

FOR LARRY D. TERRY

Larry believed in the power of “big ideas.” Big ideas, according to Larry, engaged a broad range of intellectual minds; they sparked debate and conversation, but most importantly, they served to broaden human understanding and provide a more thoughtful, constitutionally grounded foundation for the ways in which the administrative state should be conserved. Larry’s work, and his role as editor-in-chief of Public Administration Review, focused largely on ways to improve democracy and democratic institutions within the American constitutional republic. His work changed—and vastly improved—our theoretical and practical understanding of public administration.

This article is Larry’s last publication. It represents one of his “biggest ideas,” an idea he thought had been long forgotten by the field and one that should remind us all of the importance of administrative history. The past shapes the present. Larry often said that when we as a field forget this important observation, we surrender the possibility of developing a more comprehensive understanding as to how contemporary administrative scholarship and practice is influenced by the past. Larry saw this article as one way to reinvigorate the field’s interest in its own unique history. Larry was incredibly proud of this piece, as am I.

The field has lost one of its brightest stars, and I have lost the most important person in my life; but Larry’s work lives on and will be read, admired, and cited for years to come. And in the darkest hours of the night, when the rest of the world sleeps, I find extraordinary comfort in the legacy and contribution Larry left behind. This is not good-bye; this is “I’ll see you sometime in the future.” My enduring love, admiration, and respect carries me through until we meet again.

—Stephanie P. Newbold

THE PRESIDENT'S COMMITTEE ON ADMINISTRATIVE MANAGEMENT The Untold Story and the Federalist Connection

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The final report of the President's Committee on Administrative Management has been widely cited as a landmark study designed to improve executive branch management. This observation, however, does not tell the complete story of its constitutional complexity. In addition to the report that President Roosevelt submitted to Congress in 1937, he commissioned five additional studies that, individually and collectively, reveal the untold story of the Brownlow Project. They emphasize not only the improvement of public management but also the improvement of democracy within the American administrative state. Alexander Hamilton's argument regarding unity of the executive—and his understanding of the imperative nature of this philosophical principle on the American constitutional republic—connects these documents. Together, the papers underscore that the legitimacy of American public administration can be found only within its constitutional heritage.

Keywords: *President's Committee on Administrative Management (1937); executive branch management; unity of the executive*

In January 1937, President Franklin D. Roosevelt submitted to Congress a study entitled *Administrative Management in the Government of the United States*, produced by the President's Committee on Administrative Management (Brownlow, Merriam, & Gulick, 1937).¹ This 53-page document, commonly referred to as the Brownlow Report—named in honor of the committee's chair, Louis Brownlow—has been widely cited in both the public administration and political science literature as a landmark study specifically designed to improve executive branch management. President Roosevelt appointed Charles E. Merriam and Luther Gulick as members of the committee. In addition, the committee appointed Joseph P. Harris as director of research. Although Harris did not serve as a committee member, he was

an integral figure who helped to shape the operational structure of the Brownlow Committee's findings and, according to James Fesler, played a significant role in organizing the Brownlow Project.²

The final report that Roosevelt approved was accompanied, as part of the President's Committee on Administrative Management, by five other studies that were not only led by Brownlow, Merriam, and Gulick and supervised by Harris but were also commissioned by the president. These five papers included nearly 300 pages of text. Although the substantive nature of the recommendations made by these authors was highlighted in the final report, to develop a more comprehensive understanding of the value-added dimension that these recommendations bring to public administration generally and executive branch management specifically, the field needs to examine the Brownlow Committee's findings in their entirety.³

In his authoritative work, *Executive Reorganization and Reform in the New Deal*, Barry Karl (1963) indicated that the report of the President's Committee on Administrative Management "appended nine 'Special Studies,' which Merriam, with a wry mixture of poetry and justice, called the 'nonsupporting documents'" (p. 222). In 1937, the U.S. Government Printing Office published the findings of the President's Committee on Administrative Management in three different formats. The first was the 53-page final report President Roosevelt submitted to Congress. The second was entitled *The President's Committee on Administrative Management: Report of the Committee with Studies of Administrative Management in the Federal Government*. This 382-page document included the final report and each of the accompanying studies that served as the basis for the 53-page document. The table of contents for this publication lists each study by author and not by title, although the titles of each study are mentioned. When Karl analyzed these studies, he followed this format and counted by author and not title, which adds up to nine studies instead of five. This calculation is how he found the nine special studies. Finally, the U.S. Government Printing Office published each of the five accompanying studies individually and sold them for 15 to 25 cents a piece by the Superintendent of Documents in Washington, D.C. In our analysis of each of these reports, however, we did not find any appendices like those referenced by Karl. If such appendices do exist, they are not listed in the table of contents of any of the three reports produced by the President's Committee on Administrative Management and published by the U.S. Government Printing Office.

This article recounts the untold story of these five studies. We begin by examining each of the five studies, which focused on (a) personnel

management; (b) fiscal management, divided into two sections, financial control and accountability and the General Accounting Office; (c) independent regulatory commissions; (d) administrative management; and (e) rule making and the preparation of proposed legislative measures by administrative departments. We provide a biographical profile of the academic and professional accomplishments of each author, all of whom were highly regarded scholars and practitioners of public administration, political science, and/or economics. Then, we turn our attention to the findings and recommendations of the individual studies to demonstrate where the final report either embraced or ignored the specific suggestions outlined by the appointed committee members.

We make the case that these authors were guided by their knowledge and understanding of American constitutional heritage and the specific application of *Federalist 27* and *Federalist 70* to the contemporary issues affecting executive branch dynamics during the early 20th century. Such an examination answers the call of scholars such as Dwight Waldo (1948), Lynton Caldwell (1955), and Leonard D. White (1948, 1951, 1954, 1958), who eloquently reminded us of the importance of administrative history to the study and practice of public administration.⁴

THE BROWNLOW REPORT: ADVANCING DEMOCRATIC GOVERNANCE

From the moment that President Roosevelt submitted the final report of his Committee on Administrative Management to Congress, the public administration community was—and continues to be—particularly interested in the findings and recommendations of this study.⁵ Highly regarded scholars of public administration (Denhardt, 1995; Karl, 1963; Rohr, 1986; Rosenbloom & Kravchuk, 2002; Stillman, 1988, 1991) have correctly pointed to the fact that the Brownlow Report recognized the president's need for additional help while also emphasizing the importance of expanding the White House staff, reorganizing the executive branch, strengthening managerial agencies, expanding the merit system, and increasing accountability standards on behalf of the executive branch to Congress.

Although this analysis enhances our understanding of what the President's Committee on Administrative Management recommended, the committee members, and President Roosevelt, also recognized that

the most important objective of the report was the preservation of the nation's democratic institutions. The committee clearly saw the symbiotic relationship between democracy and public management. According to the committee's authors, administrative efficiency must be built into the machinery of government. The goal of the Brownlow Report, the authors claimed, was

to make *democracy* work today in our National Government; that is, to make our Government an up-to-date, efficient, and effective instrument for carrying out the will of the Nation. It is for this purpose that the Government needs thoroughly modern tools of management. . . . *We know that bad management may spoil good purposes, and that without good management democracy itself cannot achieve its highest goals.* (p. 4, italics added)

The highest goals of the American Administrative State are the same today as they were in 1937 and in 1787: Public administration is first and foremost concerned with upholding the democratic values embedded within our constitutional heritage. For as Alexander Hamilton appropriately reminded us in *Federalist 27*: "I believe it may be laid down as a general rule, that [the people's] confidence in and obedience to a government, will commonly be proportioned to the goodness or badness of its administration."

One of the central themes connecting these papers is Hamilton's position on unity, articulated in *Federalist 70*. He capitalized this word in his text and argued that the doctrine of unity is an important and necessary component of energy in the executive. Energy in the executive, according to Hamilton, is essential for good government because a weak executive—the preference of the Anti-Federalists—implies an inability to execute important and necessary responsibilities associated with republican statecraft.⁶ The four components that make up energy in the executive include (a) unity, (b) duration, (c) an adequate provision for its support, and (d) competent powers. According to Hamilton, unity of the executive is conducive to energy in the executive because if unity is not maintained,⁷ the form of constitutional democracy advocated in the *Federalist Papers* cannot survive.⁸ Hamilton concluded his analysis by observing that "the UNITY of the Executive of this state was one of the best of the distinguishing features of our constitution,"⁹ and it is precisely this point that served as the philosophical foundation of the five accompanying studies that represent the complete Brownlow Report.

**STUDY I: PERSONNEL ADMINISTRATION IN THE
FEDERAL SERVICE BY FLOYD W. REEVES
AND PAUL T. DAVID (1937)**

BIOGRAPHICAL PROFILES

Reeves was a professor of political science at the University of Chicago and Director of Personnel for the Tennessee Valley Authority (TVA), where he not only provided expertise in personnel training but also conducted social and economic research in the valley. Reeves was a pioneer in shaping federal legislation to support adult education. He advocated for a federally owned and operated broadcasting system that would be controlled by a committee recruited from nonprofit, educational, and cultural agencies to provide greater resources for adult education across the nation. His works include *Color, Class, and Personality* (1942), with Robert L. Sutherland, supported by the American Council on Education; *Instructional Problems in the University* (1933), with Wesley E. Peik and John D. Russell; and *Admission and Retention of University Students* (1933), with John D. Russell, published by the University of Chicago Press.

Like Reeves, David was affiliated with the TVA. After graduating from Brown University with a doctorate in economics in 1933, he became the first employee of the TVA. As part of the TVA, David organized the staging offices in Washington, D.C., and in Knoxville served on the economic and social analysis staff during the organization's most creative period and was responsible for organizing the TVA staff into a white-collar union. It was in this professional capacity that Reeves recruited David to work on the President's Committee on Administrative Management where he served as Reeves' deputy and coauthor. After President Roosevelt submitted the committee's findings to Congress, David became the associate director for the American Council on Education's Commission on Youth, and in 1942, he served on the Economics Staff at the Bureau of the Budget, where he continued his interest in civil aviation policy, the subject of his dissertation. Following this service, President Harry S. Truman appointed him deputy head of the U.S. delegation to the International Civil Aviation Organization Treaty from 1947 to 1950.¹⁰ David went on to become professor emeritus of government and foreign affairs at the University of Virginia, where he was the senior author of a five-volume report titled *Presidential Nominating Politics* and later the author of *The Politics of National Party Conventions*.

PERSONNEL ADMINISTRATION: AN ESSENTIAL ELEMENT OF EXECUTIVE MANAGEMENT

Reeves and David divided their 75-page study into four sections that focused on (a) the problems associated with effective personnel administration, (b) federal personnel administration of the day, (c) the development of a service of personnel administration, and (d) the extension of the merit system. A central theme of this study—one that was certainly incorporated into the final Brownlow Report—is that personnel administration cannot be examined independent of other aspects of administrative management because effective personnel administration is an important dynamic that affects the president's ability to implement his policy agenda.

Reeves and David argued that the American public regards the president as being primarily responsible for the type and quality of personnel administration implemented throughout the federal service. The structure of the executive branch in 1937, however, did not enable the president to devote an appropriate amount of time and attention to even the most urgent of personnel matters. As a result, the president's ability to balance administrative and political responsibilities, as they relate to personnel management, became increasingly difficult. According to the authors,

From the point of view of the president's administrative responsibilities, the tendency is to seek the best available personnel and to conduct other personnel activities on the basis of the requisites for a high type of performance. From the point of view of the president's political responsibilities, leadership in a legislative program of any considerable magnitude under existing political conditions requires a constant series of concessions ranging from slight favoritism toward persons with "clearance" to outright political appointments to important positions for which the appointees are unqualified and in which they exert a deadening influence over the quality of work in large areas of the service. (p. 2)

The distinction between administrative and political responsibilities draws our attention to Paul Light's (1995) argument that government thickens when presidents place political appointees in positions that are traditionally held by career civil servants. Reeves and David maintained that one way to aid the president in balancing these administrative and political responsibilities is executive discretion. They argued that personnel reform was needed not only to buffer the president against political pressure regarding his administrative responsibilities and appointment powers but

also to serve as a preventive measure against the enormous waste that occurs when appointments are open to political consideration. Reeves and David maintained that the president must have the authority to appoint individuals who support his policies and programs to the highest levels of government. They also recommended, however, that increasing the number of higher level positions in the civil service would lift its entire morale and give an incentive for the recruitment of the best talent in the lower positions (pp. 9, 72-75).

In the committee's final report, Brownlow, Merriam, and Gulick recommended that the Civil Service Commission be reorganized into a Civil Service Administration, led by a single executive officer and a non-salaried Civil Service Board. This type of reorganization, according to the committee, would "give the agency a degree of *unity, energy* [italics added], and responsibility impossible to obtain in an administrative agency headed by a full-time board of several members" (p. 10). This recommendation, which originated in Study I, was arguably one of Reeves and David's most important suggestions for improving executive branch dynamics and points to the connection with *Federalist 70*. The final report stated, "Personnel management is an essential element of executive management" (p. 10), and that was precisely Reeves and David's argument. The proposed Central Personnel Agency's responsibilities, according to the authors, would include recruitment and examination service for federal positions within the classified and competitive civil service, administration of the federal retirement system, and administration of review and control activities in position analysis and salary standardization for the "departmental service" in Washington.

As part of this recommendation, Reeves and David suggested 20 ways that such an agency would improve the president's administrative capabilities. Some of their most striking recommendations included developing constructive personnel policies, standards, and procedures for implementation throughout the federal service; compiling, arranging, indexing, annotating, and making available statutes, executive orders, and other regulations generally applicable to personnel administration throughout the federal service or large parts thereof; assisting the president in maintaining a sufficient degree of central control over personnel administration throughout the executive branch; assisting the leaders of departments and agencies in developing and improving personnel administration; and acting as the central review agency for position classification and salary standardization and control. Such recommendations, retrospectively, laid the foundation for the establishment of the Office of Personnel Management in the Carter administration.

The committee also recommended 20 ways to improve personnel administration. These suggestions became core components of the final report that President Roosevelt submitted to Congress. Of particular importance was the recommendation that Congress and the president should provide more attention to the development of a unified system of personnel administration, particularly for nonpolitical positions. The final report suggested "strengthening and developing the managerial agencies of the Government, particularly those dealing with the budget and efficiency research, with personnel and with planning, as management-arms of the Chief Executive" (p. iv). Reeves and David were the architects of this recommendation.

In their analysis for improving personnel administration, they outlined specific ways to implement this proposal. First, their study maintained that personnel administration should be represented at the highest levels of administrative management by an adequate central personnel agency responsible to the president, at the departmental level by adequate departmental personnel offices responsible to the heads of departments, and at the bureau level by bureau personnel offices responsible to the bureau chiefs. Next, it pointed to the federal government's responsibility to address inequitable variations in compensation levels, hours of duty, and working conditions throughout the civil service. Third, respective heads of the central personnel agency and budget agencies should be among the principal advisers of the president in connection with major problems of organization and reorganization within the executive branch. Fourth, the administrative and professional staffs of the central personnel agency and the personnel offices of operating establishments should be regarded collectively as a unified career service of personnel administration. Finally, all members of the permanent service of personnel administration should be included within the competitive civil service, and other personnel officers should also be appointed on the basis of merit and efficiency through an appropriate procedure (pp. 6-8).

The final report recommended extending the merit system upward, outward, and downward, and this proposal has been viewed by the committee's evaluators as an important and thoughtful way that its authors aimed to improve executive branch dynamics. The recommendation to improve and strengthen the merit system in these three areas originated with Reeves and David's study. To achieve these goals, they proposed nine recommendations. Some of the most informative included placing all non-policy-forming presidential positions in the field services in the competitive classified service by appropriate legislation as soon as possible; requiring that lower positions in the permanent services, now excepted from the

classified competitive service by the legislative or executive action, be surveyed in detail and transferred to the classified service by appropriate action as rapidly as feasible; revising the salary scale for higher nonpolitical positions to improve retention and recruitment of well-qualified administrators; and allowing incumbent emergency employees occupying positions that were made permanent and who do not have an appropriate civil service status to receive it after passing a suitable qualifying examination and on certification by an approved nonpolitical personnel officer stating they have served with merit for at least 1 year (pp. 8-9).

The analysis of this study in the context of the four that follow suggests that improving personnel administration was only one aspect of the committee's evaluation for improving executive branch management. Recommending ways to enhance the president's managerial capacities laid the foundation for more substantive, constitutionally grounded suggestions for advancing democracy within the confines of the American administrative state.

STUDY II: *FISCAL MANAGEMENT IN THE NATIONAL GOVERNMENT* BY ARTHUR E. BUCK AND HARVEY C. MANSFIELD, SR. (1937)

BIOGRAPHICAL PROFILES

Buck dramatically advanced the field's understanding of budgeting and finance and the way these two areas affect the public policy process. He worked as a representative for the New York Bureau of Municipal Research, later renamed the Institute of Public Affairs. Buck's major works focused on measuring government results, cost accounting, and the reorganization of state governments. His knowledge of the budgetary process and experience in state and municipal government were the primary reasons for his appointment to the President's Committee on Administrative Management and later to the first Hoover Commission, where he served as the principal author of the budgetary sections of each report. Interestingly, and as a matter of significance for public administration, Buck, unlike his colleagues working on this report, disagreed with the Brownlow Committee's recommendation to place the budget office in the Executive Office of the President.

The committee's authors appointed Mansfield to analyze the role of the General Accounting Office in the U.S. federal government. Mansfield was the Ruggles Professor Emeritus of Public Law and Government at

Columbia University, where his research focused primarily on the presidency and Congress. He was the managing editor of the *American Political Science Review* from 1956 to 1965 and served as chief of the Policy Analysis Branch of the U.S. Office of Price Administration. Mansfield's 30-year analysis of federal executive reorganization, published in *Public Administration Review* in 1965, and his book *Congress Against the President* (1975) are still viewed as important and noteworthy contributions on the policy dynamics of the executive and legislative branches.

FISCAL MANAGEMENT: THE BUREAU OF THE BUDGET AND THE TROUBLESOME STATUS OF THE GENERAL ACCOUNTING OFFICE

Buck and Mansfield divided their 62-page study into two sections. The first, authored by Buck, focused on financial control and accountability, and the second, authored by Mansfield, critiqued the General Accounting Office.

Financial control and accountability. Buck outlined three important recommendations in this section. First, he advised that the president should be fully responsible for the financial management of the government; second, that suitable and up-to-date machinery and methods were required to aid the president in attaining effective financial management; and finally, that executive responsibility for the management of the government was incomplete without full accountability to Congress (p. 29). In the third section of the final Brownlow Report, the authors stated,

From the standpoint of overall control the system of fiscal management of the Government now has four major defects, namely (1) the inadequate staffing of the Bureau of the Budget; (2) the vesting in the Office of the Comptroller General; (3) the absence of a truly independent and prompt audit of the financial transactions of the Government, whereby the Congress may hold the Executive Branch strictly accountable; and (4) the failure to devise and install a modern system of accounts and records. (p. 15)

Many of these areas of critique had their origins in Study II. Buck argued that the Bureau of the Budget should be reorganized internally and integrated with the Treasury Department. In turn, its staff should be broadened and strengthened to handle the functions of budgetary control, administrative research, and investigation. Likewise, Buck maintained that the Treasury Department should be reorganized to eliminate all functions extraneous to financial administration (p. 29). Simply

put, the federal government needed to implement a modern system of general accounting and reporting.

Buck also critiqued the absence of an independent and prompt auditing system for the financial transactions of the government and the failure to devise and install a modern system of accounting and record keeping. He maintained that the Bureau of the Budget should be the fulcrum of the Treasury Department: It should prepare the financial plan of the government for the president, it should receive the essential information for the current exercise of budgetary control, and it should establish an administrative division to focus on organization, research, investigation, planning, and coordination. Each of these recommendations was thoughtfully incorporated into the final report. In addition, Buck proposed specific ways to improve accounting methods and procedures, effective budgetary control, and accountability. These recommendations were in keeping with the final report's position that "it is the purpose of the budget system to provide in financial terms for planning, information, and control" (p. 16). Buck advised that the General Accounting Office be renamed the General Auditing Office (a suggestion Mansfield would address thoroughly in the second section) and that Congress create a joint congressional committee on public accounts (p. 30).

Hamilton's principle of unity of the executive, outlined in *Federalist 70*, is applicable to Buck's argument about the negative effects of reorganization on the Treasury Department. Buck maintained that the Budget and Accounting Act of 1921, and the expansion of the department's administrative functions and financial responsibilities within the U.S. federal government, had confused and derailed the need for a treasurer whose duties involved the receipt, custody, and disbursement of public monies and the need for an auditor whose decisions were subject to review by a comptroller. Hamilton, during his tenure as secretary of the treasury, established this type of managerial system, but such organizational efforts no longer existed in 1937. Under Hamilton's model, a clear sense of unity of the executive existed because the department's functions were divided into separate and distinct areas of responsibility; the applicability of what he wrote as Publius carried over into his constitutional responsibilities and organizational preferences as the chief administrator of the nation's finances. Buck's analysis of Hamilton's understanding of the proper managerial functions needed within the treasury clearly pointed to this connection.

The General Accounting Office. Mansfield's analysis examined how the General Accounting Office exercised control over the executive; the relationship among the comptroller general and the president, Congress,

and the courts; and some of the consequences of this system of control as it relates to administrative management. According to Mansfield, the problem that faced the U.S. federal government was how to secure effective administration under a managerial system that divided authority between the executive and the comptroller general to determine administrative policy and procedure (p. 33). Specifically, he critiqued the administrative difficulties arising from the failure to distinguish between the concepts of audit and control and maintained that "the Budget and Accounting Act of 1921 took the unusual step of vesting both audit and control powers in the hands of an independent officer" (p. 33). Mansfield provided definitions for these terms: An audit is an investigation and report based on the fidelity and legality of fiscal transactions that is ordinarily made by an independent officer. Control, on the other hand, is an important dynamic of executive management because it involves the power to pass on expenditures and prevent them from being made. Like Buck, Mansfield was highly critical of the Budget and Accounting Act of 1921, believing it had created administrative chaos by taking the unusual step of vesting both powers in the hands of one independent officer, the comptroller general.

Mansfield argued that the position of the comptroller general was unconstitutional and irresponsible because it was independent of all three branches of government (p. 49). For example, the president did not have the authority to remove the comptroller general from his position, nor could he initiate removal. In 1933, the comptroller general ceased making annual reports to Congress by enforcing provisions in the Legislative Appropriations Act, which authorized the heads of establishments to discontinue the printing of their reports. He was not responsible to the courts, making this the only field of administrative action in which government officials were denied access to the judiciary for the purpose of testing the limits of their authority or the meaning of the laws under which they operate. The authors of the final report reiterated this position:

The results of the vesting of important executive authority in the Comptroller General, an independent officer, who is not responsible to the chief executive, nor, in fact, to the Congress or to the courts, are serious. Effective and responsible management of the executive departments is impossible as long as this unsound and unconstitutional division of executive authority continues. (p. 24)

Mansfield recommended that that the agency's name be changed to the General Auditing Office and that the comptroller general be referred to

as the “auditor general” or the “officer of the auditor general.” In keeping with this theme, Mansfield argued that the powers of the auditor general should include auditing and investigations and extend to all governmental agencies, unless exempted by Congress.

Like Buck, Mansfield, in his analysis of the General Accounting Office, sought to provide greater unity in the executive by means of improving fiscal management in the national government. He understood the contributions Hamilton had made to the Treasury Department and maintained that the Budget and Accounting Act of 1921 had undermined those important efforts. Specifically, Mansfield argued that “the power to settle all accounts and claims should be transferred to the Treasury Department in order to restore the *unity of Executive responsibility* [italics added] that existed from 1817-1921” (p. 61). In addition, the power to prescribe administrative forms and methods of accounting should be transferred back to the treasury. Under this recommendation, the treasury would have responsibility for deciding legal questions and for the administrative execution of the budget. Such efforts, according to Mansfield, would provide a centralized system for control accounts and eliminate the present division of authority. It would, furthermore, create an environment in which financial responsibility would be clearly imposed on the president.

**STUDY III: THE PROBLEM OF *THE INDEPENDENT*
REGULATORY COMMISSIONS BY
ROBERT E. CUSHMAN (1937)**

BIOGRAPHICAL PROFILE

Cushman was the Goldwin Smith Professor of Government at Cornell University. His areas of specialization included human liberty, constitutional law, American government, and regulation. Known in the political science and public administration communities as an adamant defender of the First Amendment, Cushman maintained that a familiarity with the constitutional role and responsibilities of the U.S. Supreme Court was essential to develop a comprehensive understanding of American government. Cushman argued that Supreme Court cases told the story of America; therefore, the Court’s decisions on constitutional matters affecting the good of the state can be properly contextualized only when they are viewed against the backdrop of history, politics, and economics. His research focused on the changing nature of constitutional law and the importance of dissenting U.S. Supreme Court opinions.

Cushman publicly supported President Roosevelt's New Deal programs, and in the spring of 1936, he joined the President's Committee on Administrative Management, where he was instructed to prepare a memorandum on independent regulatory commissions. According to Cushman, the committee leaders recommended that this report evaluate the statutory basis of independent regulatory commissions, analyze the relationships of these committees to the three branches of government, and attempt to formulate possible alternatives to the independent commissions as an administrative device for regulatory action.

Cushman (1937) was best known for his work *The Independent Regulatory Commissions*, which was based largely on his work for the Brownlow Project. Gulick not only supervised this work but also secured a large grant from the Rockefeller Foundation to finance the costs associated with it. Cushman, however, was adamant that his ideas had not been written to support other proposals, including those within the Brownlow Report, but to broaden the literature concerning the administrative and political problems affecting regulatory commissions. Cushman evaluated regulatory commissions by examining the statutes that had created them and the congressional debates that had outlined the strengths and weaknesses of these statutes. He was primarily concerned with the formal purposes and principles regarding what functions and actions commissions should regulate. Based on his previous work as part of the President's Committee on Administrative Management and the analysis collected for *The Independent Regulatory Commissions*, Cushman maintained that regulatory commissions were relatively unknown with regard to how they served administrative agencies, Congress, and the president. He argued that regulatory commissions were taken for granted and no substantive information or research existed concerning their role in the administrative state.

Cushman's other works include *American National Government* (1925), *Cases in Civil Liberties* (1968 1st ed., 1994 6th ed.), 16 editions of *Leading Constitutional Decisions*, and *Cases in Constitutional Law*. During World War II, Cushman supplemented his academic career by gaining practical experience: He volunteered his time to the government board responsible for determining which enemy aliens should be rightfully released from U.S. custody. After retiring from Cornell, he served as the first editor-in-chief for the *Documentary History of the Ratification of the Constitution*. Supreme Court Justice Ruth Bader Ginsburg, an undergraduate student of Cushman's at Cornell, paid tribute to her mentor during her Senate confirmation hearing in July 1993 when she said, "He was a wonderful professor who forced me to think about the times in which we were living, when I really didn't want to" (Rabkin, 1995).

THE PROBLEMATIC NATURE OF INDEPENDENT REGULATORY COMMISSIONS

Cushman's work on independent regulatory commissions was regarded as the most controversial of all the recommendations made by the Brownlow Committee, particularly his position that "the regulatory problem is inherent in the progressive development of a complex economic society" (p. 28). He divided this 37-page report into five sections that focused on (a) the historical background of the problem, (b) the inherent problem of the independent regulatory commissions, (c) legal limitations, (d) a suggested solution, and (e) an appraisal of the suggested plan. The problem that Cushman addressed centered on the following argument:

There is high respect, based on experience, for the independent commission as a device for federal regulation. There exists a strong inclination to use this method for handling new regulatory jobs as they emerge. At the same time, the multiplication of these independent bodies leads toward a decentralized and chaotic administrative system. (p. 1)

The historical dynamics that highlight the problems Cushman associated with independent regulatory commissions were largely based on the commission movement in the United States, regulatory functions in the executive branch, and the segregation of judicial and appellate aspects of administration.

In the final report, the authors stated,

Those independent commissions have been given broad powers to explore, formulate, and administer policies of regulation. . . . They are really independent governments set up to deal with the railroad problem, banking problem, or the radio problem. They constitute a headless "fourth branch" of the Government, a haphazard deposit of irresponsible agencies and uncoordinated powers. (p. 39)

The representation of independent regulatory commissions as a "headless fourth branch of government" came from Cushman's analysis. In his introduction, he argued,

The independent regulatory commissions present a challenging problem in any program of Federal administrative reorganization. . . . Experience has evolved no practical means of making them responsible to the Congress. As someone has said, they are a sort of "fourth department" in the National Government. (p. 1)

This observation laid the theoretical and practical foundation for Cushman's critique of how independent regulatory commissions

obstructed executive branch management—a controversial argument for this time but one that certainly resonated with Hamilton’s position on the unity of the executive in *Federalist 70*. According to Cushman,

The President is the general manager of the United States. The very purpose of the Executive Department under the Constitution is to center upon a *unified* [italics added] and powerful Executive responsibility for a coordinated policy of administration and its efficient execution. Congress, by its very nature, is incapable either of doing administrative work or of holding accountable in any effective way the many officers or agencies engaged in administration. The President’s duties and responsibilities in this field are not routine in nature, but carry with them broad discretionary powers. (p. 13)

As a means of correcting this political and administrative deficiency, Cushman proposed a plan that would place independent regulatory commissions into established or “suitable” executive departments. Cushman defined “suitable departments as those that have functions relevant to those of the commission and that are neutral with respect to the regulatory duties of the commission rather than ‘promotional’ or otherwise biased” (p. 23). If the regulatory functions of a particular commission were not suitable for an executive department, they should be left independent. When incorporated into an executive department, Cushman proposed, the commission would be divided into judicial and administrative sections. The judicial section would be responsible for the judicial and quasijudicial aspects of regulation and would be in the department for organizational purposes but otherwise completely independent of the agency. The president would only be able to remove these administrators from their positions for incompetence or misconduct. Neither the president nor the cabinet secretary could review the decisions of the judicial section, meaning the decisions would be based on the records prepared and presented by the administrative section. The judicial section would have the appellate power to review certain decisions made within the administrative section. The administrative section, on the other hand, would become a division within the department and would be responsible to the president and cabinet secretary. Public servants affiliated with this section would become part of the career civil service.

Cushman recognized the controversial nature of his plan for improving judicial and administrative management within independent regulatory commissions, but he also understood that such a proposal supported Hamilton’s argument for the unity doctrine. From the standpoint of administrative management, Cushman maintained that

the plan would increase the coherence and *unity* [italics added] of the national administrative structure. . . . Simplicity of administrative structure is not an end in itself; but it makes possible the tightening of the lines of responsibility so necessary to effective administrative management. (p. 29)

In other words, the principle of unity of the executive creates the type of foundation needed to implement responsibility and other important managerial dynamics associated with governing a constitutional republic at the highest levels of government. Along this same line of reasoning, Cushman concluded, "The advantages of the suggested plan are substantial. It meets squarely the problem of the independent commissions. It creates the clear responsibility for policy-determining and administrative work that is so essential to effective over-all management" (p. 34). The authors of the final report concurred and cautioned their audience, "The independent commission, in short, provides the proper working conditions neither for administration nor for adjudication. It fails to provide responsibility for the first; it does not provide complete independence for the second" (p. 40). This observation not only supported the need for unity of the executive but also illustrated how this type of unity would improve the effectiveness of executive branch management.

**STUDY IV: PROBLEMS OF ADMINISTRATIVE MANAGEMENT
BY ARTHUR W. MACMAHON, JAMES W. FESLER,
AND HERBERT EMMERICH (1937)**

BIOGRAPHICAL PROFILES

MacMahon was a professor of government at Columbia University from 1913 to 1958. In this position, he worked to advance the field of public administration as a prominent academic discipline. His key works include *The Administration of Federal Work Relief* (1941) with John D. Millett and Gladys Ogden, *Administration and Foreign Policy* (1956), *Federal Administrators: A Biographical Approach to the Problems of Departmental Management* (1967), and *Administering Federalism in Democracy* (1972). MacMahon also had an extensive career as a practitioner serving as an adviser to both the Council of National Defense during World War I and to the New York City Charter Revision Commission from 1921 to 1923. In 1955, he began working for the Commission on Inter-Governmental Relations.

Fesler was a key contributor to public administration scholarship during the 20th century. He was an associate professor at the University of North Carolina at Chapel Hill for 16 years; a visiting professor at both the University of California, Berkeley, and the University of Minnesota; and the Alfred Cowles Professor of Government at Yale University, where he also served as department chair. Fesler's primary area of intellectual interest focused on decentralization and the clash of area and function as organizing principles. His key works include *Executive Management and the Federal Field Service* (1937), *The Independence of State Regulatory Agencies* (1942)—which complemented Cushman's work—*Industrial Mobilization for War* (1947), *Area and Administration* (1949), *The 50 States and their Local Governments* (1967), *Public Administration Theory and Practice* (1980), *American Public Administration: Patterns of the Past* (editor, 1982), and *The Politics of the Administrative Process*, with Donald F. Kettl (2005, 3rd ed.).

In addition to Fesler's academic experience, he held key positions in government and was a highly regarded consultant. In the Roosevelt administration, he served on the National Resources Planning Board and the War Protection Board. Later, Fesler contributed to the first Hoover Commission by working on ways to improve the organization of the executive branch, an important evaluative area for the commission; chaired the United Nations Group on Decentralization for Development in 1961; and served on the New Haven Redevelopment Agency's governing board and the Connecticut Governor's Committee, where he worked to improve the structure of state government. Fesler was president of the New England Political Science Administration, vice president of the American Political Science Association, and editor-in-chief of *Public Administration Review*. He was the recipient of the Dwight Waldo award "for distinguished contributions to the professional literature of public administration" and the John Gaus award for "a lifetime of exemplary scholarship in the joint tradition of political science and public administration" (Congressional Quarterly Press, 2006). Aaron Wildavsky regarded Fesler as "possessing an unerring sense of the critical problem. Whatever insight, clarity of mind, and a sense of proportion could do for his students, he did" ("In Memoriam," 2005).

Emmerich's key works include *Federal Organization and Administrative Management* (1971) and *Essays on Federal Reorganization* (1950). From 1957 to 1963, he served as the senior consultant in public administration to the Department of Economic and Social Affairs of the United Nations. Emmerich was also chairman of the American Committee for the International Union of Local Authorities.

**THE PROBLEMS OF ADMINISTRATIVE MANAGEMENT:
A SEARCH FOR SOLUTIONS**

MacMahon, Fesler, and Emmerich divided their 58-page report into three sections. The first, authored by MacMahon, focused on departmental management; the second, authored by Fesler, highlighted executive management and the federal field service; and the third, authored by Emmerich, centered on government corporations and independent supervisory agencies. Each will be examined in sequential order.

Departmental management. MacMahon structured his section of the report into four parts: (a) objectives of departmental management, (b) the emergent pattern, (c) the allocation of supervisory duties, and (d) recruitment, training, and tenure. The first part, objectives of departmental management, focused on ways to assist the department head of each executive agency to manage policy questions more effectively, particularly as they related to formulation and implementation. It also addressed the promotion of coordination, both within the department and with other executive agencies, and how and why the energies of the operating units must be liberated. Specifically, MacMahon argued that administrators who handle the "mass" must be able to detect items that involve unanswered points of policy and those that require further inter-departmental consideration. The department must be able to elicit information promptly from any of its parts. Finally, the central organization in a department can provide more useful assistance to the operating units by ensuring that bureau heads receive appropriate amounts of attention and an early answer when they have plans for approval (pp. 5-7).

The second part focused on the emergent pattern, which supported the notion that department heads need a flexible corps of aides, free from routine responsibility, and management consultants to advise them on issues affecting the implementation of the department's policies. The final report supported this recommendation and maintained, "The secretary of a department, as a chief executive of a large organization, requires the assistance of a small number of aides" (p. 39). MacMahon, however, pointed out that the managerial components of an agency cannot work in isolation from the policy dynamics of that same organization; the two are intrinsically connected to one another. The final area MacMahon highlighted in this section involved "incipient departmental managers," who he argued were often unsure of their position and the responsibilities that accompanied it, resulting in "complimenting rather than complementing his political chief" (p. 10). Furthermore, changes in political leadership within

executive departments may lead to uncertainty, a harmful administrative outcome that can undermine unity of the executive.

MacMahon relied on the third part of his report to outline arguments that favored small executive departments and those that supported large executive departments. The fourth part allowed him to provide recommendations for improving recruitment, training, and tenure within the federal service. MacMahon was troubled by the finding that the average amount of service for assistant secretaries of executive agencies was considerably less than the duration of an administration. This resulted, unfortunately, in a lack of organizational communication and poor leadership and contributed to MacMahon's analysis that "departments cannot be realities unless they have a permanent managerial focus" (p. 21). This observation complemented MacMahon's final argument about the need for stable management in executive departments. He pointed out that

Some of the needed elements of experience can be drawn from the civil service itself. . . . Experience has indicated that where appointment and service are on an essentially technical basis, even though participation in controversial policy is involved, there is no infection that starts a contagion of illicit ambition in the civil service. (p. 24)

This argument provides interesting and informative parallels to Charles Goodsell's (2004) position on the case for bureaucracy, but, more important, it continues the line of reasoning that unity of the executive, at all levels of administration, is a critical element in American constitutional democracy.

Executive management and the federal field service. Although MacMahon emphasized departmental management at the federal level, Fesler focused on the federal field service. In his opening, Fesler made an important utilitarian argument about the prime objectives of executive management: "to render administration as efficient as serviceable to the public as possible; economy in the sense of giving the greatest amount of public service per dollar expended follows as a corollary" (p. 29). In our analysis of Fesler's section, we found that he was outlining ways to connect the U.S. federal government to the citizenry in more efficient and effective ways, and he viewed field offices as one way to accomplish this goal. Fesler made recommendations for improving the institutional services of field organizations, expanding coordination efforts of field administration, abolishing the National Emergency Council (which served as the field reporting service), and upgrading public relations at the local level.

Fesler advocated the creation of an agency within the executive branch that would be solely responsible for the coordination of the federal field service. This agency would comprise 10 to 12 administrators who would settle disputes between officials and offices of different federal agencies, hold annual statewide informational meetings for all federal agencies that coordinate field service efforts, compose administrative studies on a functional or territorial basis that focused on the operation of federal agencies, and act in an advisory capacity to federal business associations in their efforts to work effectively with local businesses and social organizations. Although Fesler's proposed agency was in its infancy as far as the specifics of how it would be structured, he reiterated throughout his analysis that such a proposal was an important attempt to create stronger unity within the executive by means of improving public sector management at the highest levels of government and within the federal field service. As Fesler noted,

Experience with the attempts of agencies to perform some of the functions of executive management in the field has shown all too clearly that proposals which, on paper, appeared sound, have failed because of poor personnel in the field or because of poor direction from Washington. (p. 46)

Government corporations and independent supervisory agencies. In the last section of this study, Emmerich focused on the value-added dimension government corporations and independent supervisory agencies bring to the federal government generally and to executive branch management specifically. This is the only section of the entire five accompanying studies that was copied verbatim into the final report that President Roosevelt submitted to Congress.¹¹ Emmerich argued that "the government corporation is a useful and efficient means of carrying out powers granted [to] the Federal Government under the Constitution" (p. 49). This exact point was made in the final report. Emmerich was particularly interested in the emergency purposes and economic services and specific examples, such as hydroelectric projects, that government corporations provided to the federal and state governments. From a managerial perspective, however, Emmerich was quick to point out that although government corporations provide important and needed services to the state and its citizenry, they must comply with the norms and values embedded within our constitutional republic: "The supervisory techniques must be suitable to the corporate form but must ensure efficient operation, public accountability, responsiveness to popular will, and integration with the whole task of executive responsibility for management" (p. 49).

The authors of the final report supported Emmerich's analysis of the purpose of the corporation. Both reports concluded, "By the use of self-sustaining business corporations, it is frequently possible for the Government to provide an economic service of national importance without entering directly into business itself, thereby obviating additional burdens on the Federal Treasury" (p. 50, Study IV; p. 44, final Brownlow Report). Emmerich provided several examples in American history to support his analysis of the purposes of the corporation in American government—notably, Alexander Hamilton's establishment of the first Bank of the United States in 1791 and the Supreme Court's landmark decision in *McCulloch v. Maryland*.

Emmerich defined federal business corporations as those that are

federally chartered and in which private rights are represented by stock ownership and board representation; they are usually authorized as part of a permanent national system and have been engaged principally in the field of banking and credit; they are usually institutions serving either a local community or a region. (p. 50)

Contrastingly, Emmerich defined federal governmental corporations as those

corporations (whether incorporated under federal or state charter) which are federally owned and controlled. In these organizations a majority of the stock is owned by the United States and no member of the board of directors is elected or appointed by private interests. (p. 51)

The final report made the same distinctions; however, Emmerich furthered this analysis by arguing,

In establishing the degree of control and supervision that the Government is warranted in assuming, careful distinction must be made, however, between corporations that are, in fact, self-sustaining and self-financing and those that rely upon financial assistance from the Government. (p. 52)

Emmerich's study, and the final report, argued that federal charters were more advantageous than those administered by the individual states because when the federal government decided to charter a corporation under the laws of the various states, conflicts almost always emerged between the two jurisdictions. Discrepancies in tax policy, jurisdiction, and authority over the conduct of business corporations that had state charters were the primary ways, according to Emmerich, states hindered the implementation of government corporations.

The final report listed the exact recommendations that Emmerich made in Study IV. Emmerich maintained these recommendations provided the necessary safeguards to enable corporations to play a valuable role in the public policy process. These recommendations included (a) placing business corporations under special supervisory agencies within appropriate departments of the federal government; (b) placing each governmental corporation under a supervisory agency in the appropriate department; (c) affording the supervisory agency, whenever possible, semiautonomous status in a department, when it proves desirable to preserve the independence of the agency; and (d) refusing to allow the boards of directors of corporations to divide management work among themselves, instead assigning the task of corporate administration to a president or general manager who reports to the board (p. 53).

Emmerich's objective for this study was to enhance the power of the U.S. federal government and the power of the president by recommending ways to protect government and business corporations from state regulatory restrictions. Our analysis of these recommendations provides another informative example that illustrates how the principle of unity of the executive was a central theme highlighted within each of these studies.

**STUDY V: THE EXERCISE OF RULE-MAKING POWER AND
THE PREPARATION OF PROPOSED LEGISLATIVE MEASURES
BY ADMINISTRATIVE DEPARTMENTS BY JAMES
HART AND EDWIN E. WITTE (1937)**

BIOGRAPHICAL PROFILES

Hart was a student of W. F. Willoughby at Johns Hopkins University. He later became an instructor of political science at the University of Michigan, associate professor of political science at Johns Hopkins University, and professor of political science at the University of Virginia. His major works include *Tenure of Office Under the Constitution* (1930), *Essays in Political Science: In Honor of Westel Woodbury Willoughby* (1937), *The American Presidency in Action 1789* (1948), and *The Ordinance Making Powers of the President of the United States* (1970, 2nd ed.).

Witte is regarded by most as the father of Social Security. He earned a doctorate in economics from the University of Wisconsin, where he studied under John R. Commons. Witte referred to himself as a "government man" because he had spent most of his professional career

working in the public service, holding more than 30 governmental positions, 9 of them full-time. In this capacity, he worked for Congressman John M. Nelson, the U.S. Commission on Industrial Relations, the Wisconsin Legislative Reference Library, the Committee on Economic Security, and the War Labor Board during World War II. Witte, however, is remembered most for his service as executive director of the President's Committee on Economic Security, which drafted the Social Security Act of 1935. In that same year, he defended this legislation before the House Ways and Means Committee and the Senate Finance Committee.

In addition to Witte's stellar career as a practitioner, he also made important contributions to public administration and political science scholarship. He was a professor and lecturer in the Department of Economics at the University of Wisconsin from 1933 to 1957 and served as chair of the department for 12 years. He greatly influenced the field of political economy, particularly in the areas of labor economics, governmental regulation of business, and social security. Witte's major works include *The Government in Labor Disputes* (1932), *Social Security Perspectives* (1962), and *Development of the Social Security Act* (1963).

FROM CHAOS TO ORDER: RULE-MAKING AND WRITING LAW¹²

Hart and Witte divided their 66-page study into two sections. The first, authored by Hart, focused on rule-making, and the second, prepared by Witte, addressed proposed legislation written by administrative officials. Both authors expressed concern about the growing power of administrative agencies and their role in writing and interpreting laws and regulations. Hart and Witte's recommendations were not highlighted in the final Brownlow Report. Future research may shed some light on this interesting and important area of scholarly inquiry.

Delegated rule-making power and executive unity. Hart began his discussion by arguing that the rule-making power of federal administrative agencies was central to the problems of administrative management. He made the case that such power was a direct result of the delegation doctrine (Aranson, Gellhorn, & Robinson, 1982; Gellhorn, 1987; Sargentich, 1987), which he traced back to the administration of President George Washington. Hart astutely acknowledged that the delegation of power from the legislative branch to administrative agencies is a necessary requirement of modern government; the delegation of rule-making power is no exception. He asserted that agency rule-making is a

viable mechanism for “introducing the rule of law at the administrative level” (p. 3).¹³

That said, Hart expressed uneasiness about the rapid growth in the number of federal administrative agencies (115 in 1937) and their increasing exercise of delegated rule-making power. Hart was especially critical of Congress for what he described as the “splitting up of the Executive Branch of government through the creation of independent commissions” (p. 7). He warned that if these trends continued unchecked and without adequate oversight, the very foundation of American constitutional democracy would be at risk. Drawing on Hamilton’s argument in *Federalist 70*, Hart maintained that executive unity would be undermined if the president was not given the power to control and supervise the rule-making activities of administrative agencies. The following passage is a clear expression of this point of view:

Unless the president is able to supervise rule-making, the *unity of the Executive* [italics added] which the *Federalist* [italics added] emphasized is in danger of being destroyed. In the last two decades Executive unity has been especially threatened by the multiplication of regulatory boards and commissions, some of which possess extensive rule-making powers and others of which do what in effect amount to rule-making as a byproduct of their so-called quasi-judicial functions. . . . The strict application of the *Federalist* [italics added] doctrine of *the unity of the Executive* [italics added] calls for vesting rule-making powers in the heads of the appropriate departments. . . . The surest way to safeguard the public is to place the exercise of this discretion [rule-making power] directly under the control and hence under the unique responsibility of the President. One-man responsibility to the President, in turn is, preferable to decisions by boards, for the reason that a board is a screen behind which responsibility can be hidden and defeated. (p. 4)

To preserve executive unity, how should the president control and supervise the rule-making powers of department heads and, in turn, administrative agencies? Hart answered this question by suggesting that the president should use his “general power of direction” and implement five specific recommendations: (a) regularization of the rule-making process at the departmental level, (b) extension and improvement of the use of prenatal procedural safeguards designed to provide group consultation, (c) insurance of adequate postnatal publicity, (d) coordination of federal rule-making, and (e) prescription of uniform regulations governing the service of institutional operations of the executive branch (p. 4).

Hart’s first recommendation was designed to bring some order to what he described as a chaotic, inefficient, and haphazard rule-making process

spinning out of control. He was especially critical of the fact that many rules were carelessly drafted by individuals (usually lawyers) with little or no technical expertise in the area. This resulted in the issuance of poorly drafted rules and regulations that were inconsistent in form and, in many instances, raised troubling questions of legality. Hart viewed the regularization of rule-making at the department level as a suitable remedy for the ailing rule-making process (p. 27). To achieve regularization, Hart recommended that the president issue an executive order prescribing a “systematic procedure for the flow of rules in the course of their preparation” (p. 4). He argued that this systematic procedure should be located in a “single permanent official” assigned responsibility for each major aspect of the rule-making process (p. 4). Here again, we see the application of the executive unity doctrine articulated by Hamilton in *Federalist 70*.

Hart’s second recommendation was designed to ensure group consultation during the early—or what he called the prenatal stages—of the rule-making process (p. 27). When Hart uses the term *group*, he is referring to special interest groups. Hart argued that rule-making power, like most other types of power, is subject to abuse. Though such abuses may take different forms, he was primarily concerned with the power and influence of special interest groups:

In rule-making the principal danger is that pressure politics will weaken the proposals worked out by experts. In a large department, the bureau may be practically autonomous; and if the bureau officials are political appointees, the rule-making power will be exercised by politicians who bear no effective public responsibility to the general public. Or, if the department head interferes with the exercise of the power, that is apt to be the result of pressure politics. . . . The dangers of pressure politics arise particularly from the fact that it tends to cause more consideration to be given to the views and interest of articulate, well organized, and economically (and hence politically) powerful groups than to the vague public interest, or the interest of weaker groups, or the interest of such an unorganized category of persons as consumers. (p. 26)

Hart conceded that special interest groups are a permanent fixture of the American political landscape. Instead of ignoring their existence, he suggested that special interest groups be brought out of the smoke-filled backrooms of the halls of power and given a public arena to voice their opinion. According to Hart, this strategy would provide a safeguard for the American public because it offered an opportunity for powerful, competing interests to air their concerns and differences in a transparent way, thus minimizing the abuse of power. As a means of operationalizing the transparency strategy, Hart advocated the extensive use of

advisory committees, notice and formal hearings, publication of draft regulations, informal contacts with groups affected, and a progression from voluntary to mandatory standards (pp. 29-32).

The third recommendation, "the issuance of postnatal publicity," focused on activities of administrative agencies after the issuance of proposed rules and regulations. This recommendation suggested that adequate publicity regarding proposed rules is deemed an important requirement for reforming the rule-making process. Hart stated that the president should use his "general power of direction to insure the postnatal safeguard of adequate publicity, so that the rules and regulations may be brought to the attention of those whom they apply" (p. 35).

Hart concentrated on the structure and organization of the *Federal Register*, a publication created by an act of Congress in 1935 to publicize executive orders and other documents relating to the rule-making activities of federal administrative agencies. He suggested that although the creation of the *Federal Register* was an improvement over what had existed before (the absence of a central publication publicizing the rule-making activities of agencies), it was poorly organized and difficult to read and navigate. Surprisingly, but consistent with Hart's commitment to the doctrine of executive unity as expressed in the president's "general power of direction," he recommended a range of seemingly technical and minute changes such as adding a note to regulations or rules explaining changes and suggesting that the form of the *Federal Register* be changed to a "ring binder for rules and regulations" (p. 36).

Hart's fourth recommendation addressed the need to coordinate the rule-making process across federal agencies. He contended that the lack of coordination was a major problem in the formulation of public policy in general and rule-making in particular. Hart asserted that poor interagency coordination contributed to inefficiency and unnecessary conflict between agencies. Again, he argued that the president should use his power of direction to issue an executive order mandating procedures intended to improve interagency coordination. These procedures would involve some form of prenatal clearance of rules and regulations by the Bureau of the Budget. According to Hart, this would minimize conflict among federal agencies.

The fifth and final recommendation pertained to the president's role in ensuring the uniformity of rules and regulations. Hart characterized the president as the "general manager of Federal administration" (p. 43). In performing this role, he argued that the president has the overall responsibility for ensuring the effective and efficient operation of institutional activities of federal administrative agencies. Drawing on Willoughby's (1927) conceptualization of institutional activities, Hart

suggested that the president establish uniform rules and regulations to manage institutional activities such as budgetary policy and practice, financial administration, personnel administration, administrative research, and planning (p. 43). He recommended that the president use the “rule-making technique in the exercise of his general power of direction” to achieve this end. Hart acknowledged that the scope and complexities of federal administrative agencies made it extremely difficult to ensure total uniformity of all rules and regulations. With this in mind, he recommended that the president use the Bureau of the Budget as a staff agency to clear rules and regulations. According to Hart, the Bureau of the Budget would serve as a clearinghouse, thereby ensuring that specific institutional activities conformed to presidential policy. This, in turn, would allow the president to assume full responsibility as the “general manager of the business aspects of the Federal Government” (p. 43).

Writing law: The quest for coordination and control of administrative agencies. Witte was a seasoned public service veteran. The extensive experience of this government man was clearly reflected in his in-depth understanding of the nuisances and, in turn, the important role of federal administrative agencies in the legislative process. Witte began his discussion by outlining several principles that should govern the legislative activities of administrative agencies. These principles, 16 in total, addressed the constitutionality and day-to-day practices of administrative agencies. Witte was quick to point out that the U.S. Constitution afforded the legislative branch of government the primary responsibility for determining legislative policies; administrative agencies should always be cognizant of this fact. It was no coincidence that Witte’s first principle addressed this subject:

Under the Constitution, Congress is the Legislative Branch of the Government and must determine all legislative policies. It has final control of the organization of all administrative departments and the exercise of administrative powers. The legislative activities of administrative departments, consequently, should be developed with this fundamental principle ever in mind and should be directed toward giving the Congress the complete information it needs for the wisest exercise of its powers. (p. 50)

Although Witte acknowledged the constitutional supremacy of the legislative branch in determining legislative policies, he did not shy away from arguing that the executive branch and, in turn, administrative agencies, also have a legitimate constitutional role in this sphere of political action. Hence, Witte’s second principle is thus:

The founding fathers wisely created *a single not a plural Executive* [italics added]. The Constitution centralizes responsibility for efficient administration in the President. The President, moreover, is specifically charged in the Constitution with important duties in relation to legislation. It is his duty under article II, section 3, to commend to the Congress, "from time to time," such Measures as he shall judge necessary and expedient," and he is expressly authorized in article II, section 2, to require the "*principle Officer in each of the executive Departments*" [italics added] to give him his "Opinion, in writing . . . upon any subject relating to the Duties of their respective Offices. (p. 50)

With these two principles as an overarching framework, Witte focused his sights on the legislative activities of administrative agencies. He specifically addressed the manner in which administrative agencies prepared drafts of proposed legislation. Witte was critical of the overall process because it lacked coordination and systematic oversight. Echoing Hart's concern outlined in the first section, Witte described a chaotic situation in which administrative agencies ran amok in drafting proposed legislation. He asserted that many of those drafting proposed legislation were not technically competent to do so. Witte also noted that it was not uncommon for bills initiated within administrative agencies to reach the Congress without the knowledge of the agency head.

To remedy this chaotic situation, Witte offered recommendations similar to those made by Hart. It was clear that he, too, relied on *Federalist 70* as an underlying philosophical framework:

Efficient administrative management must take account of the legislative activities of administrative departments. In the interest of efficient management and in accord with the provisions of the Constitution creating a single Executive and vesting in him the duty of making recommendations for legislation to Congress, the President must be able at all time to control the legislative activities of the departments. (p. 63)

Like Hart, Witte recommended that a central clearance agency assume responsibility for all bills originating within the executive branch of government. He identified several possibilities including the Department of Justice, the Bureau of the Budget, the White House, and at the departmental level. Witte settled on the Bureau of the Budget because most bills drafted by administrative agencies have financial aspects. The Budget and Accounting Act of 1921 required that such bills be cleared through the Bureau of the Budget. From Witte's perspective, this made the bureau a logical choice. His proposal required that the Bureau of the Budget assume an active role in examining proposed legislation drafted

by administrative agencies. According to Witte, not only should the bureau examine proposed legislation not only from the standpoint of its financial implications, but it should also take a much broader view and examine the effects of legislation on the entire government.

As Hart had done earlier, Witte called for the development of experts who would be trained in writing legislation. This was of utmost importance because poorly drafted and ill-thought-out legislation had a harmful effect on the American political system.

CONCLUSION

The five accompanying studies that represent the complete Brownlow Report illustrate the contemporary relevance of the nation's state papers to public administration theory and practice. Within these studies, we find that *Federalist 27* laid the foundation for *Federalist 70*. The people's confidence in government not only is proportionate to the goodness or badness of its administration but also, as these studies show, provides the necessary framework for the unity doctrine, a point of view these authors illustrate with profound understanding and confidence. The President's Committee on Administrative Management did not produce a study whose primary objective was simply to improve public management; rather, this was a study about improving democracy within the American constitutional republic. The authors' recommendations and suggestions for improving executive branch dynamics demonstrate the connection between good management and constitutional tradition. Our analysis reveals that these papers were not written from a managerial perspective but from a constitutional one. Such efforts draw our attention to the practical relevance that the *Federalist Papers* continue to have on contemporary democratic governance. This analysis provides another formative example that the legitimacy of the American administrative state can be found only within its constitutional heritage.

NOTES

1. At the time President Roosevelt commissioned his Committee on Administrative Management, highly contested political battles were occurring among the executive, legislative, and judicial branches of American government. We consider the relevance of the political environment in which Roosevelt was operating as an important historical and contextual underpinning that affected how he viewed the responsibilities associated with

the committee's findings and recommendations. The focus of this research, however, emphasizes the constitutional themes that link each of these papers together and not the political and practical dynamics affecting the U.S. federal government in 1937. We would like to thank Herbert Kaufman for bringing this point to our attention.

2. Conversation between Kaufman and Fesler May 16, 2003. Fesler confirmed Harris's administrative and organizational role in this conversation. Also see Fesler (1987) and Karl (1963).

3. The preface of each report notes,

The statements and recommendations contained in these studies are those of the individual authors as submitted to the Committee as a part of the body of facts to be considered in the preparation of its report, and do not necessarily embody the ideas of the Committee.

However, the relevance of these documents is that some recommendations were included in the final report that President Roosevelt submitted to Congress, whereas others were not. Regardless of whether these recommendations were included, they are both important and historically significant for scholars and practitioners interested in the development of executive branch management in the United States.

4. Guy Adams (1992) and Laurence Lynn (2001) also draw our attention to the importance of administrative history. Adams emphasizes the notion that administrative history produces a genuinely open inquiry in the field, whereas Lynn argues that traditional public administration stood for respect for law, politics, and citizens more so than the customer-oriented managerialism, which barely acknowledges the constitutional nature of the American administrative state.

5. John Rohr (1986), an important scholar in the constitutional school of public administration, provides a formative analysis of the theoretical and practical significance the Brownlow Committee's findings had on the development of the American administrative state in his work *To Run a Constitution*. We have benefited from his scholarship.

6. Although Publius's argument regarding executive unity was in large part a response to the Anti-Federalist's concern that an energized executive would resemble a monarchical form of government instead of a republican one, the authors of the five accompanying studies of the Brownlow Report applied Hamilton's understanding of the unity doctrine to their critique of boards, commissions, regulatory agencies, and the General Accounting Office. The committee's authors argued that the creation of these regulatory and policy agencies undermined the principle of unity of the executive the way Hamilton feared it would be compromised if the nation operated under a weak executive. We maintain that the committee's analysis provides an insightful parallel that illustrates the contemporary relevance of the *Federalist Papers* to current issues affecting democratic governance and to those interested in the constitutional school of American public administration.

7. In discussing the unity of the executive, Hamilton argues, "Decision, activity, secrecy, and dispatch, will generally characterize the proceedings of one man, in a much more eminent degree, than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished."

8. In *Federalist 70*, Hamilton argues that unity would be destroyed under the following circumstances:

Either by vesting the power in two or more magistrates of equal dignity and authority; or by vesting it ostensibly in one man, subject, in whole or in part, to the control and co-operation of others, in the capacity of counsellors to him.

9. See Jacob E. Cooke (1989).
10. For a more detailed account of David's professional accomplishments, see Thompson (1995).
11. See pages 49 to 53 of this study and pages 43 to 46 of the final Brownlow Report.
12. The phrase *rule making* was hyphenated by Hart. We kept with that format for this article.
13. Theodore Lowi (1993), a leading critic of the delegation doctrine, also makes this point.

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