

David H. Rosenbloom

*1946: Framing a Lasting Congressional Response to the Administrative State*

50 Admin. L. Rev. 173 (1998)

Abstract by Ryann Kathleen Bernard

1946 saw the creation of the Administrative Procedure Act (APA). The APA is a focal point of the study of administrative law—it is the basic law for regulating federal administration and for structuring judicial review of agency actions and decisions. The author reconstructs Congress's understanding of the APA's constitutional role and analyzes the blueprint it developed for the supervision of federal administration.

The author posits that Congress' creation of the APA resulted in a lasting, powerful, political dynamics that have frustrated contemporary administrative reforms. The APA is the product of the increasing power of the executive branch and Congress' search for a way to maintain its supremacy. Congress, which increasingly did not have the time to perform all of its political and constitutional functions, used the APA to establish that administrative agencies were immediate extensions of Congress. Opponents of the APA feared it was a one-size fits all approach, while proponents thought individualized treatment of each agency was not an effective strategy for effective control or supervision. The APA provided Congress with the tools to influence agencies and draw them into the legislative sphere. It also allowed Congress to focus on pork barrel projects that increased incumbency.

However, by the 1970s, problems with the APA became obvious. It no longer secured incumbency and presidents no longer supported it. Yet, Congress has refused to abandon the APA and the author concludes that the APA remains vibrant and shows no signs of becoming obsolete.