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*The Continuing Need for an Administrative Conference*

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Abstract by Ryann Kathleen Bernard

Despite the written Constitution and the Administrative Procedure Act, the federal administrative process is characterized by a significant degree of procedural flexibility and agency discretion. Such flexibility and discretion requires independent oversight to keep the process fair, effective and accountable; this is a role that used to belong to the Administrative Conference of the United States (ACUS) and it is a role that is still needed.

In 1964, the ACUS was established with the purpose of determining means to reduce delays and costs in administrative proceedings, but not to focus on agency policy. The ACUS was meant to be a mix of public and private figures who met twice a year, and its work consisted mostly of enacting recommendations. Several government-wide and agency-specific ACUS recommendations were implemented and people were encouraged to use less-costly alternatives than formal administrative litigation. The ACUS removed politics from procedural issues—thus avoiding many conflicts; however, there were difficulties when the ACUS was faced with issues that were philosophically or jurisprudentially divisive. Having a permanent staff allowed the ACUS to see projects through from beginning to end and the ACUS served a coordination function for the field of administrative law, publishing books and arranging conferences.

In 1995, Congress dissolved the ACUS, claiming its usefulness had come to an end. Today, the author concludes, there is no one party who is able to properly oversee administrative processes. The courts defer to the decisions of administrative agencies and congressional oversight has always been episodic, while agencies themselves do not have the resources needed to properly self-examine and scholars are rarely attracted to the arcane, agency-specific details involved. The author argues that a permanent governmental body is needed. Such a body could garner strength from the best that scholars, members of the bar, government officials, and experts from agencies have to offer. A separate body could remain and be perceived as objective and would allow a career staff to develop the expertise necessary to implement recommendations. This new entity should serve an advisory role, be smaller than the ACUS in terms of members and of permanent staff, and could perhaps affiliate with a law school. It is unlikely that the ACUS will be reestablished, but the author suggests that it should be reinvented.