

# Executive Summary

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**T**HE MODERN ADMINISTRATIVE STATE reflects a profound failure of republican self-governance. Today’s federal agencies wield immense power and broad discretion, with too little accountability to the people, and too little regard for the rule of law.

But this is not a failure of the agencies themselves. Rather, it is the collective failure of our federal government’s three branches. The legislative, executive, and judicial branches have chosen to cede such power and discretion to the administrative state; they have eschewed the use of their own constitutional powers to direct, channel, and restrain its energy and will.

Administrative agencies are not inherently bad—quite the contrary. Among the many deficiencies of American’s first national government that our Constitution remedied was an utter lack of administrative capacity. To that end, the Constitution established the executive branch and alluded to “Departments” that would administer law and federal policy. When properly limited and guided by the three branches of government, our administrative agencies have played a crucial role in constitutional government.

Today’s administrative state is something starkly different. After two centuries of growth and change, federal agencies have become the government’s predominant lawmakers and policymakers. And in recent years, agencies have sought to unilaterally govern the most significant issues of our time, stretching statutes beyond the breaking point to assert control over the nation’s economy, the Internet, and even the exercise of religion. They do it in lieu of Congress—or in defiance of it.

But just as all three branches of government are responsible for the administrative state’s overgrowth, so must all three play a role in its reform. To that end, this report’s chapters urge the following reforms:

- Congress must reassert itself as “the First Branch” in our constitutional government, by reawakening its members to the need for active governance of the administrative state, and by developing the institutional tools necessary to effectively constrain and oversee the agencies.
- The President must manage the administrative state much more energetically and effectively. He must take actual responsibility for his agencies’ regulations. To that end, the President and Congress must strengthen the White House’s Office of Information and Regulatory Affairs (OIRA) to reflect its actual role as the headquarters of the administrative state. The White House should manage the agencies’ planning process more effectively, by holding each agency to a “regulatory budget” and by carrying out its own regulatory oversight role much more systematically and transparently. Finally, the White House must improve the information and methodologies upon which the administrative state relies, by setting consistent standards across all agencies, and by actively supporting better and more diverse economic research.
- Finally, with respect to judicial review and agency process, Congress must reform administrative law to reflect administrative reality. But, crucially, Congress must reform judicial review and agency process together, not separately, by re-calibrating judicial review to create the incentives for better agency processes. To that end, Congress should not abolish “judicial deference,” because judicial review is not an end in and of itself; it is a means toward the greater end of good governance. So Congress should structure judicial review—including judicial deference—in a way that spurs agencies to comply with heightened procedural requirements instead of evading them.

These proposals are not anti-government, or even anti-regulatory. In both substance and motive, they are recommendations for making government work better—with more transparency, more accountability, and greater effectiveness. They attempt to align the agencies’

incentives with the public's, in terms of both republican self-government and the rule of law.

In all of this, the answer will not be found exclusively in a single branch of government, let alone in a single methodology. The administrative state's reform requires more than just more aggressive judges, or more exacting cost-benefit analyses. It requires, in Publius's words, "republican remedies" to the diseases most incident to administrative government.

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