

Making Presidential Democracy: Revisiting the Executive Reorganization Act of 1937

We live in an age of presidential democracy. As even a casual observer can see, the contemporary United States channels much of its putatively democratic rule through the office of the national executive. This is surprising. It is not how the Constitution was supposed to work. It also flies in the face of strong anti-executive traditions in American political thought, institutional design, and public law. Remarkably, American state builders empowered the president despite all this, and successfully grounded the expanded executive in argument and law.

This paper reconstructs and analyzes a key part of that story: the development of the institutional and intellectual underpinnings of the modern presidency through the Executive Reorganization Act of 1937. It argues that the Act and its accompanying report sketched the blueprint for the presidential democracy of today. Although the 1937 bill failed to pass, its vision was largely realized over the next fifty years anyway. The rise of modern presidential democracy was not haphazard or accidental. It constituted the culmination of a longstanding, theoretically sophisticated movement to make mass representative democracy work.

I begin by tracing the emergence of that 1937 vision from earlier efforts at reform. I argue that it was the product of a New Deal reimagining of an older Progressive tradition centered on “responsible government.” At the turn of the twentieth century, thinker-reformers like Woodrow Wilson and Frank Goodnow championed fundamental state reorganization to make elected officials more accountable to their constituents and create a closer connection between voters and policy. At the heart of their proposals were plans to empower the executive branch through administrative centralization, civil service professionalization, and the development of an executive-led budgeting process. These reforms, they believed, would help overcome the single greatest obstacle to responsible government: the separation of powers, which frustrated the state’s ability to achieve its ends while obscuring responsibility for its failures.

The members of the President’s Committee on Administrative Management, which formulated the 1937 Act, adapted and transformed Wilson and Goodnow’s ideas. Students of Progressive Era reform and veterans of the movements for state and local government reorganization, they shared many of their teachers’ concerns. Unsurprisingly, they followed their key recommendations. However, the emergence of fascism in Europe in the 1930s inflected their thought decisively. It pushed them to distinguish their envisioned American regime from its European counterparts, even while advocating for not-dissimilar government reforms, such as greatly strengthening the national executive. This was no easy distinction to make, particularly since Progressive Era reform thought could be a close cousin of outright proto-fascism. The President’s Committee’s solution involved embracing the doctrine of separation of powers. So doing, they rejected their teachers. But this created new possibilities for legitimating their proposed reforms and harmonizing emergent presidential democracy with American law.

Although my argument is novel, it builds on and revises an existing and growing literature on the Reorganization Act. In the last decade, scholars of administrative and constitutional law have begun to appreciate the importance of the 1937 bill and the Report of the President’s Committee. However, this scholarship has so far remained narrowly focused on technical questions such as

the pedigree of “internal administrative law” or the history of the theory of the “unitary executive.” It has not sought a broader understanding of the Act and its significance, and does not engage deeply with the prior historiography or make much use of primary sources. The recent scholarly interest in the Act is best interpreted as a welcome invitation to further research. My paper takes it up.

The argument advances through an analysis of published and archival sources. It sits at the intersection of intellectual history, legal history, and American Political Development, and makes use of methods distinctive to each. Throughout, it pays particular attention to the transnational dimension of intellectual debate and institutional development that was characteristic of the late nineteenth and early twentieth century. Its primary aim is to revisit the Executive Reorganization Act of 1937 in its original context to uncover the unsettling foundations of the presidential democracy Americans live with today.