

Rethinking Parties and Politics in Administrative Law

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Michael A. Livermore, [Political Parties and Presidential Oversight](#), 67 *Al. L. Rev.* 45 (2015).

Ever since courts have recognized the legitimacy of political influence on agency policymaking, scholars have struggled to formulate a model of Administrative Law that describes an appropriate balance between such influence and agency expertise. The current reigning consensus – the Presidential Control Model – fails to satisfy many critics, especially in light of recent Presidential assertions of greater and greater power over the apparatus of administrative government. More recently, the heightened partisanship of federal government has added to concerns that presidential control does not assure that the administrative state is sufficiently responsive to the general polity and the public interest. Thus, it is surprising that up until now few scholars have explicitly analyzed the role of political parties in the operation of the federal administrative state, and none have tried to use the workings of contemporary parties to formulate a normative account of how politics should inform agency policymaking. [Political Parties and Presidential Oversight](#) by [Michael Livermore](#) takes a large and impressive first step to fill that analytic vacuum.

Livermore begins by reviewing the replacement of the local, patronage-driven party system that existed prior to the Kennedy Administration, with the modern national, professional and programmatically driven party system. He then summarizes arguments that the modern party system, along with candidate-centered politics, will drive Presidential elections towards candidates that implement the policy preferences of the majority or, more precisely, the median voter. Livermore rejects the candidate-centered model because Presidents do not seem to implement unifying policy agendas that reflect the position of the median voter. He therefore reinvigorates a theory of “responsible party government.”

This theory posits that parties provide programmatic platforms that distinguish between their respective presidential candidates. Federal elections become a competition for each program to attract voters. The Party that wins the White House gets four years to implement its programs. The party out of the White House uses its position in Congress and more generally its party platform to criticize current administration programs, with the ultimate goal of convincing the polity to reject the incumbent party’s presidential candidate in the next election. In essence, parties provide competing programs, and help those elected to implement the programs on which they run.

Applying responsible party government to the administrative state, Livermore notes that the President can personally participate in a very small percentage of decisions made by the executive branch, and hence the President depends on loyal and capable appointees. Livermore notes that choosing officials from those active in programmatically driven parties helps assure that the appointee will share the party’s and hence the President’s policy vision. He also notes that party connection with issue networks can help the President choose effective officials. More importantly, the theory of responsible party government provides a sounder justification for the presidential control model than does the median voter hypothesis. Even though the President’s party’s programs usually will not represent the preferences of the median voter, the party whose candidate wins the White House must be given the opportunity to implement its programs, and this is best accomplished by close White House supervision of the apparatus of the administrative state.

Livermore, however, recognizes that the theory of responsible party government can also lead to problems with administrative governance depending on the role parties play in Congress, and the power of the out-of-White-House party in the legislature. One role of parties in Congress is to solve collective action problems created by intraparty disputes among members of Congress. For the out-of-White-House party, leadership limits the party’s legislatively proposed programs to those consistent with the party’s programmatic vision that competes with that of the President.

But Livermore notes that such mechanisms work less effectively for administrative oversight, which is more decentralized than the process of enacting legislation. For oversight activities, party dominance will obtain only when there is “sufficiently homogenous party membership together with institutional context that places power in the hands of a leader who is responsive to the median-party member.” When such conditions are not present, the nonincumbent party cannot propose a coherent programmatic alternative to that of the President, making the theory of responsible party governance a less persuasive justification for presidential control.

Livermore also addresses a problem that can arise even when the nonincumbent party does adopt a coherent alternative to the President’s programs. Essentially, partisanship in Congress can lead the out-of-White-House party to do everything in its power to sabotage the President’s programs, even if sabotage is against the best interests of the nation or even of the constituents of the opposition party members of Congress. The nonincumbent party’s proposed programs will look better if the President’s programs are made to fail. Thus, without an alternative positive vision of party influence in Congress, Livermore concludes that “the best that can be done is to limit congressional influence [over agencies] to the absolute minimum.”

Finally, Livermore proposes an alternative normative project, which he calls “responsible party administration,” that “seeks to integrate party government with traditional administrative values [of coherence and vigor, representativeness, and legality].” Livermore’s project is pragmatic: it does not provide an overarching set of principles to implement responsible party administration. Rather, his project seeks to highlight and clarify tradeoffs that must be balanced between competing priorities for the administrative state. He proposes doing so both by improving party responsibility and explicitly vindicating administrative values in the context of particular questions of administrative law, such as structuring judicial review and executive review.

What is most impressive about “Political Parties and Presidential Oversight” is its endeavor to incorporate the structure and role of current political parties into the debate on fundamental questions of administrative law. Livermore does not have all the answers, and the answers he provides are often contingent on current party practices. But, this Article provides an excellent start to this endeavor first by cogently reviewing and analyzing various theories of political parties in government, and then carefully identifying ways in which the theory of responsible party government can illuminate tradeoffs inherent in the administrative state. It is a must read for those who think about how to incorporate politics into the current administrative

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