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## *The Fourth Pillar: America's Administrative Agencies*



*Dear United States of America,*

The Constitution describes three branches of government. Every American schoolchild can name them. What the Constitution does not describe — because it could not have, in 1787 — is the vast apparatus that has grown up alongside those three branches over the past century and a half: the federal administrative agencies. The Environmental Protection Agency. The Food and Drug Administration. The Securities and Exchange Commission. The Federal Reserve. The Federal Aviation Administration. There are now hundreds of them. They write rules that carry the force of law, enforce those rules, and adjudicate disputes arising from them — which is to say they legislate, execute, and adjudicate all at once. To a constitutionalist of the founding era, this would have been a deeply uncomfortable observation. To most Americans today, it is the most normal thing in the world. The story of how this happened is, in many ways, the story of the twentieth century. The federal government the founders designed was lean by intention. It was meant to do certain things — coin money, raise armies, regulate interstate commerce, conduct foreign policy — and leave the rest to the states and to individuals. For roughly the first hundred and fifty years of the republic, that is what it did. Then came the Great Depression.

Franklin Roosevelt's New Deal, launched in the early 1930s in response to the worst economic crisis in American history, fundamentally changed the relationship between the federal government and everyday life. New agencies were created at a pace that left observers breathless — the SEC to regulate financial markets, the FDIC to insure bank deposits, the NLRB to oversee labour relations. The logic was straightforward: the problems of a modern industrial economy were simply too complex and too fast-moving for Congress alone to manage. Legislators could not be experts in aviation safety, pharmaceutical chemistry, environmental toxicology, and monetary policy simultaneously. Agencies staffed by specialists could. Congress would set the broad goals; the agencies would figure out the details. It was a practical solution to a practical problem. It was also, depending on your constitutional philosophy, either a brilliant adaptation of the founding framework to modern conditions, or a quiet revolution that the founders never sanctioned.

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Take the Environmental Protection Agency, founded in 1970 under President Nixon — a Republican, which is worth noting given how the agency has become a focal point of political debate in recent decades. The EPA was created in response to a genuine crisis: the Cuyahoga River in Cleveland had caught fire — literally, from the industrial waste choking it — oil spills were fouling California beaches, and smog was sitting over American cities thick enough to taste. A public increasingly alarmed by the visible cost of unchecked industrial growth was demanding that someone does something. It was not a not a political convenience. It was a practical response to conditions that no one seriously disputed. Over the following decades it became one of the most consequential regulatory bodies in the world, setting standards for air and water quality that measurably improved public health and reshaped entire industries.

Whether one believes it has since overreached its mandate, or not reached far enough, is a legitimate debate. That it did something real and necessary in its early decades is difficult to argue with. The EPA is, in this sense, a good emblem for the administrative state as a whole — the fourth pillar of American government, one the Constitution did not anticipate, but whose legal foundations it nonetheless provided. The argument against it is not trivial: if Congress delegates its lawmaking authority to unelected experts, who exactly is accountable to the voters? The argument for it is equally serious: modern governance is simply too complex for 535 legislators – 100 senators and 435 representatives – to manage alone, and the alternative to expert agencies is not pure democracy but paralysis. This tension has never been fully resolved, and in recent years it has intensified considerably, as successive administrations have pushed and pulled at the boundaries of what agencies can do, and courts have begun to scrutinise their authority with renewed scepticism. The founders designed a government for a nation of four million people living along an Atlantic coastline. That the framework has stretched to accommodate a continental superpower of more than three hundred and thirty million is either a testament to its genius or a sign of how far it has been asked to travel. Probably both, one likes to think.

*Yours, with great admiration and transatlantic devotion,*

## **Franz J. Heidinger**

Senior Partner, Alix Frank Attorneys at Law | Vienna

University of Virginia, School of Law & Fulbright Alumnus

Vice President, Women in Law Initiative | Secretary General, Justitia Awards

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