislation or rules,
 - (A) agencies may be required to seek the views of small entities
 - (B) presidential executive orders may be issued to assess the impact on minority interests
 - (C) legislative acts may be passed to assess the impact on social institutions
 - (D) all of the above

24. Which is *not* a strategy that Congress has used to deal with the burgeoning federal bureaucracy?
 - (A) it has added thousands of new staff
 - (B) it has strengthened its own administrative units
 - (C) it has developed greater committee and subcommittee specialization
 - (D) it has streamlined its own operations to improve responsiveness
25. Which of following theories explain the emergence of nonprofits
 - (A) market failure
 - (B) government failure
 - (C) voluntary sector failure
 - (D) all of the above
26. Which of the following are not attributes of a nonprofit
 - (A) they enjoy a tax preferred status from the federal government
 - (B) they can distribute some profits to shareholders
 - (C) they are governed by Section 501 c of the Internal Revenue code
 - (D) they are private organizations
27. In *Elrod v. Burns* (1976), the Supreme Court held that
 - (A) patronage dismissals, in some cases, were unconstitutional
 - (B) congressional delegations violated the separation of powers
 - (C) public assistance was not a privilege but a right
 - (D) additional taxes needed to be levied to finance school desegregation efforts

True or False

1. Congressional micromanagement of the federal bureaucracy furthers the administrative values of economy and efficiency.
2. The number of staff in Congress today is greater than it was in 1946.
3. The Constitution gives the President sole power over public administration, but in recent years Congress and the courts have encroached upon this power.
4. The Federal Advisory Committee Act (1972) promotes the access of interest groups to federal administration.
5. The New Public Management endorses the use of congressional “casework” because it promotes efficiency.
6. The General Accounting Office is in the legislative branch of the federal government.
7. “Remedial law” refers to a class that prepares lawyers to argue in the public interest before the Supreme Court.
8. In recent years, agency rule making, adjudication, and policy initiatives have exceeded congressional legislation, judicial hearings, and presidential policy initiatives.
9. The Government Performance and Results Act enabled the Congress to play a large role in determining what agencies’ goals will be.
10. Regulatory agencies are structured to emphasize values prescribed by the legal approach to public administration.
11. “Pork barrel” legislation is a general term for the regulation of food products.
12. The Office of Personnel Management is part of the Executive Office of the President.

13. The Government Printing Office (GPO) is an example of an administrative “overhead” agency.
14. The Sherman Act (1890) was passed to control the development of economic monopolies.
15. The passage of the Hatch Acts in 1939 and 1940 signified the federal government’s support for political patronage.
16. The non-distribution constraint stipulates that nonprofits cannot distribute any profits to stakeholders.