

ADMINISTRATIVE DECENTRALIZATION

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ADMINISTRATIVE DECENTRALIZATION

DAVID FONTANA *

Abstract: The legitimacy of the administrative state has been challenged since it was first created. These challenges to the legitimacy of the administrative state in theory have transformed into a crisis in reality. The second Trump Administration dismantled several administrative agencies and disrupted many other agencies in its first year in office. In the year before the second Trump Administration, the Supreme Court overturned *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, endangering many core features of the administrative state.

This persistent war over the administrative state now features a newly significant and largely unexamined front. Political and legal leaders from across the ideological and jurisprudential spectrum have started to question whether many of the problems of the administrative state are due to the fact that the overwhelming majority of the most important administrative officials are concentrated by law in a single location: the Washington metropolitan area. The last few presidential administrations across both parties have even pursued reforms to this administrative centralization.

This Article considers for the first time how administrative law does and should treat the geographical centralization of the administrative state in Washington. It provides a descriptive account of the distinctive areas of administrative law dividing authority between officials inside and outside of Washington. Administrative officials outside of Washington play a vital and underappreciated role in the administrative state, but administrative law ensures that this role is a limited one. The administrative state outside of Washington is largely defined by—with important exceptions—its subservience to the administrative state inside of Washington.

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This Article then considers whether and when to redistribute greater authority to administrative officials outside of Washington. Working across different parts of the administrative state, this Article considers examples of decentralizing reforms that further broadly supported administrative goals. Many administrative functions should be performed in Washington because they should be performed by those with a background in and/or a deeper connection to the federal government. The substantial decentralizing efforts pursued by the two terms of President Trump have failed to sufficiently appreciate this point.

In other situations, it can be more constructive to empower officials outside of Washington to a greater degree precisely because they are in a place that is distant and therefore different from Washington. The democratic nature of the administrative state would be furthered by ensuring that more people from more places can more easily work for or with those at the highest levels of the administrative state. The expert capacity of the administrative state would be enhanced by ensuring that expert knowledge from all places can influence the administrative state.

INTRODUCTION

The administrative state has always endured “a strong and persisting challenge to the basic legitimacy of the administrative process itself.”¹ These challenges to the legitimacy of the administrative state in theory have transformed into a crisis in reality. President Donald J. Trump campaigned for his second term in the White House pledging to “shatter the deep state” by targeting “rogue bureaucrats” on day one in office.² At an event one month into the second term of the Trump Administration, one of President Trump’s key advisors, Elon Musk, took to the stage with a chainsaw to make it clear how seriously the Trump Administration was taking this effort.³ The Trump Administration dismantled many agencies, including most dramatically the Department of Ed-

¹ JAMES O. FREEDMAN, *CRISIS AND LEGITIMACY* 10 (1978).

² See *Agenda47: President Trump’s Plan to Dismantle the Deep State and Return Power to the American People*, TRUMP-VANCE 2024 (Mar. 21, 2023), <https://www.donaldjtrump.com/agenda47/agenda47-president-trumps-plan-to-dismantle-the-deep-state-and-return-power-to-the-american-people> [perma.cc/B23N-LVLM] (discussing the second Trump Administration’s plans for the administrative state). During President Trump’s first term, one of his key advisors, Steve Bannon, pledged a “deconstruction of the administrative state.” See Philip Rucker & Robert Costa, *Bannon Vows a Daily Fight for “Deconstruction of the Administrative State,”* WASH. POST (Feb. 23, 2017), https://www.washingtonpost.com/politics/top-wh-strategist-vows-a-daily-fight-for-deconstruction-of-the-administrative-state/2017/02/23/03f6b8da-f9ea-11e6-bf01-d47f8cf9b643_story.html [perma.cc/YN4J-A6EQ] (highlighting the central role that dismantling the administrative state played in Donald Trump’s presidential campaign).

³ Jess Bidgood, *What That Chain Saw Was Really About*, N.Y. TIMES (Feb. 21, 2025), <https://www.nytimes.com/2025/02/21/us/politics/elon-musk-doge-cpac-chainsaw.html> [perma.cc/4VDB-N65V] (“Musk roared—or was he just making a chain saw noise? This, he said, was the chain saw he was taking to the bureaucracy. ‘Chain saw,’ he repeated for effect.”).

ucation⁴ and the United States Agency for International Development.⁵ In the year before the second Trump Administration, the Supreme Court overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*,⁶ and thereby endangered many core features of the administrative state.

This persistent war over the administrative state now features a newly significant and largely unexamined front.⁷ Political and legal leaders from across the ideological and jurisprudential spectrum have started to question whether many of the problems of the administrative state are due to the fact that the overwhelming majority of the most important administrative officials are concentrated by law in a single location: the Washington metropolitan area. The last few presidential administrations across both parties have even pursued reforms to this administrative centralization.

The Supreme Court has always assumed that the administrative state must be “completely centralized” in the Washington metropolitan area,⁸ and scholars have largely agreed.⁹ As scholars started to produce important work showing that an administrative state also exists outside of Washington, the assumption remained that while these officials could be meaningful, they had to remain

⁴ See Michael C. Bender & Dana Goldstein, *Education Department Fires 1,300 Workers, Gutting Its Staff*, N.Y. TIMES (Mar. 11, 2025), <https://www.nytimes.com/2025/03/11/us/politics/trump-education-department-firings.html>. (“The Education Department announced on Tuesday that it was firing more than 1,300 workers, effectively gutting the agency The layoffs mean that the department . . . will now have a work force of about half that size after less than two months with President Trump in office.”).

⁵ See Karoun Demirjian, Stephanie Nolen, Michael Crowley & Elizabeth Dias, *Final Cuts Will Eliminate U.S. Aid Agency in All but Name*, N.Y. TIMES (Mar. 28, 2025), <https://www.nytimes.com/2025/03/28/us/politics/usaid-trump-doge-cuts.html> [perma.cc/24YX-AC7Y] (“The staff of U.S.A.I.D. will be reduced to some 15 legally required positions. The agency employed about 10,000 people before the Trump administration entered office.”).

⁶ *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), overruled by *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

⁷ I am using the phrase “the administrative state” in its broadest way. See Sharon B. Jacobs, *The Administrative State’s Passive Virtues*, 66 ADMIN. L. REV. 565, 574 (2014) (defining the administrative state as “a vast bureaucracy of agencies and commissions in which the majority of law formation, interpretation, and enforcement actually takes place”).

⁸ *United States v. Lopez*, 514 U.S. 549, 557 (1995) (citations and quotations omitted); see also *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 576–77 (1985) (Powell, J., dissenting) (“The administration and enforcement of federal laws and regulations necessarily are largely in the hands of staff and civil service employees. . . . [T]hey hardly are as accessible and responsive as those who occupy analogous positions in state and local governments.”).

⁹ Dave Owen, *Regional Federal Administration*, 63 UCLA L. REV. 58, 58 (2016) (“Conventional accounts of federalism and administrative law generally assume that the federal government is highly centralized in Washington”); J.B. Ruhl, *The Fitness of Law: Using Complexity Theory to Describe the Evolution of Law and Society and Its Practical Meaning for Democracy*, 49 VAND. L. REV. 1406, 1475–76 (1996) (taking the “unmistakable centralization of lawmaking power in the federal government” to mean “unelected, bureaucratic administrative agencies”); Ernest A. Young, *Executive Preemption*, 102 NW. U. L. REV. 869, 870 (2008) (“Agency action thus evades both the political and the procedural safeguards of federalism.”).

entirely secondary.¹⁰ During President Barack Obama's second term, though, many important functions were redistributed to administrative officials outside of Washington.¹¹ Democratic members of Congress supported these efforts and proposed their own.¹² The Trump Administration in its two terms appropriated administrative decentralization as a tool not to redistribute administrative power to those best situated to use it effectively, but as a tool to relocate civil servants it considered disloyal.¹³

This Article considers for the first time how administrative law does and should treat the geographical centralization of the administrative state in Washington. It provides a descriptive account of the distinctive areas of administrative law dividing authority between officials inside and outside of Washington. Administrative officials outside of Washington play a vital and underappreciated role in the administrative state, but administrative law ensures that this role

¹⁰ See Yishai Blank & Issi Rosen-Zvi, *Reviving Federal Regions*, 70 STAN. L. REV. 1895, 1915 (2018) (“[R]egions . . . serve as frontline enforcers and implementers of policies set by central headquarters [R]egions should not make the rules, but rather should simply implement them or ensure that they are properly implemented by others.”); Jessica Bulman-Pozen, *Our Regionalism*, 166 U. PA. L. REV. 377, 388 (2018) (“[F]ederal regional administration is top-down in its approach”); Owen, *supra* note 9, at 61 (“Many of those employees [outside of Washington] do report, directly or indirectly, to superiors in Washington, and federal employees in the D.C. area therefore do exert a disproportionate amount of influence on federal governance. But they do not completely dominate it”).

¹¹ See Ash Carter, U.S. Sec’y of Def., Drell Lecture: “Rewiring the Pentagon: Charting a New Path on Innovation and Cybersecurity” (Stanford University) (Apr. 23, 2015), <https://www.defense.gov/News/Speeches/Speech/Article/606666/drell-lecture-rewiring-the-pentagon-charting-a-new-path-on-innovation-and-cyber/> [perma.cc/N842-JU43] (announcing the creating of a Pentagon outpost based in Silicon Valley and explaining the importance of geographic proximity to innovation hubs to help the Pentagon scout and adopt emerging technology); Jessi Hempel, *DOD Head Ashton Carter Enlists Silicon Valley to Transform the Military*, WIRED MAG. (Nov. 18, 2015), <https://www.wired.com/2015/11/secretary-of-defense-ashton-carter/> [perma.cc/M8DW-KPQ3] (reporting on the Pentagon’s decision to station its new innovation unit in Silicon Valley); John Markoff, *Pentagon Turns to Silicon Valley for Edge in Artificial Intelligence*, N.Y. TIMES (May 11, 2016), <https://www.nytimes.com/2016/05/12/technology/artificial-intelligence-as-the-pentagons-latest-weapon.html> [perma.cc/CB65-TMFV] (“Mr. Carter indicated that bridge building with local[s] . . . was a key reason the new Pentagon office he visited . . . will now report directly to him.”). For a larger discussion of the nature and history of the concept of federal decentralization, see David Fontana, *Federal Decentralization*, 104 VA. L. REV. 727 (2018).

¹² See, e.g., Sabrina Eaton, *Rep. Tim Ryan Suggests Relocating Federal Agencies Outside Washington, D.C.*, PLAIN DEALER (Apr. 20, 2017), http://www.cleveland.com/metro/index.ssf/2017/04/rep_tim_ryan_suggests_relocati.html [perma.cc/ZZG5-9F6W] (reporting that Democrat Representative Tim Ryan suggests federal agencies could operate effectively outside of Washington); Annie Lowrey, *Ro Khanna Wants to Give Working-Class Households \$1 Trillion*, THE ATLANTIC (Apr. 28, 2017), <https://www.theatlantic.com/business/archive/2017/04/ro-khanna-trillion-dollar-plan/524754/> [perma.cc/N3GK-NTAH] (describing Ro Khanna’s proposal to move federal jobs outside Washington alongside investments in higher education and distressed communities).

¹³ See, e.g., Coral Davenport & Lisa Friedman, *With Ready Orders and an Energy Czar, Trump Plots Pivot to Fossil Fuels*, N.Y. TIMES (Nov. 8, 2024), <https://www.nytimes.com/2024/11/08/climate/trump-transition-epa-interior-energy.html> [perma.cc/G87P-CLRJ] (noting how “Mr. Trump’s vision of relocating tens of thousands of federal employees” was an important agenda item and part of President Trump’s stated goal of replacing “the deep state” with “patriots who love America”).

is a limited one. The administrative state outside of Washington is largely defined by—with important exceptions—its subservience to the administrative state inside of Washington.

This Article considers whether and when to redistribute administrative authority to these officials outside of Washington. The administrative state has been criticized for being more undemocratic than it should be and less expert than it could be. Both of these concerns could be mitigated—although certainly not eliminated—if administrative officials outside of Washington were delegated more power more often. Working across different parts of the administrative state, this Article considers examples of decentralizing reforms that further broadly supported administrative goals.

A crisis is a terrible thing to waste because it is a terrific occasion to reimagine.¹⁴ Now is a moment when large parts of the federal administrative state are being dismantled, or at the very least being revisited, and will therefore need to be reimaged. The administrative state can be placed on more solid ground moving forward if administrative officials on the ground in more places are given more authority.

American federal law is dedicated to the principle that the “accumulation of all powers . . . in the same hands . . . may justly be pronounced the very definition of tyranny.”¹⁵ Federalism¹⁶ and the separation of powers,¹⁷ for instance, are meant to ensure that different interests would control different categories of sovereign power.¹⁸ Administrative law has likewise considered how to best

¹⁴ See Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 412 (2018) (characterizing certain moments as “calling for a radical imagination, where the scale of deep critique is matched with a scale of grand vision”).

¹⁵ THE FEDERALIST NO. 47, at 301 (James Madison) (Clinton Rossiter ed., 1961). See generally Jon D. Michaels, *An Enduring, Evolving Separation of Powers*, 115 COLUM. L. REV. 515, 525 (2015) (“The Framers . . . endowed each group with distinct dispositional, political, and institutional characteristics. And they made each group answerable to different sets of constituencies . . .”); David E. Pozen, *Self-Help and the Separation of Powers*, 124 YALE L.J. 2, 75–76 (2014) (noting this as a basic principle of structural design).

¹⁶ See, e.g., *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring) (“The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal . . .”).

¹⁷ See, e.g., *INS v. Chadha*, 462 U.S. 919, 946 (1983) (“The very structure of the Articles delegating and separating powers under Arts. I, II, and III exemplifies the concept of separation of powers . . .”).

¹⁸ See, e.g., Akhil Reed Amar, *Of Sovereignty and Federalism*, 96 YALE L.J. 1425, 1495 (1987) (arguing analogies between the separation of powers and federalism are not coincidental, for “in separating and dividing power, whether horizontally or vertically, the Federalists pursued the same strategy: Vest power in different sets of agents who will have personal incentives to monitor and enforce limitations on each other’s powers”); Jessica Bulman-Pozen, *Federalism as a Safeguard of the Separation of Powers*, 112 COLUM. L. REV. 459, 460 (2012) (“Ever since Madison celebrated the ‘double security’ provided by federalism and the separation of powers . . . courts and commentators have recognized a strong analogy between the two great structural principles of our Constitution.”).

separate power outside and within the administrative state.¹⁹ Courts and commentators, however, have largely not considered how to separate out administrative power not just across the branches and levels of power, but across the places of power.

The Constitution contemplates a separation of administrative places by recognizing that there could be federal officials regulating from outside of the capital.²⁰ For as long as there has been reliable empirical data, that data has demonstrated that approximately eighty-five percent of administrative officials have been located outside of the Washington metropolitan area.²¹ These officials outside of Washington are often hiding in plain sight. Consider, for instance, that in 2024, in *Loper Bright Enterprises v. Raimondo*²²—the Supreme Court decision overruling *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*²³—the regulatory action being challenged was initiated by “eight regional fishery management councils composed of representatives from the coastal States,”²⁴ and yet that dimension was never discussed in the Court’s opinion.

Although administrative law recognizes these decentralized administrative officials, it does not usually diffuse substantial power to them. Administrative law divides officials broadly speaking into two categories, what this Article labels “headquarters” officials located in Washington and “decentralized” officials located elsewhere in the country.²⁵ Decentralized administrative offi-

¹⁹ See generally J.R. DeShazo & Jody Freeman, *The Congressional Competition to Control Delegated Power*, 81 TEX. L. REV. 1443, 1452–53 (2003) (discussing the administrative state as a particular problem for the diffusion of powers); Cynthia R. Farina, *Statutory Interpretation and the Balance of Power in the Administrative State*, 89 COLUM. L. REV. 452, 523 (1989) (“[T]he dominance of the executive that has followed the delegation of regulatory power cannot be squared with the original commitment to separation of powers”); Neal Kumar Katyal, *Internal Separation of Powers: Checking Today’s Most Dangerous Branch from Within*, 115 YALE L.J. 2314, 2316 (2006) (noting how executive power has started to “subsume[] much of the tripartite structure of government”); Gary Lawson, *The Rise and Rise of the Administrative State*, 107 HARV. L. REV. 1231, 1231, 1248–49 (1994) (considering the administrative state unconstitutional for separation of powers reasons).

²⁰ The District Clause in Article I of the Constitution states that Congress has authority over certain federal properties outside of the “Seat of the Government of the United States” so long as there is “Consent of the Legislature of the State in which the Same shall be” U.S. CONST. art. I, § 8, cl. 17.

²¹ See Carl Abbott, *Dimensions of Regional Change in Washington, D.C.*, 95 AM. HIST. REV. 1367, 1370 n.11 (1990).

²² 603 U.S. 369 (2024).

²³ 467 U.S. 837 (1984), overruled by *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

²⁴ *Loper Bright*, 603 U.S. at 380.

²⁵ This Article will call these officials outside of Washington “decentralized officials” simply as a means of grouping together administrative officials regulating from all different types of locations outside of Washington. Some of these officials work in regional agency offices in larger metropolitan areas like New York or Los Angeles. Scholars have focused mostly—but not entirely—on these regional officials as the defining subnational unit of regulation. See Blank & Rosen-Zvi, *supra* note 10, at 1915 (“[R]egions . . . serve as frontline enforcers and implementers of policies set by central headquarters [R]egions should not make the rules, but rather should simply implement them or ensure

cials not only have less power to act themselves, but they also have less ability to interact with high-ranking, more powerful agency officials in Washington. As a result, the most powerful administrative officials are those selected from and influenced by the network of those with experience in and connections to the federal government in Washington.²⁶ Administrative officials with substantial—but lesser—power are those selected from and then connected to state and local governments, private actors, and communities of residents outside of Washington.

James Madison wrote in *The Federalist Papers* that “the natural limit of a democracy is that distance from the central point which will just permit the most remote citizens to assemble as often as their public functions demand.”²⁷ A centralized administrative state raises the costs for many affected parties of all kinds in the rest of the country to access regulators. A centralized administrative state therefore makes it easier for critics of the administrative state to claim that the “bureaucracy” is not in touch with “the will of the people.”²⁸ It creates more of a “faceless bureaucracy” that is “hard to understand and even harder to love.”²⁹ The expert capacity of the administrative state is limited by raising the costs for expert knowledge from all places to influence the administrative state. Whereas private firms locate their technology experts in Silicon Valley, their finance experts in New York City, and their regulatory experts in Washington, agencies are largely prohibited from doing the same.³⁰

that they are properly implemented by others.”); Bulman-Pozen, *supra* note 10, at 381 (“This Article provides an account of ‘Our Regionalism,’ describing the legal forms regions assume in the United States and exploring how these forms have shaped American government over the past century.”); Owen, *supra* note 9, at 61 (“[S]ome federal agencies are almost entirely regional . . .”). There are many administrative officials, however, working in administrative units outside of Washington, and these units are not properly classified as regions. *See, e.g.*, 20 C.F.R. § 422.5 (2026) (“There are over 700 social security district offices and branch offices In addition, there are over 3,300 contact stations . . .”). These officials need to be considered as well if the goal is to paint a complete picture of administrative life outside of Washington.

²⁶ For a discussion of how networks shape administrative action, see, for instance, Jessica Bulman-Pozen & Heather K. Gerken, *Uncooperative Federalism*, 118 YALE L.J. 1256, 1271 (2009) (considering the networks created between federal administrative officials and state regulatory officials); Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2646–48 (1997) (considering the networks between administrative officials and international officials).

²⁷ THE FEDERALIST NO. 14, at 101 (James Madison) (Clinton Rossiter ed., 1961).

²⁸ See Thomas B. Edsall, *Elon Musk Is Leading a “Hostile Takeover of the Federal Government,”* N.Y. TIMES (Feb. 18, 2025), <https://www.nytimes.com/2025/02/18/opinion/musk-trump-doge-tech.html> [perma.cc/KB4C-LMFK] (quoting Musk). See generally Anya Bernstein & Cristina Rodríguez, *The Accountable Bureaucrat*, 132 YALE L.J. 1600, 1603 (2023) (“The image of the unelected bureaucrat indicts the administrative state.”).

²⁹ Jennifer Szalai, *Trump vs. The Bureaucrats*, N.Y. TIMES (Jan. 11, 2025), <https://www.nytimes.com/2025/01/11/books/review/administrative-state-trump-bannon.html> [perma.cc/S3QF-7KK6].

³⁰ For a discussion of these private firm dynamics see, for instance, Giles Duranton & Diego Puga, *Nursery Cities: Urban Diversity, Process Innovation, and the Life Cycle of Products*, 91 AM. ECON. REV. 1454 (2001) (discussing the changing geographical diffusion of private firm leaders).

The point is not to suggest that any category of administrative official is always or even mostly preferable. The point is instead that categories of officials are systematically different across places. It will sometimes be preferable to empower an official with substantial federal experience and connections in Washington, and in other situations it will be preferable to empower an official more experienced in and connected to state and local governments or private communities outside of Washington. It is therefore problematic that there is usually a legal prohibition on decentralized officials exercising substantial amounts of power.³¹ It is important to allocate the right categories of administrative powers to the right types of administrative officials,³² and sometimes these officials will be outside of Washington.

Public law principles are subject to what Jack Balkin has called ideological drift, because these principles “do not have a fixed normative or political valence.”³³ The “valence” of these principles “varies over time as they are applied” and “inserted into new and unexpected contexts” and situations.³⁴ This phenomenon is visible in the trajectory of administrative decentralization.

One of the most successful presidents to engage in administrative decentralization was Democratic President Franklin D. Roosevelt.³⁵ Administrative decentralization has become more affiliated with the Make America Great Again (MAGA) movement and President Trump in the past few years. Both the first and the second Trump Administration have focused on relocating hundreds of thousands of administrative officials, not to elevate the voices of administrative officials outside of Washington, but to minimize or eliminate the voices of those headquarters-type officials with experience inside the federal community in Washington.³⁶ In his first term, President Trump’s Acting Chief of Staff Mick Mulvaney stated that the Trump Administration would use ad-

³¹ See Joseph Blocher, *Bans*, 129 YALE L.J. 308, 314 (2019) (“[T]he characterization of a law as a ban tends to trigger a per se rule of invalidity . . .”).

³² See Aziz Z. Huq, *The Institution Matching Canon*, 106 NW. U. L. REV. 417, 419 (2012) (suggesting that when courts evaluate governmental decisions, they should consider whether the “component of government that made the decision has actual competence” to address that regulatory area).

³³ J.M. Balkin, *Ideological Drift and the Struggle Over Meaning*, 25 CONN. L. REV. 869, 870 (1993).

³⁴ *Id.*; J.M. Balkin, *Transcendental Deconstruction, Transcendent Justice*, 92 MICH. L. REV. 1131, 1148 (1994).

³⁵ See *President Shifts 10,000 Employees Out of Washington*, N.Y. TIMES (Dec. 20, 1941), <http://www.nytimes.com/1941/12/20/archives/president-shifts-10000-employees-out-of-washington-dozen-bureaus.html> [perma.cc/5LQN-YG52] (discussing administrative decentralization during the New Deal and World War II).

³⁶ For a discussion of the efforts in this area from the first Trump Administration, see David Fontana, *Destructive Federal Decentralization*, 29 WM. & MARY BILL RTS. J. 619 (2021). These efforts have been partly, if not entirely, because of the ideological or partisan disagreement that the Trump Administration sees that it has with the administrative state. See generally Katherine Shaw, *Partisan-ship Creep*, 118 NW. U. L. REV. 1563, 1563 (2024) (“President Donald Trump grew increasingly willing to challenge nonpartisanship principles directly . . .”).

ministrative decentralization to undermine the power of the administrative state by targeting the civil servants at the heart of it.³⁷

Prior to his second term, President Trump promised that he would decentralize “as many as 100,000” executive officials “out of Washington to places filled with patriots who love America,” and that “[t]his is how [he] will shatter the deep state.”³⁸ President Trump therefore included within his campaign orbit individuals like Kash Patel, who promised during the campaign season to “shut down the F.B.I. Hoover Building on Day 1”³⁹ As I have detailed elsewhere, these efforts have already started and have substantially damaged the administrative state—but have largely escaped notice.⁴⁰

If it takes a “theory to beat a theory,”⁴¹ the goal of this Article is to provide an alternative theory of administrative decentralization. Administrative decentralization is not necessarily a conservative or a MAGA principle (nor a progressive one) but rather can be a good government idea. Americans deserve an administrative state next door—not because it needs to be moved away from evil people in Washington, but because it should be shared with talented people around the country. These administrative officials outside of Washington could provide the administrative state with a “second face” precisely because they operate from a second place.⁴²

Other countries have placed important functions of their administrative states outside of their capital.⁴³ The American administrative state has experi-

³⁷ See Editorial Board, *The Administration Said It Was Moving These Agencies for Efficiency. Now the Truth Comes Out*, WASH. POST (Aug. 10, 2019), https://www.washingtonpost.com/opinions/the-administration-said-it-was-moving-these-agencies-for-efficiency-now-the-truth-comes-out/2019/08/10/854ccd10-b91a-11e9-b3b4-2bb69e8c4e39_story.html [perma.cc/THU2-3QK8].

³⁸ See Davenport & Friedman, *supra* note 13 (quoting remarks made by Trump during his 2024 campaign for President).

³⁹ See Elizabeth Williamson & Charlie Savage, *Kash Patel Has Plan to Remake the F.B.I. into a Tool of Trump*, N.Y. TIMES (Dec. 2, 2024), <https://www.nytimes.com/2024/12/02/us/politics/kash-patel-fbi.html> [perma.cc/Y8DD-KSKG] (quoting Patel).

⁴⁰ See David Fontana, *Trump Is Turning a Good Idea into an Authoritarian Weapon*, N.Y. TIMES (May 19, 2025), <https://www.nytimes.com/2025/05/19/opinion/trump-federal-offices-relocation.html> [perma.cc/39XM-4N49].

⁴¹ See ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 91–92 (2012) (“It takes a theory to beat a theory and, after a decade of trying, the opponents of originalism have never converged on an appealing and practical alternative.” (quoting RANDY E. BARNETT, *RESTORING THE LOST CONSTITUTION: THE PRESUMPTION OF LIBERTY* 92 (2004))).

⁴² I borrow this great phrase about the “second face” of the administrative state from Emily Chertoff and Jessica Bulman-Pozen’s recent article. See Emily R. Chertoff & Jessica Bulman-Pozen, *The Administrative State’s Second Face*, 100 N.Y.U. L. REV. 727, 729–30 (2025) (“The second face of administrative law allows agencies to operate without a clear delegation of power, to process knowledge in secret to identify threats, and to exercise control over populations. It is the law that governs the DOD, CIA, and ICE.”).

⁴³ See, e.g., Christopher F. Schuetze, *Germany Opens Massive Intelligence Complex (Maybe the World’s Largest) in Berlin*, N.Y. TIMES (Feb. 9, 2019), <https://www.nytimes.com/2019/02/09/world/europe/germany-intelligence-service-headquarters-berlin-bnd.html> [perma.cc/JNW9-2YQ7] (noting

mented with this to a smaller degree as well, through regional branches of the Federal Reserve Bank⁴⁴ or the Centers for Disease Control.⁴⁵ Private firms have increasingly decentralized their leadership. While previously the “dominant employment system was . . . hierarchically governed”⁴⁶ now “[t]he single most important organizational phenomenon to emerge in the last century was the multibusiness corporation, characterized by . . . relatively autonomous and discrete operating units.”⁴⁷

The administrative state can be organized across places functionally rather than the current regime of organizing it hierarchically. There are many functions that the administrative state performs in Washington that are best performed by those who understand the administrative state and the federal government at the highest levels and to the greatest degree. For instance, when the leader of a particular agency must often interact with the White House and Congress and/or the leaders of other agencies as part of their portfolio, it will make sense for them to be empowered to act from Washington. The same is true of officials involved in drafting the legal details of regulatory programs. These officials also benefit from experience with and connections to other actors in Washington.⁴⁸

how the different locations of domestic and foreign intelligence agencies in Germany and also the locations of the elected branches of the national government are located outside of Berlin).

⁴⁴ See Sarah Binder & Mark Spindel, *Monetary Politics: Origins of the Federal Reserve*, 27 STUD. AM. POL. DEV. 1, 1–2 (2013) (describing the rationale for the structure and location of the regional offices of the Federal Reserve Bank).

⁴⁵ See Martha Nolan, *A Two-Way Street: Being Next-Door Neighbors Benefits Both Rollins and CDC*, ROLLINS MAG. (Fall 2021), <https://sph.emory.edu/magazine/2021/fall/two-way-street> [perma.cc/JE6Y-GNSL] (discussing the location of the CDC in Atlanta).

⁴⁶ Matthew Bidwell, Forrest Briscoe, Isabel Fernandez-Mateo & Adina Sterling, *The Employment Relationship and Inequality: How and Why Changes in Employment Practices Are Reshaping Rewards in Organizations*, 7 ACAD. MGMT. ANNALS 61, 62 (2013).

⁴⁷ David Collis, David Young & Michael Goold, *The Size, Structure and Performance of Corporate Headquarters*, 28 STRAT. MGMT. J. 383, 383 (2007) (citation omitted); see also Thomas Klier & William Testa, *Location Trends of Large Company Headquarters During the 1990s*, 26 ECON. PERSPS. 12, 15 (2002) (“[W]e have seen a loosening of the location ties of business services industry and corporate headquarters.”). The important point is not that *all* private firms are structured this way, but that it is a choice *when* and *whether* to organize that way. There are larger private firms that have maintained their geographically hierarchical structure. See generally Sidney G. Winter & Gabriel Szulanski, *Replication as Strategy*, 12 ORG. SCI. 730 (2001) (discussing private firms that have outposts with relatively little autonomy). There is an enormous variation among private firms, and examining the causes and consequences of that variation is a major scholarly topic for scholars of private firms. See Collis et al., *supra*, at 383–84 (“Some companies, such as the leveraged buyout firm KKR, have been able to control over \$40 billion in revenues with fewer than 80 people at headquarters Coca-Cola . . . had nearly 5,000 corporate employees for less than \$20 billion in revenues In Germany in the late 1990s, the chemical and pharmaceutical manufacturer Hoechst had only 180 people in the headquarters function, while its competitor, Bayer, had close to 7,000.” (citations omitted)).

⁴⁸ See Daniel B. Rodriguez & David Schleicher, *The Location Market*, 19 GEO. MASON L. REV. 637, 651 (2012) (“A lobbyist talking to another lobbyist about congressional procedure is producing information spillovers that will improve the listener’s productivity at work. A lobbyist talking about

In other situations, though, administrative officials will work better when they are operating outside of Washington. Important officials at independent agencies, for instance, can operate more independently when they are across the country rather than across the street from those who are trying to influence them. For some of these officials, being outside of Washington generates a push away from the forces in Washington that they are meant to ignore—largely if not entirely. Other administrative functions are better performed outside of Washington because of the pull of a different epistemic community. For instance, it can make sense to regulate the unique ecology of the Great Lakes by empowering federal regulators working in and with those in the Great Lakes region, just like it can make sense to regulate technology by empowering those working in and with those in Silicon Valley.

The normative framework that this Article provides is pitched at a higher level of generality because it is meant to address similar institutional design questions arising across a broader range of administrative contexts. Public law is defined by disputes not just about how the law should govern the diffusion of powers but by how much diffusion should be desired in the first place.⁴⁹ The concrete costs and benefits involved in deciding when to centralize and when to decentralize must be made official-by-official and institution-by-institution—similar to other larger questions of institutional design. The goal of this Article is therefore not to resolve the context-dependent questions implicated in deciding when or how to reallocate power between specific federal offices or officials. It instead aspires to serve as a “proof of concept” that administrative decentralization is not only possible, but often desirable.

This Article advances two novel points—one descriptive and the other normative. First, as a descriptive matter, this Article for the first time foregrounds the comprehensive legal framework that constrains administrative officials outside of the Washington metropolitan area. Second, this Article discusses normatively why and when that legal regime is problematic and how administrative law can be reformed to address those concerns.

Part I is conceptual and typological. It considers the existing state of the debate about administrative law and the relative absence of a discussion of administrative decentralization from that debate—until recently.⁵⁰ Part II describes the legal regime centralizing the administrative state and the implica-

congressional procedure to just about anyone else is a bore.”); see also David Schleicher, *The City as a Law and Economic Subject*, 2010 U. ILL. L. REV. 1507, 1523 (discussing research about the ability “to learn from others . . . by adopting best practices and sharing in industry-specific knowledge”).

⁴⁹ See Eric A. Posner, *Balance-of-Powers Arguments, The Structural Constitution, and the Problem of Executive “Underenforcement,”* 164 U. PA. L. REV. 1677, 1680 (2016) (discussing “the difficulty of defining and measuring power [in structural constitutional law], let alone determining whether the power of different branches ‘balances’”).

⁵⁰ See *infra* notes 54–103 and accompanying text.

tions of that legal regime.⁵¹ Part III describes why the regime and its implications are problematic.⁵² Part IV describes the problems with the Trump Administration's relocation programs as a normative solution and considers a different regime as a normative alternative.⁵³

I. THE DIFFUSION OF POWERS

This Part situates the law of geographical administrative decentralization as a category within administrative law. Diffusing power among different governmental actors has long been a central principle utilized by institutional designers.⁵⁴ Diffusing power involves not just diffusing power across branches or levels of power but also across *places* of power.

This was one of the concerns of the Founding generation of thinkers who had expressed worry in the Declaration of Independence about a British Empire that had exercised power from “places unusual, uncomfortable, and distant.”⁵⁵ The Founding moment featured a “fear of distant government power” that has persisted until the present moment.⁵⁶ Congress is therefore structured to feature representatives from districts pitted against other representatives from other districts, and senators from states pitted against other senators from other states. The federal judiciary features a Supreme Court staffed with Justices sitting in Washington and lower courts staffed by judges from the districts and states in which they sit around the country.

The administrative state has featured its own debates about diffusing power. Yet geographical decentralization within the administrative state has largely escaped the attention of courts and commentators—until roughly the last ten years.

A. Principles and Practices

One of the animating principles motivating how many parts of the federal government—and even state governments—are organized is that sovereign power should be diffused rather than concentrated.⁵⁷ Writing down limits on the power of an institution is insufficient to ensure that sovereign power is dif-

⁵¹ See *infra* notes 104–193 and accompanying text.

⁵² See *infra* notes 194–269 and accompanying text.

⁵³ See *infra* notes 270–335 and accompanying text.

⁵⁴ See, e.g., *Bowsher v. Synar*, 478 U.S. 714, 721 (1986) (“The declared purpose of separating and dividing the powers of government, of course, was to ‘diffus[e] power the better to secure liberty.’” (alteration in original) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring))).

⁵⁵ THE DECLARATION OF INDEPENDENCE para. 6 (U.S. 1776).

⁵⁶ Michael J. Klarman, *Antifidelity*, 70 S. CAL. L. REV. 381, 385 (1997).

⁵⁷ See, e.g., THE FEDERALIST NO. 47, *supra* note 15, at 301 (James Madison) (“The accumulation of all powers . . . in the same hands . . . may justly be pronounced the very definition of tyranny.”).

fused.⁵⁸ Institutions must be designed to feature sufficiently different officials with their powers so that these different officials would compete with one another for power. James Madison famously wrote in *The Federalist Papers* “the great security against a gradual concentration of the several powers . . . consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others.”⁵⁹ For instance, the officials in one institution will be selected and empowered so that they might prefer a larger minimum wage or universal health care. Another institution might prefer a smaller minimum wage or lesser access to health care—or simply not care about those issues at all.

This need to diffuse powers manifests in discussions about federalism and the separation of powers. Madison discussed these two constitutional principles as providing a “double security.”⁶⁰ Federalism diffuses power among separate levels of government. The federal government would be selected using different mechanisms and would have its own list of authorized powers. The separation of powers diffuses power among separate branches of the federal government, each with their own selection mechanisms and their own authorized powers.

A central feature of diffusing power has also involved separating institutions by *places*. In the other branches, these place diffusions might not be done in the right ways or in the right amount and might be questioned for those reasons. Regardless of whether it is done correctly, this dimension of the diffusion of powers remains a central part of understanding how the diffusion of powers works across many parts of the federal government.

Members of the House of Representatives are elected to represent a particular geographical district outside of Washington and the Constitution requires that the representative maintain that connection to their district even while they are in Congress.⁶¹ Members of the Senate are elected to represent a state and must be connected to that state even while they are in Congress.⁶²

⁵⁸ THE FEDERALIST NO. 48, at 313 (James Madison) (Clinton Rossiter ed., 1961) (“[A] mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to . . . government in the same hands.”).

⁵⁹ THE FEDERALIST NO. 51, at 321–22 (James Madison) (Clinton Rossiter ed., 1961).

⁶⁰ *Id.* at 323; see also *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (“Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.”); Heather K. Gerken, *Foreword: Federalism All the Way Down*, 124 HARV. L. REV. 4, 33 (2010) (“Federalism and the separation of powers have long been considered complementary strategies for diffusing national power . . .”).

⁶¹ U.S. CONST. art. I, § 2, cl. 2 (“No Person shall be a Representative . . . who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.”).

⁶² *Id.* art. I, § 3, cl. 3 (“No Person shall be a Senator . . . who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.”).

When a candidate for Congress does not seem sufficiently connected to their district or to their state, it can become an issue in their election.⁶³

The Constitution does not indicate that federal courts must be geographically decentralized, but from the beginning they have been decentralized by federal statute. The Judiciary Act of 1789 created the lower federal courts and identified with precision the different locations where they would sit.⁶⁴ The federal courts of appeals are organized in a way to ensure that each of the circuits (with the obvious exception of the D.C. Circuit) features at least three states within their jurisdiction.⁶⁵ Federal law requires that judges on the courts of appeals are residents of the circuits on which they sit.⁶⁶ Congress made this even more precise by enacting a statute in 1997 making it clear that membership on the courts of appeals should be shaped by state residency.⁶⁷

Justices have referenced this decentralization as legitimating the decisions that federal courts make. Consider, for instance, what happened in 2015, in *Obergefell v. Hodges*, when the Supreme Court decided that the Constitution protects a person's right to marry regardless of the sex of the person they are trying to marry.⁶⁸ The dissenting justices questioned the legitimacy of the decision because it resolved this issue through judicial rather than democratic process.⁶⁹ Justice Antonin Scalia's dissent focused on the lack of geographical diversity on the Supreme Court as a reason to question the legitimacy of the Supreme Court making this decision.⁷⁰

⁶³ See, e.g., Jonathan Martin, *Lacking a House, A Senator Is Renewing His Ties in Kansas*, N.Y. TIMES (Feb. 7, 2014), <https://www.nytimes.com/2014/02/08/us/senator-races-to-show-ties-including-an-address-in-kansas.html> [perma.cc/T8RH-SNKL] (noting that now former United States Senator Pat Roberts listed on his voter registration a home in Kansas owned by two donors, but lived in a home in Virginia); Manu Raju, *Lugar to Repay Hotel Expenses*, POLITICO (Mar. 21, 2012), <https://www.politico.com/story/2012/03/lugar-to-repay-home-state-hotel-expenses-074329> [perma.cc/4MAQ-N77L] (noting that now former Indiana Republican Senator Richard Lugar lived in Washington and stayed in hotels—often at taxpayer expense—when he returned to Indiana).

⁶⁴ See, e.g., Judiciary Act of 1789, ch. 20, § 5, 1 Stat. 73, 75 (mentioning federal judges who would be sitting in “Charlottesville and Williamsburgh” in Virginia and “New Castle and Dover” in Delaware); see also *id.* § 35, 1 Stat. 73, 92 (“And there shall be appointed in each district a meet person learned in the law to act as attorney for the United States in such district . . .”) (emphasis added).

⁶⁵ JUDICIAL CONFERENCE OF THE U.S., LONG RANGE PLAN FOR THE FEDERAL COURTS 6 (1995), reprinted in 166 F.R.D. 66 (1995).

⁶⁶ See 28 U.S.C. § 44(c) (“Except in the District of Columbia, each circuit judge shall be a resident of the circuit for which appointed at the time of his appointment and thereafter while in active service.”).

⁶⁷ *Id.*, amended by Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119, § 307, 111 Stat. 2440, 2493 (1997) (“[T]here shall be at least one circuit judge in regular active service appointed from the residents of each state in that circuit.”).

⁶⁸ *Obergefell v. Hodges*, 576 U.S. 644, 675 (2015).

⁶⁹ *Id.* at 687 (Roberts, C.J., dissenting) (“Five lawyers have closed the debate and enacted their own vision of marriage as a matter of constitutional law. Stealing this issue from the people will for many cast a cloud over same-sex marriage . . .”).

⁷⁰ Justice Scalia discussed this concern at length in his dissent:

Federalism is also justified as a means of generating a diffusion of places. Federalism imagines separate sovereigns,⁷¹ and state sovereigns that are separate in part because they are physically separated from the federal seat of government. Many cases explaining the rationale for federalism imply that state governments being physically separated from Washington is a definitional part of federalism.⁷² Indeed, more than a hundred years ago, the Court stated that the physical location of the state government was so important to being a unique, separate state that it must be “essentially and peculiarly” for a state alone to decide where its state capital shall be located.⁷³

B. Administrative Diffusion

One of the primary topics in the diffusion of powers has been the increase in executive power. Scholars have described the executive branch as “the most dangerous branch”⁷⁴ and have focused their attention on the diffusion of powers related to the executive branch.⁷⁵ Presidential power is part of the analysis, but so is the existence and structure of the administrative state.⁷⁶ The administrative state is part of a checks and balances scheme that requires it to compete

[T]he Federal Judiciary is hardly a cross-section of America. Take, for example, this Court . . . Four of the nine are natives of New York City. Eight of them grew up in east- and west-coast States. Only one hails from the vast expanse in-between. Not a single Southwesterner or even, to tell the truth, a genuine Westerner (California does not count). . . . [T]o allow the policy question of same-sex marriage to be considered and resolved by a . . . highly unrepresentative panel of nine is to violate a principle even more fundamental than no taxation without representation: no social transformation without representation.

Id. at 717–18 (Scalia, J., dissenting).

⁷¹ See, e.g., *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring) (“The Framers split the atom of sovereignty The resulting Constitution created a legal system . . . establishing two orders of government . . .”).

⁷² Being someplace other than Washington, for instance, means that state officials are “decentralized” and therefore might “be more sensitive to the diverse needs of a heterogenous society.” *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991). Being in Albany or Austin “increases opportunity for citizen involvement in democratic processes.” *Id.*

⁷³ *Coyle v. Smith*, 221 U.S. 559, 565 (1911).

⁷⁴ See generally Martin S. Flaherty, *The Most Dangerous Branch*, 105 YALE L.J. 1725, 1727 (1996) (discussing the reasons for this characterization). See Abner S. Greene, *Checks and Balances in an Era of Presidential Lawmaking*, 61 U. CHI. L. REV. 123, 125 (1994) (“[T]he framers’ factual assumptions [that the legislature would be the most dangerous branch] have been displaced. Now, it is the President whose power has expanded and who therefore needs to be checked.”).

⁷⁵ Farina, *supra* note 19, at 523 (“[T]he dominance of the executive that has followed the delegation of regulatory power cannot be squared with the original commitment to separation of powers”); Katyal, *supra* note 19, at 2316 (observing that executive power has started to “subsume[] much of the tripartite structure of government”).

⁷⁶ See, e.g., DeShazo & Freeman, *supra* note 19, at 1452–53 (noting how the administrative state can pose a problem for the diffusion of powers); Lawson, *supra* note 19, at 1248–49 (considering the administrative state unconstitutional for separation of powers reasons).

with other branches—namely the legislative and judicial branches—for authority.⁷⁷ Administrative power derives from competition with state governments for administrative authority.⁷⁸

As these constraints across the branches or across the levels of power have failed to constrain the executive branch in general and the administrative state in particular, scholars have started to look to an “internal separation of powers” within the executive branch.⁷⁹ For instance, Jon Michaels has referred to an “administrative separation of powers,” arguing that the administrative state features a range of different types of actors who compete with one another because of their structural differences.⁸⁰ The existence of a civil service and political appointees, for instance, is a form of administrative diffusion.⁸¹ Neal Katyal has imagined different tools for empowering civil servants.⁸²

The Administrative Procedure Act (APA) requires the “separation of functions” within an agency to ensure that different agency functions are performed by different—and different types—of agency officials. For instance, section 554(d) of the APA makes this clear by requiring that agency officials “engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review . . . except as witness or counsel in public proceedings.”⁸³ The Supreme Court has noted that the purpose behind this language was to “divide enforcement and adjudication between separate personnel.”⁸⁴

Although the administrative separation of powers has received substantial attention, any administrative separation of places that might be part of that debate has largely not been a part of that conversation. The Supreme Court simply assumes that the administrative state is “completely centralized.”⁸⁵

⁷⁷ See, e.g., William N. Eskridge, Jr. & John Ferejohn, *The Article I, Section 7 Game*, 80 GEO. L.J. 523, 547–51 (1992) (looking to federal courts to counterbalance the administrative state); Flaherty, *supra* note 74, at 1832–34 (“[T]here is every functionalist reason to look favorably upon the legislative veto, at least with regard to those functions championed at the Founding.”).

⁷⁸ See generally Jessica Bulman-Pozen, *Executive Federalism Comes to America*, 102 VA. L. REV. 953, 954 (2016) (considering how the administrative state can facilitate collaboration across federal initiatives in order to shape federalism); Bulman-Pozen, *supra* note 18 and accompanying text.

⁷⁹ See Katyal, *supra* note 19, at 2317.

⁸⁰ See Michaels, *supra* note 15, at 530 (discussing the structural features and “dispositional characteristics” of different parts of the administrative state).

⁸¹ *Id.* at 522 (“[A]dministrative lawyers erected a system of subconstitutional checks and balances. Renewing (while updating) the Framers’ commitment to rivalrous government . . . they equipped civil servants and members of the general public with the tools to enrich administrative decisionmaking and to resist agency leaders’ efforts to cut legal corners or implement hyperpartisan policies.”).

⁸² See Katyal, *supra* note 19, at 2322–42.

⁸³ 5 U.S.C. § 554(d). Agency heads are exempted by this text from this prohibition. See *id.* § 554(d)(C).

⁸⁴ *Martin v. Occupational Safety & Health Rev. Comm’n*, 499 U.S. 144, 151 (1991).

⁸⁵ *United States v. Lopez*, 514 U.S. 549, 557 (1995) (citations and quotations omitted).

The closest analogue to any consideration of a geographical diffusion of powers in the administrative state is found in the federalism literature.⁸⁶ Many federal statutes involve and invite state actors to implement federal regulations from outside of Washington.⁸⁷ The Patient Protection and Affordable Care Act (ACA), for instance, includes many delegations of federal enforcement authority to state officials working together with administrative staff.⁸⁸ “Cooperative federalism” is the term used by courts and commentators to describe this pattern of state consent to and therefore enforcement of federal regulations.⁸⁹ Cooperative federalism makes administrative officials inside of Washington meaningfully dependent on the participation of state officials outside of Washington—as administrative officials also are when state officials resist enforcement.

Cooperative federalism substitutes to some degree for any decentralization that the administrative state lacks by ensuring that major decisions are being made from outside of Washington. If state governments outside of Washington have substantial power of their own to act, then maybe we do not need as many federal actors outside of Washington. But federalism in the sense of state governments acting on their own does not generate administrative officials acting outside of Washington.

The reality of an administrative state outside of Washington goes as far back as the administrative state—as do attempts to expand that decentralized administrative state. Edmund Randolph proposed at the Founding that there would be three co-presidents, with each “drawn from different portions of the

⁸⁶ See Bulman-Pozen, *supra* note 78, at 954 (“[T]oday’s executive action entails collaboration among state and federal officials, reliance on state as well as federal initiative, and the contestation that follows from multiple sites of power. Multifaceted executive interactions, not congressional decisions, shape both national policy and our federalism.”).

⁸⁷ See Abbe R. Gluck, *Intrastatutory Federalism and Statutory Interpretation: State Implementation of Federal Law in Health Reform and Beyond*, 121 YALE L.J. 534, 534 (2011) (“State implementation of federal law is commonplace . . .”); Abbe R. Gluck, *Our [National] Federalism*, 123 YALE L.J. 1996, 1997 (2014) (“The modern federal regulatory apparatus is increasingly attendant to questions of the state-federal allocation of responsibility, and also is dependent on state actors, in ways both practical and political.”).

⁸⁸ See Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 1311(f), 124 Stat. 119, 179 (2010) (codified at 42 U.S.C. § 18031(f)), *amended by* Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029; § 1321, 124 Stat. at 186 (codified at 42 U.S.C. § 18041); § 1331, 124 Stat. at 199 (codified at 42 U.S.C. § 18051); § 1412(e), 124 Stat. at 223 (codified at 42 U.S.C. § 18082(e)).

⁸⁹ For a helpful summary of cooperative federalism, see Erin Ryan, *Negotiating Federalism*, 52 B.C. L. REV. 1, 31 (2011) (“State and federal actors also negotiate over enforcement policy and individual enforcement actions arising within cooperative federalism programs . . .”).

Country.”⁹⁰ The first National Bank remained in Philadelphia even after the rest of the federal government relocated to Washington at the end of 1800.⁹¹

There was insufficient motivation to expand on this statutory model because of how relatively small the administrative state was in the earliest days of the Republic. There was little concern about centralized administrative power when there were so few officials exercising administrative power in the first place. At the end of 1800, when the federal government moved to Washington, there were just 153 full-time executive branch officials working for the federal government year-round in Washington.⁹² Nearly thirty years later, the country had more than doubled in population, but there were still only roughly 300 executive branch officials constantly in Washington.⁹³

Administrative power was also centralized by necessity in addition to by choice. Cooperation across and within agencies—in addition to cooperation with other parts of the federal government—requires frequent interaction. But it was very difficult to imagine federal officials working together with those in other places given how difficult travel was at the time.⁹⁴

As the administrative state grew larger, and cooperation across places grew more possible, there was still relative silence about administrative decentralization—until about ten years ago. A series of articles by scholars pointed out the existence—although the relatively limited power—of the administrative state outside of the Washington metropolitan area.⁹⁵ President Barack Obama pursued various efforts to decentralize the administrative state, most notably by increasing the power of the Department of Defense officials located in Silicon Valley during his second term in office.⁹⁶ Democratic members of the House of Representatives talked openly about doing more of this,⁹⁷ and

⁹⁰ See James Madison, *Proceedings of Committee of the Whole House, May 30–June 19, in 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787*, at 80 (Max Farrand ed., 1911).

⁹¹ See FED. RESERVE BANK OF PHILA., *THE FIRST BANK OF THE UNITED STATES: A CHAPTER IN THE HISTORY OF CENTRAL BANKING* 11 (2009), <https://www.philadelphiafed.org/-/media/FRBP/Assets/Institutional/Education/Publications/the-first-bank-of-the-united-states.pdf>.

⁹² See BRIAN BALOGH, *A GOVERNMENT OUT OF SIGHT: THE MYSTERY OF NATIONAL AUTHORITY IN NINETEENTH-CENTURY AMERICA* 112 (2009).

⁹³ See *id.*; Jeremy Hobson, *Shutting Down the Government Is a Modern Phenomenon—and It’s Uniquely American*, WBUR (Jan. 10, 2019), <https://www.wbur.org/hereandnow/2019/01/10/history-of-government-shutdowns> [perma.cc/AZG5-C6AE] (quoting Yale historian Joanne Freeman).

⁹⁴ See Edward L. Glaeser & Janet E. Kohlhase, *Cities, Regions, and the Decline of Transport Costs* 2–3 (Nat’l Bureau of Econ. Rsch., Working Paper No. 9886, 2004), https://www.nber.org/system/files/working_papers/w9886/w9886.pdf [perma.cc/XCA4-LJN4] (discussing the higher past costs in transporting people across places).

⁹⁵ See *supra* note 11 and accompanying text. For discussions of this as a feature of constitutional design across countries, see David Fontana, *The Narrowing of Federal Power by the American Political Capital*, 23 WM. & MARY BILL RTS. J. 733, 737–38 (2015); David Fontana, *Placing the Government in Fragile Democracies*, 50 WAKE FOREST L. REV. 985, 985–87 (2015).

⁹⁶ See *supra* note 12 and accompanying text.

⁹⁷ See *supra* note 12 and accompanying text.

they introduced legislation in the House of Representatives to accomplish this.⁹⁸ The progressive push for administrative decentralization was more anti-plutocratic, concerned about the “billionaire class”⁹⁹ controlling the administrative state through regulatory capture.

The arrival of Donald J. Trump on the political scene in 2015 generated more attention for this issue than ever before but also changed the nature of the focus on this issue. President Trump has repeatedly campaigned against the “deep state.”¹⁰⁰ Starting in 2015, one of the legal remedies pursued most often in response to his sense of the deep state was to decentralize the administrative state.¹⁰¹ In the *Project 2025* book that motivated the earliest moments of the second Trump Administration, decentralizing the administrative state was one of the central tools being discussed.¹⁰² President Trump said during his third campaign for President (in 2023) that “as many as 100,000 government positions can be moved out. And I mean immediately out of Washington to places filled with patriots who love America, and they really do love America.”¹⁰³

⁹⁸ Press Release, Congressman Timothy Ryan (D-OH), *Congressman Tim Ryan Introduces Legislation to Decentralize the Federal Government* (Apr. 20, 2017), <https://timryan.house.gov/press-release/congressman-tim-ryan-introduces-legislation-decentralize-federal-government> (noting the complexity generated by “more than 300,000 federal workers . . . in 190 federally-owned buildings and 500 leased buildings”).

⁹⁹ 160 CONG. REC. S1806 (daily ed. Mar. 27, 2014) (statement of Sen. Bernie Sanders) (“[I]t doesn’t matter what party is in power because the real power economically and politically rests with a billionaire class It is not the Republican Party, per se. It is not the Democratic Party, per se. It is the billionaire party led by people like the Koch brothers and Sheldon Adelson. They are the dominant political force in this country . . .”).

¹⁰⁰ See, e.g., Daniel Benjamin & Steven Simon, *Why Steve Bannon Wants You to Believe in the Deep State*, POLITICO (Mar. 21, 2017), <https://www.politico.com/magazine/story/2017/03/steve-bannon-deep-state-214935> [perma.cc/L5UL-Q34U] (discussing the use of this phrase in Donald Trump’s first campaign for president).

¹⁰¹ See Ben Wofford, *Inside the Radical, Self-Destructive, and Probably Impossible Plan to Move the Government Out of Washington*, WASHINGTONIAN (July 16, 2017), <https://washingtonian.com/2017/07/16/radical-probably-impossible-plan-move-government-out-washington/> [perma.cc/65EF-E2MS] (referencing bolder legislation considered in the House and more widely supported Senate plans as well as the role that ideas surrounding administrative decentralization played); see also Ross Douthat, *Break Up the Liberal City*, N.Y. TIMES (Mar. 25, 2017), <https://www.nytimes.com/2017/03/25/opinion/sunday/break-up-the-liberal-city.html> [perma.cc/2LXQ-PV6T] (mentioning the economic features of this debate); Jenna Portnoy, *Drain the Swamp? No, Let’s Just Move It*, Rep. Chaffetz Suggests, WASH. POST (Mar. 8, 2017), https://www.washingtonpost.com/local/dc-politics/drain-the-swamp-no-lets-just-move-it-rep-chaffetz-suggests/2017/03/08/384938ba-0426-11e7-ad5b-d22680e18d10_story.html [perma.cc/LZ3W-K35F] (highlighting congressional action); Matt Yglesias, *Let’s Relocate a Bunch of Government Agencies to the Midwest*, VOX (Dec. 9, 2016), <https://www.vox.com/new-money/2016/12/9/13881712/move-government-to-midwest> [perma.cc/D2LR-TCXW] (considering the economic ramifications of this debate).

¹⁰² See, e.g., William Perry Pendley, *Department of Interior*, (discussing these plans as “the epitome of good governance”), in *MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE* 517, 524 (Kevin Roberts et al. eds., 2023).

¹⁰³ *Agenda47: President Trump’s Plan to Dismantle the Deep State and Return Power to the American People*, TRUMP-VANCE 2024 (Mar. 21, 2023), <https://www.donaldjtrump.com/agenda47/>

Now this dimension of institutional design is impossible to ignore if the changes in the administrative state are to be seriously studied.

II. ADMINISTRATIVE CENTRALIZATION

The focus on administrative centralization has grown enormously, but the recency of this interest is surprising because of the inevitability of this area of law and its importance. Although the decision whether and how much to geographically centralize administrative officials is a complicated normative question, the decision whether to regulate these matters with rules in the first place is not. The federal government must feature rules deciding how much power to geographically centralize one way or another.¹⁰⁴ A federal official must know whether to go into work in the Washington metropolitan area or in a regional office—and therefore where to buy a house or enroll their children in school. These rules can be derived from formal legal sources and supplemented by convention.¹⁰⁵ But one way or another there has always been a law of administrative location.

This Part will canvass the existing law of administrative centralization. The basic structure of the administrative state is geographically *hierarchical*. This hierarchical structure is fairly deduced from the text of the Constitution and from the statutes creating agencies and their component parts. The majority of the rules, though, come from “internal administrative law.”¹⁰⁶ This structure is sometimes referred to as a form of “headquarters” principle—meaning that only those in Washington can do most of the important things that administrative actors do. Decentralized officials are limited in the powers they have over federal law *because* they are decentralized. They are largely hired by officials in Washington and rarely report to the most important officials in Wash-

agenda47-president-trumps-plan-to-dismantle-the-deep-state-and-return-power-to-the-american-people [perma.cc/B23N-LVLM].

¹⁰⁴ Rules placing the government are something comparable to a “coordination rule” that must be resolved in order for an institution to function. This means these rules are often advanced in writing and by law. *See generally* Jacob E. Gersen & Eric A. Posner, *Timing Rules and Legal Institutions*, 121 HARV. L. REV. 543, 548 (2007) (defining these rules as ones that “a decisionmaking body would have difficulty coordinating on its own”).

¹⁰⁵ *See generally* Joseph Fishkin & David E. Pozen, *Asymmetric Constitutional Hardball*, 118 COLUM. L. REV. 915, 921 (2018) (noting how conventions can “fill in the gaps of adjudicated structural constitutional law”); Ashraf Ahmed, *A Theory of Constitutional Norms*, 120 MICH. L. REV. 1361, 1384 (2022) (stating that a convention is “regular behavior by members of a community among whom it is common knowledge that in a particular type of recurring situation, people generally follow the convention”); Adrian Vermeule, *Conventions of Agency Independence*, 113 COLUM. L. REV. 1163, 1182, 1185 (2013) (defining conventions as “regular patterns of political behavior” that are “followed from a sense of obligation”).

¹⁰⁶ *See* Gillian E. Metzger & Kevin M. Stack, *Internal Administrative Law*, 115 MICH. L. REV. 1239, 1239 (2017) (“Internal administrative law consists of the internal directives, guidance, and organizational forms through which agencies structure the discretion of their employees and presidents control the workings of the executive branch.”).

ington. The powers they have are limited to the enforcement of rules rather than the creation of them. These are all generalizations subject to meaningful caveats and exceptions.

The result is the creation, broadly speaking, of two categories of administrative officials. There are headquarters officials who are more likely to be selected from and influenced by those related to the federal government, such as other parts of the federal government or the national media or lobbying community in the Washington metropolitan area. Then there are decentralized officials who are more likely to be selected from and influenced by other communities—perhaps state and local governments in other places, or private sector communities outside of the Washington metropolitan area.

A. Powers

The first place to look for a headquarters principle is “constitutional text and history.”¹⁰⁷ The text of the Constitution implies that there would be a dominant location where major decisions are made but also that there would be other places hosting important federal officials. Consider, for instance, the District Clause in Article I:

[The Congress shall have power] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may . . . become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings.¹⁰⁸

The first type of place would be the “Seat of Government.” Although the specific seat of government where the new government would be located was not identified in the Constitution, this phrase suggests that there would be a single place dominating the federal government—the “Seat of Government.”¹⁰⁹ The District Clause uses a generic phrase to describe the other locations for federal power—“all Places.” The distinction between the “Seat of Government” and “all places” suggests a hierarchy of places, as does the type of parts of the federal government that would be located in “all places.”¹¹⁰

¹⁰⁷ *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 2 (2022) (citing *District of Columbia v. Heller*, 554 U.S. 570).

¹⁰⁸ U.S. CONST. art. I, § 8, cl. 17.

¹⁰⁹ *See, e.g., McPherson v. Blacker*, 146 U.S. 1, 27 (1892) (stating that when the “framers of the Constitution employed words in their natural sense; and where they are plain and clear, resort to collateral aids to interpretation is unnecessary and cannot be indulged in to narrow or enlarge the text”).

¹¹⁰ The second category of places would feature “Forts, Magazines, Arsenals, dock-Yards and other needful Buildings.” U.S. CONST. art. I, § 8, cl. 17. These would be important for the defense of a

The Residence Act of 1790 stated that “[a]ll offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law.”¹¹¹ Statutes creating parts of the executive branch often make it clear that the important officials in each of these new parts of the executive branch would be centralized in Washington. These statutes use the language of “seat of government” that was first used in the Residence Act.¹¹² The Supreme Court seemed to ratify a version of this two-tier theory in a case from 1867.¹¹³ This assumption has been shared by presidents¹¹⁴ and members of Congress.¹¹⁵

For most administrative officials outside of Washington, headquarters officials are deciding what the rules are. Agency regulations in many situations engage in a further discussion of this and make clear that the headquarters office is supposed to (as in the illustrative case of the Securities and Exchange Commission) generate “overall development, policy, and technical guidance, and policy direction of the operating programs”¹¹⁶

Administrative officials outside of Washington are limited to enforcing rules on a case-by-case basis—by and large. There are significant exceptions, discussed below and otherwise in the Article. The authority of decentralized officials is usually explicitly limited to the power “to enforce” existing legal rules as defined by law.¹¹⁷ For instance, the jurisdiction of each Regional Of-

new and fragile country, but also surely not as important as other types of federal institutions like Congress and the President.

¹¹¹ 4 U.S.C. § 72.

¹¹² See, e.g., 15 U.S.C. § 5101 (1903) (“There shall be at the seat of government an executive department to be known as the Department of Commerce, and a Secretary of Commerce, who shall be the head thereof”); 50 U.S.C. § 409(a) (1947) (“The term ‘Department of the Army’ as used in this Act shall be construed to mean the Department of the Army at the seat of the government and all field headquarters . . . under the control or supervision of the Department of the Army.”); 50 U.S.C. § 409(b) (1966) (“The term ‘Department of the Navy’ . . . shall be construed to mean the Department of the Navy at the seat of the government”); 50 U.S.C. § 409(c) (1947) (“The term ‘Department of the Air Force’ as used in this Act shall be construed to mean the Department of the Air Force at the seat of the government and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Department of the Air Force.”).

¹¹³ See *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 43–44 (1867) (noting that there is a “capital” housing the “principal operations” of the federal government and that there are “offices of secondary importance” in other places).

¹¹⁴ For a discussion of the debates around the time, see *The “Welcome” Demonstration*, EVENING STAR (D.C.), Dec. 22, 1870, at 4 (quoting President Ulysses Grant controversially signaling opposition to the decentralization pursued by President Lincoln’s allies).

¹¹⁵ In 2017, Representative Jason Chaffetz (R-UT) proposed a statute to relocate federal officials outside of Washington. Delegate Eleanor Holmes Norton from the District of Columbia objected on many grounds, including that “the framers decided . . . there would be a capital and in the capital would be located the major agencies that run your government.” See Portnoy, *supra* note 101.

¹¹⁶ 17 C.F.R. § 200.11(a)(1) (2025).

¹¹⁷ See, e.g., *City of Boerne v. Flores*, 521 U.S. 507, 519–20 (1997) (describing congressional power to enforce as “remedial” and not the power “to decree the substance” or “determine what constitutes a . . . violation” (quoting *South Carolina v. Katzenbach*, 383 U.S. 301, 326 (1966))); see also

office of the Environmental Protection Agency (EPA) is limited to “the execution of the Regional Programs of the Agency.”¹¹⁸

One consistent theme across agencies is that on many particularly important matters, headquarters will even reserve for itself what would usually be considered significant areas of enforcement powers. For instance, in the Department of Justice (DOJ), the Attorney General in Washington has plenary litigating authority.¹¹⁹ No one can authorize a lawsuit on behalf of the United States except the Attorney General or someone the Attorney General designates.¹²⁰ Furthermore, “no Department employee may communicate with Senators, Representatives, congressional committees, or congressional staff without advance coordination, consultation, and approval” from the Office of Legislative Affairs in Main Justice in Washington.¹²¹ In cases “seeking an indictment for an offense potentially punishable by death, the United States Attorney or Assistant Attorney General shall consult with the Capital Case Section” in Washington.¹²²

Even when this category of “important” enforcement activities remains with decentralized officials, on occasion it can only be utilized after receiving the approval of headquarters officials. The Division of Enforcement in the Securities and Exchange Commission (SEC) in Washington, for instance, meets “on a quarterly basis” to review matters having “potential programmatic significance.”¹²³ This SEC oversight of regional enforcement has reached particularly dramatic extremes in the past. When Christopher Cox was in charge of the SEC, he mandated that regional enforcement staff fly to Washington and present cases to him and to others for a full commission review.¹²⁴ The National Labor Relations Board (NLRB) features in its manual an unusually clear and detailed list of important matters for which headquarters permission is neces-

Jerry L. Mashaw, *Recovering American Administrative Law: Federalist Foundations, 1787–1801*, 115 YALE L.J. 1256, 1261 (2006) (“When a litigant sues the Secretary of Health and Human Services, or Congress summons the Commissioner of the Food and Drug Administration to a hearing, both assume that these high-level officials have effective control over the bureaucracies that they manage.”).

¹¹⁸ 40 C.F.R. § 1.61 (2025).

¹¹⁹ See, e.g., 28 U.S.C. § 519 (“Except as otherwise authorized by law, the Attorney General shall supervise all litigation to which the United States, an agency, or officer thereof is a party, and shall direct all United States attorneys, assistant United States attorneys, and special attorneys . . . in the discharge of their respective duties.”).

¹²⁰ For cases discussing this, see, for instance, *F.T.C. v. Guignon*, 390 F.2d 323 (8th Cir. 1968); *I.C.C. v. S. Ry. Co.*, 543 F.2d 534 (5th Cir. 1976), *reh’g denied*, 551 F.2d 95 (1977).

¹²¹ U.S. Dep’t of Just., Justice Manual § 1-8.200 (2019).

¹²² *Id.* § 9-10.040 (2014).

¹²³ See U.S. SEC. & EXCH. COMM’N, DIV. OF ENF’T, ENFORCEMENT MANUAL § 2.2.4 (2026) [hereinafter SEC ENFORCEMENT MANUAL], www.sec.gov/divisions/enforce/enforcementmanual.pdf [perma.cc/9ZYH-A3TA].

¹²⁴ See Zachary A. Goldfarb, *In Cox Years at the SEC, Policies Undercut Action*, WASH. POST (May 31, 2009), <https://www.washingtonpost.com/archive/national/2009/06/01/in-cox-years-at-the-sec-policies-undercut-action/5e833b9a-01d9-46b4-97a8-92b3696b6aa5/> (“The SEC enforcement team flew to Washington from California to present its case . . .”).

sary before a regional official can act.¹²⁵ The Customs Department suggests that the interpretation of laws must come from headquarters.¹²⁶

Another means by which decentralized administrative officials are limited in the powers that they exercise is the meaningful oversight that is exercised from agency headquarters in Washington ahead of enforcement and after enforcement on a larger, programmatic level. Headquarters officials will write manuals and regulations and guidance documents and also otherwise state what rules mean, which constrains decentralized enforcement discretion ahead of time.¹²⁷

The Washington office of the Social Security Administration (SSA) produces a document called “The Red Book,” which details who and how one qualifies for benefits that the SSA administers.¹²⁸ The DOJ manual for its United States Attorneys has a comparable goal.¹²⁹ The NLRB has an extensive manual requiring that congressional interactions be cleared by the Washington office.¹³⁰

There are also mechanisms after decentralized action to ensure that—in general—decentralized actors are complying with headquarters preferences. Regulations specify the need for decentralized officials to act consistently. There will sometimes be a centralized adjudicatory mechanism reviewing large numbers of cases (sometimes all cases) coming from executive branch adjudicators outside of Washington. In the Social Security Administration, for in-

¹²⁵ See NAT’L LAB. RELS. BD., CASEHANDLING MANUAL PART TWO: REPRESENTATION PROCEEDINGS 11754.2(b)-(c) (2023), <https://www.nlr.gov/sites/default/files/attachments/pages/node-174/chm-part-ii-rep2023published-12-2023.pdf> [perma.cc/4VEG-DATL] (stating that headquarters must be involved if there are “new or novel legal problems” or “enforcement of an investigative subpoena”).

¹²⁶ See 19 C.F.R. § 177.11(a) (2026) (“Advice or guidance as to the interpretation or proper application of the Customs and related laws with respect to a specific Customs transaction may be requested by Customs Service field offices from the Headquarters Office at any time, whether the transaction is prospective, current, or completed”).

¹²⁷ See, e.g., 17 C.F.R. § 200.11(a)(1) (2026) (“Division and Office Heads in the Headquarters Office [of the SEC] . . . have Commission-wide responsibility to the Commission for the overall development, policy and technical guidance, and policy direction of the operating programs under their jurisdiction.”); 40 C.F.R. § 1.5(a) (2026) (“EPA Headquarters in Washington, DC maintains overall planning, coordination and control of EPA programs.”).

¹²⁸ See SOC. SEC. ADMIN., RED BOOK: A GUIDE TO WORK INCENTIVES AND EMPLOYMENT SUPPORTS FOR PEOPLE WHO HAVE A DISABILITY UNDER THE SOCIAL SECURITY DISABILITY INSURANCE (SSDI) AND SUPPLEMENTAL SECURITY INCOME (SSI) PROGRAMS (2026), <https://www.ssa.gov/pubs/EN-64-030.pdf> [perma.cc/MTK3-G8NU].

¹²⁹ See U.S. Dep’t of Just., Justice Manual § 1-1.100 (2024) (setting forth the purpose of the manual as a source of internal DOJ policies and procedures). The Manual used to be called the “U.S. Attorneys’ Manual.” See U.S. Dep’t of Just., United States Attorneys’ Manual, § 1-1.100 (2009) (“The United States Attorneys’ Manual is designed as a quick and ready reference for United States Attorneys, Assistant United States Attorneys, and Department attorneys responsible for the prosecution of violations of federal law. It contains general policies and some procedures relevant to the work of the United States Attorneys’ offices and to their relations with the legal divisions, investigative agencies, and other components within the Department of Justice.”).

¹³⁰ See NAT’L LAB. RELS. BD., *supra* note 125, at 11886 (discussing procedures for congressional questions).

stance, there is the Appeals Council located in Northern Virginia just outside of Washington.¹³¹ Many agencies will keep data on decentralized activities and review that data regularly. Regional offices of the SEC, for instance, are reviewed by different parts of the main office in Washington depending on the nature of the regional action.¹³²

At a more significant level, whatever powers regions are granted are limited not just because exercises of these powers can be overturned, or the sub-delegation of those powers withdrawn, but the entire regional office can simply be eliminated without great procedural difficulty.¹³³ The NLRB, for instance, is currently contemplating eliminating its office in Memphis.¹³⁴ The SEC has created and eliminated offices outside of the Washington metropolitan area many times, most recently and significantly in 2007.¹³⁵

¹³¹ See *Brief History and Current Information About the Appeals Council*, SOC. SEC. ADMIN., http://www.ssa.gov/appeals/about_ac.html [perma.cc/K7BD-8S29] (providing a general overview of the Appeals Council, including its physical location in Falls Church, Virginia); see also *Brief History and Current Information About the Appeals Council*, SOC. SEC. ADMIN., https://www.supremecourt.gov/opinions/URLs_Cited/OT2018/17-1606/17-1606-1.pdf [perma.cc/3RL9-SMEK] (“[T]he Appeals Council was established to oversee the hearings and appeals process, promote national consistency in hearing decisions made by referees (now administrative law judges) and make sure that the Social Security Board’s (now the Commissioner’s) records were adequate for judicial review.”). This final level of review by an administrative law judge exists across the administrative litigation spectrum. See, e.g., *National Appeals Division (NAD)*, U.S. DEP’T. OF AGRIC., <https://www.usda.gov/about-usda/general-information/staff-offices/office-hearings-and-appeals/national-appeals-division> [perma.cc/86VD-T9CQ].

¹³² See 17 C.F.R. § 200.27 (2026) (“Each Regional Director is . . . subject to review, on enforcement matters, by the Director or Deputy Director of the Division of Enforcement and, on examination matters, by the Director of the Division of Examinations, and subject to policy direction and review by the other Division Directors, the General Counsel, and the Chief Accountant.”); see also U.S. SEC. & EXCH. COMM’N, OFF. OF INSPECTOR GEN., INVESTIGATION OF THE SEC’S RESPONSE TO CONCERNS REGARDING ROBERT ALLEN STANFORD’S ALLEGED PONZI SCHEME, CASE NO. OIG-526, 26 (Mar. 31, 2010), <https://sivg.org/resources/oig-526.pdf> [perma.cc/6N4U-XY5G] (“A Fort Worth Assistant Director . . . stated: ‘Everybody was mindful of stats . . . Stats were recorded internally by the SEC in Washington.’”).

¹³³ The agency heads, but even occasionally other officials in the headquarters office, are the recipients of delegations from Congress. See, e.g., Jennifer Nou, *Subdelegating Powers*, 117 COLUM. L. REV. 473, 474 (2017) (“Administrative law’s central anxiety is the exercise of delegated power. This angst, more often than not, is directed at delegations from Congress to an administrative agency”); *id.* at 475 (“[P]olitically-appointed agency heads—say, the Administrator of the Environmental Protection Agency (EPA) or the Secretary of Health and Human Services (HHS)—are the main arbiters of delegated authority.”). Decentralized officials usually only exist to the extent they are delegated authority by headquarters.

¹³⁴ See Press Release, NLRB, Off. of Pub. Affairs, *Public Comments Invited on Proposal to Close Memphis NLRB Office and Recruit a Resident Agent* (Oct. 9, 2024), <https://www.nlr.gov/news-outreach/region-15-new-orleans/public-comments-invited-on-proposal-to-close-memphis-nlr> [perma.cc/U4QH-9P68] (announcing a proposal to close the NLRB’s Memphis subregional office and consolidate its functions into regional offices as part of the agency’s broader efforts to reduce costs).

¹³⁵ See Regional Office Reorganization, 17 C.F.R. §§ 200–203, 209, 230, 232, 240, 249 (2026) (reorganizing SEC’s five regional and six district offices into eleven regional offices); Press Release, U.S. Sec. & Exch. Comm’n., *SEC Elevates District Offices to Regional Level* (Mar. 30, 2007), <https://www.sec.gov/press/2007/20070330.htm>.

To be clear, decentralized officials still possess meaningful authority. Statutes and regulations leave substantial discretion related to how they can and should act.¹³⁶ Decentralized officials must decide whether to start an investigation, and then if enough evidence is found, decide whether to bring an enforcement procedure or commence a settlement negotiation. Making these decisions also involves deciding how seriously to value different sources of evidence, how many resources should be brought to bear on a particular investigation, and which charges (of many choices) to bring in the first place. This is why in the context of *state* enforcement of federal law, scholars have noted that “[b]ecause federal bureaucrats depend on state actors, . . . state interests are pursued through not only political channels, but also administrative ones.”¹³⁷

State enforcers can offer their reactions to headquarters policies by resisting enforcement or only enforcing incompletely. Federal enforcers can engage in the same course of conduct. Both, in other words, have some powers of voice because of their powers to enforce. State officials have significantly greater powers of exit though.¹³⁸ A state official enforcing a federal program cannot be fired by those at the top of an executive agency or department.¹³⁹ A state agent of a federal principal can decline to enforce the federal program and still enjoy a highly successful career in state government outside of Washington because it is a different professional network.¹⁴⁰

www.sec.gov/newsroom/press-releases/2007-59-sec-elevates-district-offices-regional-level [perma.cc/TC6E-5ATT].

¹³⁶ See William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 529–33 (2001) (discussing incentives for overly broad criminal statutes).

¹³⁷ Bulman-Pozen & Gerken, *supra* note 26, at 1286. Another analogy here is to uncooperative federalism. See *id.* at 1256 (“The literature has not developed a vocabulary for describing how states use regulatory power conferred by the government to resist federal policy, let alone a full account of the implications of this practice.”); see also Richard Briffault, “What About the ‘Ism’?” *Normative and Formal Concerns in Contemporary Federalism*, 47 VAND. L. REV. 1303, 1318 (1994) (“[L]ocalism suggests . . . [that] subordinate units can do quite well in the political scheme of things . . . without a claim to sovereignty, and without a claim to constitutional protection against upper-level governments.”).

¹³⁸ See generally ALBERT O. HIRSCHMAN, *EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FORMS, ORGANIZATIONS, AND STATES* (1970) (discussing exit as a tool of power).

¹³⁹ See, e.g., Larry Kramer, *Understanding Federalism*, 47 VAND. L. REV. 1485, 1544 (1994) (“Realistically speaking, Congress can neither abandon these programs nor ‘fire’ the states and have federal bureaucrats assume full responsibility for them.”).

¹⁴⁰ See, e.g., Bulman-Pozen & Gerken, *supra* note 26, at 1271 (“State actors, be they legislators or bureaucrats, can thus rely on a separate power base that possesses significant resources, stability, and stature.”); see also DANIEL P. CARPENTER, *THE FORGING OF BUREAUCRATIC AUTONOMY: REPUTATIONS, NETWORKS, AND POLICY INNOVATION IN EXECUTIVE AGENCIES, 1862–1928*, at 15 (2001) (describing being “embedded in political and social networks” as a source of power for officials).

B. Process

One means by which agents can have influence over their principals is if they have regular access to these principals.¹⁴¹ As Jennifer Nou has written, “[o]ffices within an agency are often physically organized according to hierarchies, which affords those higher up the chain with greater day-to-day access to agency leadership.”¹⁴² Decentralized administrative officials are also subordinate because of how they are hired and fired, and because of how they access the highest levels of agency leaders.¹⁴³

First, headquarters officials play a central role in personnel decisions for decentralized offices. For the SEC, for instance, it appears that the Chairman in Washington is empowered to engage in “the appointment and supervision of personnel employed under the Commission.”¹⁴⁴ There are media reports of high-ranking advisors on presidential campaigns being quickly nominated after inauguration to these positions by those in the White House.¹⁴⁵ Regional Directors of the EPA are announced by press releases featuring praise from the Ad-

¹⁴¹ See Bulman-Pozen & Gerken, *supra* note 26, at 1268–69 (“When an actor is embedded in a larger system, a web of connective tissues binds higher- and lower-level decisionmakers. Regular interactions generate trust and give lower-level decisionmakers the knowledge and relationships they need to work the system.”).

¹⁴² Jennifer Nou, *Intra-Agency Coordination*, 129 HARV. L. REV. 421, 454 (2015) (“The more . . . integrated as part of the top-level decision apparatus, the more likely [there will be] . . . influence [over] the final regulatory option picked.”). This is similar to the discussion in the process federalism literature about the importance of state officials being integrated with federal regulators. See Bulman-Pozen & Gerken, *supra* note 26, at 1268 (“When an actor is embedded in a larger system, a web of connective tissues binds higher- and lower-level decisionmakers.”); Cristina M. Rodríguez, *Negotiating Conflict Through Federalism: Institutional and Popular Perspectives*, 123 YALE L.J. 2094, 2097 (2014) (discussing the importance of “policy conversations and bureaucratic negotiations”).

¹⁴³ If the prior Section was comparable to the “autonomy federalism” idea of ensuring that decentralized state officials must have meaningful areas to act for federalism to work, then one may think about this dimension as “process federalism,” but for decentralized federal officials rather than (decentralized) state officials. In the federalism literature, state governments are sometimes presented as being protected because of their interactions with the federal government—regardless of whether state governments have any powers of their own. See Herbert Wechsler, *The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government*, 54 COLUM. L. REV. 543, 546, 558–59 (1954) (discussing how federal politics necessarily involves state governments); see also Kramer, *supra* note 139, at 1544 (“[T]he federal government depends so heavily on state officials to help administer its programs . . . Congress can neither abandon these programs nor ‘fire’ the states and have federal bureaucrats assume full responsibility for them. The federal government needs the states as much as the reverse, and this mutual dependency guarantees state officials a voice in the process.”). More recent literature identifies state governments as involved in the federal administrative process. See Bulman-Pozen & Gerken, *supra* note 26, at 1285 (“[S]tate contestation occurs in the vast regulatory swaths where states are not autonomous policymakers but instead carry out federal law.”).

¹⁴⁴ Reorganization Plan No. 10 of 1950 § 1(a)(1), 5 U.S.C. app. at 127 (2018).

¹⁴⁵ See, e.g., Martha Pskowski, *Project 2025 Adviser Takes the Reins at EPA Region Including Texas*, TEX. TRIB. (Feb. 10, 2025), <https://www.texastribune.org/2025/02/10/texas-epa-region-6-administrator-environmental-protection-agency/> [perma.cc/4JBQ-2YP3] (discussing the involvement of an EPA Regional Administrator in the prior presidential campaign).

ministrator of the EPA but language indicating that the President themselves had “appointed” the Regional Director.¹⁴⁶

Second, most decentralized officials do not report directly to the most important agency officials: the political appointees at the top of their agency.¹⁴⁷ There will usually be an office within headquarters—but not within the agency head’s executive office—to which the decentralized official reports. The Regional Offices of the EPA, for instance, do not regularly report to the Administrator. There is a specially created “Office of Regional Operations” which itself “reports directly to the Administrator and Deputy Administrator” and is “the primary communications link between the Administrator/Deputy Administrator and the Regional Administrators,”¹⁴⁸ thereby precluding some direct communication between Regional Administrators and the Administrator in headquarters. There is also a discussion of “on-site field visits” from this “Office of Regional Operations” to regions.¹⁴⁹

It is worth noting, though, that the “Office of Regional Operations” is not itself located within the Office of the Administrator even though it reports directly to that Office.¹⁵⁰ In the SEC, the Regional Directors report to different officials in headquarters depending on the matter involved.¹⁵¹

C. People

Administrative officials are influenced by the “thick political surround” that shapes them prior to assuming office and once in their positions.¹⁵² Their

¹⁴⁶ This is the language of the Appointments Clause. *See* U.S. CONST. art. II, § 2, cl. 2 (“[The President] . . . shall nominate . . . [principal officers] . . . but the Congress may by Law vest the *Appointment* of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.”) (emphasis added); *see, e.g.*, Press Release, Env’t Prot. Agency, *Kevin J. McOmber Appointed to Lead EPA’s Southeast Region* (Feb. 24, 2025), <https://www.epa.gov/newsreleases/kevin-j-mcomber-appointed-lead-epas-southeast-region> [perma.cc/WUV3-RH3K] (announcing President Trump’s appointment of Kevin J. McOmber as EPA Regional Administrator for the Southeast Region).

¹⁴⁷ *See* JAMES Q. WILSON, *BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT* 198 (1989) (“The chief executive of most federal agencies, bureaus, and departments is a political appointee.”).

¹⁴⁸ 40 C.F.R. § 1.27(b) (2026).

¹⁴⁹ *Id.*

¹⁵⁰ *See* 40 C.F.R. § 1.23 (“The Environmental Protection Agency is headed by an Administrator who . . . is assisted by a Deputy Administrator . . .”); *Organization Chart for the Office of Administrator*, EPA, <https://www.epa.gov/aboutepa/organization-chart-office-administrator> [perma.cc/3GH2-B8NY] (Apr. 29, 2026) (omitting Office of Regional Operations from list of offices within the Office of the Administrator).

¹⁵¹ *See* 17 C.F.R. § 200.27 (2026) (“Each Regional Director is . . . subject to review, on enforcement matters, by the Director or Deputy Director of the Division of Enforcement and, on examination matters, by the Director of the Division of Examinations, and subject to policy direction and review by the other Division Directors, the General Counsel, and the Chief Accountant.”).

¹⁵² Aziz Z. Huq & Jon D. Michaels, *The Cycles of Separation-of-Powers Jurisprudence*, 126 *YALE L.J.* 346, 346, 382–91 (2016).

“social network” is a major part of understanding their incentives.¹⁵³ They are shaped by their peers, supervisors, and clients inside and outside of the administrative state.¹⁵⁴ It is now relatively “well established empirically”¹⁵⁵ that “[p]eople frequently think and do what they think and do because of what they think relevant others think and do.”¹⁵⁶

Headquarters officials are part of different networks than decentralized officials for two primary reasons. Headquarters officials are the product of different “selection effects”¹⁵⁷ than decentralized officials. A systematically different type of actor becomes the one with the most administrative power in headquarters in the first place. Headquarters officials are also the product of different treatment effects¹⁵⁸ than decentralized officials. One of the primary effects of location is that it shapes the epistemic community to which one belongs.¹⁵⁹ It shapes the argument pools that one is exposed to, meaning the policies and priorities that an administrative official hears.¹⁶⁰ It also shapes the relevant community that one is trying to please or otherwise face reputational costs.¹⁶¹

¹⁵³ See BETSY SINCLAIR, *THE SOCIAL CITIZEN: PEER NETWORKS AND POLITICAL BEHAVIOR*, at xi (2012) (defining a social network as “the complex collection of relationships that arise from each person’s geography, work, and leisure activities”).

¹⁵⁴ JOHN BREHM & SCOTT GATES, *WORKING, SHIRKING, AND SABOTAGE: BUREAUCRATIC RESPONSE TO A DEMOCRATIC PUBLIC* 3 (1999); see also Daniel Carpenter & George A. Krause, *Transactional Authority and Bureaucratic Politics*, 25 J. PUB. ADMIN. RSCH. & THEORY 5, 13 (2014) (considering how the network in which administrative officials operate shapes their behavior).

¹⁵⁵ James H. Fowler et al., *Causality in Political Networks*, 39 AM. POL. RSCH. 437, 438 (2011). See generally David A. Siegel, *Social Networks and Collective Action*, 53 AM. J. POL. SCI. 122, 122 (2009) (“Across social science, a wealth of empirical evidence illustrates the ways in which social interactions can alter choice.”).

¹⁵⁶ Cass R. Sunstein, *Deliberative Trouble? Why Groups Go to Extremes*, 110 YALE L.J. 71, 77 (2000).

¹⁵⁷ See Adrian Vermeule, *Selection Effects in Constitutional Law*, 91 VA. L. REV. 953, 953 (2005) (defining “selection effects” as those effects that regulate “which (potential) officials are selected”).

¹⁵⁸ See *id.* (describing the “incentives for those who happen to occupy official posts at any given time”).

¹⁵⁹ See, e.g., Robert M. Cover, *Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 42 (1983) (discussing how being a part of an intellectual community shapes behavior); Peter M. Haas, *Introduction: Epistemic Communities and International Policy Coordination*, 46 INT’L ORG. 1, 17 (1992) (discussing how this matters for international law); Koh, *supra* note 26, at 2603 (same). Alfred Marshall has the classic account of this from the late nineteenth century. ALFRED MARSHALL, *PRINCIPLES OF ECONOMICS* 271 (8th ed. 1953) (stating that when workers are physically proximate “[t]he mysteries of the trade become no mysteries; but are as it were in the air”).

¹⁶⁰ See Sushil Bikhchandani, David Hirshleifer & Ivo Welch, *A Theory of Fads, Fashion, Custom, and Cultural Change as Informational Cascades*, 100 J. POL. ECON. 992, 995 (1992) (describing how “informational cascades” can form argument pools for the public); cf. Timur Kuran & Cass R. Sunstein, *Availability Cascades and Risk Regulation*, 51 STAN. L. REV. 683, 715–35 (1999) (discussing how limited argument pools shape preferences).

¹⁶¹ See Damon Centola, *The Spread of Behavior in an Online Social Network Experiment*, SCIENCE, Sep. 3, 2010, at 1194, 1197 (“Whereas locally clustered ties may be redundant for simple contagions, like information or disease, . . . they can be highly efficient for promoting behavioral diffusion.”) (citations omitted). For studies of this for regulators, see John Brehm & James T. Hamilton,

The predominant concentration of the most meaningful forms of administrative power in a single metropolitan area means that the administrative state is dominated by officials from within the federal community. That federal network can include other elected officials and their staffers, higher-ranking administrative officials, leading lobbyists, significant donors, and national media figures. For decentralized administrative officials, the network will be dominated more by state and local government figures and leading figures in private industries, along with some other decentralized administrative officials. The point of drawing this distinction is not to criticize or praise one category of officials or another category of officials. Instead, the point is to demonstrate the effects of the regulations discussed earlier on the types of administrative officials at the disposal of institutional designers.

First, headquarters officials—the ones with the most administrative power—are more often selected from those with experience with and knowledge of the federal government. These officials can have experience working for a Washington law firm. They can come from lobbyists for national organizations in Washington¹⁶² or from think tanks located in Washington.¹⁶³ They can have experience working for Congress or for other actors in the executive branch. For instance, the acting head of the Division of Examinations in the SEC at the time of this Article was previously the Director of the SEC's Office of Legislative and Intergovernmental Affairs, and prior to that worked in the Department of Justice and in the United States Senate.¹⁶⁴

Their connections to others at the highest levels of the federal government can make them sufficiently connected to be nominated and confirmed (if that is required) to important agency positions in the first place.¹⁶⁵ It is no surprise therefore that roughly one in three political appointees (the overwhelming majority of whom are being selected for headquarters positions) are already living in the Washington metropolitan area at the time they are selected by the Presi-

Noncompliance in Environmental Reporting: Are Violators Ignorant, or Evasive, of the Law?, 40 AM. J. POL. SCI. 444, 449–50 n.5 (1996); David M. Hedge, *A Spatial Model of Regulation*, 21 AM. POL. Q. 387, 388 (1993).

¹⁶² See Lee Fang, *Where Have All the Lobbyists Gone?*, THE NATION (Feb. 19, 2014), <https://www.thenation.com/article/archive/shadow-lobbying-complex/> [perma.cc/973R-GZQE] (quoting relevant empirical research).

¹⁶³ LEE DRUTMAN, *THE BUSINESS OF AMERICA IS LOBBYING: HOW CORPORATIONS BECAME POLITICIZED AND AMERICA BECAME MORE CORPORATE* 27–28 (2015).

¹⁶⁴ *Director, Division of Examinations*, U.S. SEC. & EXCH. COMM'N., <https://www.sec.gov/about/divisions-offices/division-examinations/keith-cassidy> (July 7, 2026), [perma.cc/7UQA-CYEM].

¹⁶⁵ See Gabriel Horton & David E. Lewis, *Turkey Farms, Patronage, and Obama Administration Appointments* 20–28 (Vanderbilt Pub. L. Working Paper No. 09-24, 2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1478474 [perma.cc/Z5T2-RM49] (discussing these mechanisms and evidence of these mechanisms).

dent.¹⁶⁶ Officials with a background in Washington have obtained “specific human capital” in the form of experience in the federal government, and relationships with other federal officials can help these officials navigate many of the bureaucratic challenges that arise when operating within an agency.¹⁶⁷ This promise of greater performance in their positions is part of what makes them appealing options.

Consider the *Trump v. Slaughter* case recently decided by the Supreme Court.¹⁶⁸ *Slaughter* addresses President Trump’s decision to remove Rebecca Slaughter as a Commissioner of the Federal Trade Commission (FTC), where she handled many technical regulatory matters.¹⁶⁹ Slaughter claims that this termination violates the relevant federal statute protecting her from removal except “for inefficiency, neglect of duty, or malfeasance in office.”¹⁷⁰ The Trump Administration claims that the statute “unconstitutionally infringes on the President’s Article II power.”¹⁷¹

Rebecca Slaughter served almost seven years on the FTC before President Trump removed her.¹⁷² Slaughter was a graduate of Yale Law School who later served at a Washington law firm before working for many years for Senator Charles Schumer (D-NY).¹⁷³ She worked on FTC matters as the Chief Counsel to Senator Schumer, and she cited that as her primary background for her nomination to the FTC.¹⁷⁴

By contrast, decentralized officials are often picked based on experience with and connections to other networks. Decentralized administrative officials usually have their jurisdiction defined geographically as including a specific part of the country, so it should be no surprise that key stakeholders within that area are consulted.¹⁷⁵ Often this connection to local actors is even part of their

¹⁶⁶ Anne Joseph O’Connell, *Shortening Agency and Judicial Vacancies Through Filibuster Reform? An Examination of Confirmation Rates and Delays from 1981 to 2014*, 64 DUKE L.J. 1645, 1646 (2015).

¹⁶⁷ Sarah A. Binder & Frances E. Lee, *Making Deals in Congress*, in SOLUTIONS TO POLITICAL POLARIZATION IN AMERICA 240, 255 (Nathaniel Persily ed., 2015).

¹⁶⁸ *Trump v. Slaughter*, 146 S. Ct. 2283 (2026).

¹⁶⁹ *Id.* at 2291–95.

¹⁷⁰ 15 U.S.C. § 41, *invalidated by*, *Trump v. Slaughter*, 146 S. Ct. 2283 (2026).

¹⁷¹ *Slaughter v. Trump*, No. 25-5261, 2025 WL 2551247, at *2 (D.C. Cir. Sep. 2, 2025), *cert. granted before judgment*, 146 S. Ct. 18, *rev’d and remanded*, 146 S. Ct. 2283 (2026).

¹⁷² See David McCabe, *Who Is Rebecca Slaughter?*, N.Y. TIMES (Dec. 8, 2025), <https://www.nytimes.com/2025/12/08/us/politics/rebecca-slaughter.html> [perma.cc/K2DX-QU8G] (providing background information on Rebecca Slaughter in the context of the case regarding her removal).

¹⁷³ SENATE COM. COMM., 118TH CONG., NOMINEE QUESTIONNAIRE, REBECCA SLAUGHTER 2 (2023), <https://www.commerce.senate.gov/services/files/C3338EB5-3572-40DB-8C75-1D64BA56A1DE> [perma.cc/7RN7-3KVK].

¹⁷⁴ *Id.* at 25.

¹⁷⁵ See, e.g., 40 C.F.R. § 1.5(a) (2026) (“Regional Administrators head the Regional Offices and are responsible directly to the Administrator for the execution of the Agency’s programs within the

job description in administrative office.¹⁷⁶ Formal and informal input from local stakeholders is sometimes a formal part of the process of selecting these decentralized administrative officials.¹⁷⁷

*Loper Bright Enterprises v. Raimondo*¹⁷⁸ is known as the case that overturned *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*¹⁷⁹ *Loper Bright* is also notable because it involved the Regional Fishery Management Councils created by the Magnuson-Stevens Fishery Conservation and Management Act.¹⁸⁰ Governors played a crucial role in the selection of officials for those Councils because they had to justify how each nominee “is knowledgeable and experienced by reason of . . . occupational or other experience, scientific expertise, or training . . . related to the fishery resources of the geographical area of concern to the Council . . .” in a nomination statement.¹⁸¹

Second, these administrative officials will differ in the epistemic communities to which they belong once they are in office. Headquarters officials are surrounded by those working in or with the other parts of the federal government.¹⁸² Headquarters officials know that there are many other opportunities for them at the highest levels of the federal government once they leave their positions—and without them having to leave town because these opportunities are within the Washington metropolitan area.¹⁸³ They therefore face incentives to act consistently with the understandings within the epistemic community of the federal government. If they conform to that centralized community of those

boundaries of their Regions.”); *Id.* § 1.7(b)(1) (listing “Region I” as including “Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont”).

¹⁷⁶ The *SEC Enforcement Manual* indicates that “state securities regulators have relationships with the SEC regional office that covers the territory in which they are located, and the state regulators direct their referrals to that office.” SEC ENFORCEMENT MANUAL, *supra* note 123, § 2.1.2.3.

¹⁷⁷ For instance, the statute creating the Federal Emergency Management Agency (FEMA) indicates that regional administrators of FEMA are appointed only “after consulting with State, local, and tribal government officials in the region.” 6 U.S.C. § 317(b)(1).

¹⁷⁸ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

¹⁷⁹ *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), *overruled by* *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

¹⁸⁰ See Pub. L. 94-265, 90 Stat. 331 (1976) (codified as amended at 16 U.S.C. § 1801) (establishing the federal framework for managing and conserving fishery resources with the United States).

¹⁸¹ 50 C.F.R. § 600.215(b)(1) (2026).

¹⁸² See, e.g., Rodriguez & Schleicher, *supra* note 48, at 651 (discussing how proximity shapes behavior).

¹⁸³ The concentration of similar opportunities in the same place creates a type of “market depth.” See Schleicher, *supra* note 48, at 1520–21 (“[I]ndividuals and firms locate . . . to participate in deep labor markets with lots of potential workers in any given field.”). For the classic account, see MARSHALL, *supra* note 159, at 271–72. Workers in that place therefore benefit from a form of risk pooling protecting them “against firm . . . specific shocks.” Edward L. Glaeser, *Are Cities Dying?*, 12 J. ECON. PERSPS. 139, 146 (1998). If one employment opportunity disappears because a particular employer disappears, then another one is still available across town. A new opportunity therefore arises without anyone having to endure the various costs associated with relocation.

at the highest levels of federal power, they will be rewarded reputationally and maybe even with employment opportunities.¹⁸⁴

By contrast, decentralized administrative officials are more likely to share networks with private actors (not their national lobbying representatives in Washington), as well as state and local officials.¹⁸⁵ Because of their deeper personal and professional connections to these larger metropolitan areas outside of Washington (e.g., Atlanta) or to smaller towns (e.g., where a Social Security Office might be), these officials will likely stay in those areas once they leave office and aspire for state and local power, rather than trying to please and then be employed by the more powerful officials in Washington.

A former Director of the New York Regional Office of the SEC, for instance, left to join the New York office of a law firm because of their knowledge of the New York City corporate world.¹⁸⁶ Former New York City Mayor Bill De Blasio was the Regional Director for Housing and Urban Development (HUD) offices in New York and New Jersey during the Clinton Administration.¹⁸⁷ Decentralized federal officials might sometimes aspire to and obtain power in Washington, but this is certainly far less common.¹⁸⁸

Decentralized officials will often see it as part of their institutional mission to engage with and learn from these epistemic communities outside of the Washington metropolitan area. These connections can become one of the “focal points” organizing the mission of these offices outside of Washington.¹⁸⁹ For

¹⁸⁴ See Jerry L. Mashaw, *Federal Administration and Administrative Law in the Gilded Age*, 119 YALE L.J. 1362, 1362 (2010) (“State capacities built steadily throughout the post-Reconstruction era. Congress created multiple new departments, bureaus, and programs, and federal civilian employment grew much more rapidly than population.”).

¹⁸⁵ See Blank & Rosen-Zvi, *supra* note 10, at 1905 (“Their proximity to . . . state and local political institutions enables regional offices . . .”); Richard C. Schragger, *Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System*, 115 YALE L.J. 2542, 2562–63 (2006) (“Mayors come to Washington to lobby for aid or assistance, but they tend not to have ongoing relationships with federal elected officials or federal bureaucracies. Instead of being direct participants in state and federal policymaking, they are outsiders to it, only as influential as any other representative of a group or institution seeking government aid might be.”).

¹⁸⁶ See Press Release, Latham & Watkins LLP, *Preeminent SEC Enforcement Lawyer Joins Latham in New York* (Feb. 5, 2025), <https://www.prnewswire.com/news-releases/preeminent-sec-enforcement-lawyer-joins-latham-in-new-york-302368925.html> [perma.cc/N24E-HVU3].

¹⁸⁷ James Warren, *De Blasio’s Early Audition*, N.Y. DAILY NEWS (Oct. 27, 2013), <http://www.nydailynews.com/opinion/de-blasio-early-audition-article-1.1496691> [perma.cc/4NR5-CAD9].

¹⁸⁸ *But see* Adam Nagourney, *A Trump Ally in Congress Warns His State, California, to Make Nice*, N.Y. TIMES (Feb. 18, 2017), <https://www.nytimes.com/2017/02/18/us/a-trump-ally-in-congress-warns-his-state-california-to-make-nice.html> [perma.cc/R9SW-PWS9] (describing how future Speaker of the House Kevin McCarthy started in the district office of a member of the House of Representatives in California).

¹⁸⁹ See generally Richard H. McAdams, *Beyond the Prisoners’ Dilemma: Coordination, Game Theory, and Law*, 82 S. CAL. L. REV. 209, 233–34 (2009) (describing a focal point as a basis to help “individuals coordinate in a particular way, and thereby create self-fulfilling expectations that the recommended behavior will occur”). For a discussion of this in the context of the administrative state, see J.R. DeShazo & Jody Freeman, *Public Agencies as Lobbyists*, 105 COLUM. L. REV. 2217, 2219

instance, SEC regional offices develop relationships with local leaders who provide information.¹⁹⁰ One official at the SEC noted how local people would “drop[] dimes” with regional regulators they know well with the hope that it would generate distinctive regional actions.¹⁹¹ One regional office reported that a relationship with the local Better Business Bureau office generated important cases.¹⁹² Another regional office reported informal referrals from the state officials because they worked in the same state.¹⁹³ Rather than the priorities of agency leaders, or national lobbyists, or members of Congress influencing headquarters officials, these decentralized communities can provide information and motivation to decentralized officials to regulate in an entirely different way.

III. ADMINISTRATIVE CENTRALIZATION’S PROBLEMS

The administrative state has many normative values that it tries to promote.¹⁹⁴ Courts and commentators focus on two of these values the most: democracy and expertise. The administrative state is usually imagined as a balance between these two inversely related values.¹⁹⁵ The assumption is that the more lay people are involved in the administrative state, the less expertise the administrative state is utilizing.¹⁹⁶ As the Supreme Court has put it, the “argument from bureaucratic expertise” is one that competes against a federal gov-

(2005) (noting the possibility of “substantive or procedural” mandates; the latter “impose obligations to consider additional factors, perform a particular analysis, or consult with specific players”); Tiberiu Dragu & Mattias Polborn, *The Administrative Foundation of the Rule of Law*, 75 J. POL. 1038, 1046–48 (2013).

¹⁹⁰ See, e.g., SEC ENFORCEMENT MANUAL, *supra* note 123, § 2.1.2.3, <https://www.sec.gov/divisions/enforce/enforcementmanual.pdf> [perma.cc/Z5QZ-DUKA] (“Most of the state securities regulators have relationships with the SEC regional office that covers the territory in which they are located and the state regulators direct their referrals to that office.”).

¹⁹¹ See Giovanni Patti & Peter Robau, *SEC Regional Offices*, 18 N.Y.U. J.L. & BUS. 471, 514 (2022) (alteration in original) (quoting Paul Maco).

¹⁹² SUSAN P. SHAPIRO, *WAYWARD CAPITALISTS: TARGET OF THE SECURITIES AND EXCHANGE COMMISSION* 69 (1984).

¹⁹³ See *id.*

¹⁹⁴ For helpful lists of normative values in the larger separation of powers context (outside of just administrative law), see, for instance, Bruce Ackerman, *The New Separation of Powers*, 113 HARV. L. REV. 633, 640 (2000) (presenting “three legitimating ideals” of democracy, professionalism, and the protection of basic rights); Jacob E. Gersen, *Unbundled Powers*, 96 VA. L. REV. 301, 324–52 (2010) (identifying variations of these three principles); Huq & Michaels, *supra* note 152, at 378–87 (providing a list of values largely similar to these three normative ambitions); Daphna Renan, *Pooling Powers*, 115 COLUM. L. REV. 211, 275–80 (2015) (identifying separation of powers goals of efficacy, democratic accountability, and protecting fundamental rights).

¹⁹⁵ See, e.g., Elizabeth Magill & Adrian Vermeule, *Allocating Power Within Agencies*, 120 YALE L.J. 1032, 1039 (2011) (“[T]hese rules reflect a tradeoff between ‘politics’ and ‘expertise.’”).

¹⁹⁶ For some helpful exceptions, see, for instance, Jacob E. Gersen & Anne Joseph O’Connell, *Deadlines in Administrative Law*, 156 U. PA. L. REV. 923, 972 (2008) (“Both democratic and technocratic ideals in administrative law suggest that notice and comment is a desirable form of agency action.”).

ernment based on the “dependence on the people.”¹⁹⁷ Chief Justice John Roberts has noted how the administrative state should create “a government that functions without being ruled by functionaries, and a government that benefits from expertise without being ruled by experts.”¹⁹⁸

The claim in this Part is that the degree of administrative centralization presented in Part II makes democracy and expertise travel together on the same problematic normative road. This amount of authority lodged in a single location can be bad both for democratic and expertise goals of the administrative state because it displaces the democratic and expertise benefits of sometimes empowering decentralized administrative officials to a greater degree. One of the reasons for the legitimacy problems the administrative state has endured has been its substantial centralization. Defenders of the administrative state have largely missed this point—but so have the critics of the administrative state.

A. Democracy

Administrative officials are unelected, and if being elected is a necessary part of being democratically legitimate then the administrative state is doomed. But electoral accountability is just one part of democratic legitimacy.¹⁹⁹ Democracy is also about popular engagement in the process of debating and defining and refining public issues even without elections as a means of expressing public sentiments.²⁰⁰ Democracy also focuses on outputs as a source of democratic legitimacy as well by ensuring that governmental action reflects public priorities and perspectives.²⁰¹

The legal regime discussed in Part II complicates both of those democratic ambitions.²⁰² It provides substantial power to administrative officials from within the federal community who are experienced in ensuring that democratic sentiments are translated into regulatory action. But the legal regime highlighted in Part II diminishes the power of administrative officials who would participate more directly in talking to and hearing from the people outside of the federal community in Washington.

The Supreme Court has led the discussion over democratic objections to the administrative state in the past generation. Many justices have stated that

¹⁹⁷ *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 501 (2010) (citations and quotations omitted).

¹⁹⁸ *Id.* at 499.

¹⁹⁹ See Douglas NeJaime & Reva Siegel, *Answering the Lochner Objection: Substantive Due Process and the Role of Courts in a Democracy*, 96 N.Y.U. L. REV. 1902, 1951 (2021) (“Many democratic theories highlight the inadequacy of equating democracy with voting.”).

²⁰⁰ *Id.* at 1910 (“Democracy requires majoritarian procedures in which all adults have an equal right and an equal opportunity to participate.”).

²⁰¹ See, e.g., Nicholas O. Stephanopoulos, *Elections and Alignment*, 114 COLUM. L. REV. 283, 283 (2014) (“[V]oters’ preferences ought to be congruent with those of their elected representatives.”).

²⁰² See *supra* notes 104–193 and accompanying text.

democratic legitimacy can be a problem for the administrative state because control of the administrative state “may slip from . . . the people.”²⁰³ The Court has said—quoting James Madison—that a “dependence on the people” would be the “primary control on the government.”²⁰⁴ Justice Neil Gorsuch has framed it as a choice: “government by bureaucracy” or “government by the people.”²⁰⁵

For those most supportive of the administrative state, there are many ways that the administrative state is democratically legitimated. The Administrative Procedure Act (APA) imagines that formal rulemaking will be made on the record and subsequent to an agency hearing.²⁰⁶ There are many procedural guarantees that ensure that this hearing will be accessible and open.²⁰⁷ Informal rulemaking (often called “notice and comment”) ensures that “interested persons [have] an opportunity to participate in the rule making” process by providing their comments.²⁰⁸ These procedures are meant to provide democratic legitimacy to that process.²⁰⁹ Agencies must respond to significant comments received during the process of formulating a rule.²¹⁰ The Supreme Court has more recently imagined “foundational principle[s] of administrative law”²¹¹ to include making sure that the true reasons for administrative action be available to “the public.”²¹²

²⁰³ *Free Enter. Fund*, 561 U.S. at 499.

²⁰⁴ *Id.* at 501 (citing THE FEDERALIST NO. 51, *supra* note 59, at 349 (James Madison)); *see also* *West Virginia v. EPA*, 597 U.S. 697, 738 (2022) (Gorsuch, J., concurring) (quoting this phrase and also stating the importance of the principle that “those who make our laws would better reflect the diversity of the people they represent” and that “[t]oday, some might describe the Constitution as having designed the federal lawmaking process to capture the wisdom of the masses”) (citation omitted), *amended sub nom.* *Am. Lung Ass’n v. EPA*, No. 19-1140, 2022 WL 15163000, at *1 (D.C. Cir. Oct. 27, 2022).

²⁰⁵ *Nat’l Fed’n of Indep. Bus. v. Occupational Safety & Health Admin.*, 595 U.S. 109, 125 (2022) (Gorsuch, J., concurring) (citations and quotations omitted); *see also West Virginia v. EPA*, 597 U.S. at 737 (Gorsuch, J., concurring) (“[T]he framers believed that a republic—a thing of the people—would be more likely to enact just laws than a regime administered by a ruling class of largely unaccountable ‘ministers.’”) (citations omitted).

²⁰⁶ *See* 5 U.S.C. § 553(c).

²⁰⁷ *See id.* § 556(d)–(e).

²⁰⁸ *See id.* § 553(c).

²⁰⁹ *See, e.g.,* Lumen N. Mulligan & Glen Staszewski, *The Supreme Court’s Regulation of Civil Procedure: Lessons from Administrative Law*, 59 UCLA L. REV. 1188, 1244 (2012) (“It is widely recognized in administrative law that notice-and-comment rulemaking provides opportunities for public participation and obligations for decisionmakers to consider a range of different perspectives, which improve the legitimacy of the administrative process.”); *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 58 n.13 (2020) (Thomas, J., concurring in part) (“[T]he notice and comment process at least attempts to provide a ‘surrogate political process’ that takes some of the sting out of the inherently undemocratic and unaccountable rulemaking process.” (citation omitted)).

²¹⁰ *See, e.g.,* *Home Box Off., Inc. v. FCC*, 567 F.2d 9, 35–36 (D.C. Cir. 1977) (holding that an agency must respond to significant comments raised during rulemaking to ensure the reviewing court has an adequate basis to assess the reasonableness of the agency’s final rule).

²¹¹ *Dep’t of Homeland Sec.*, 591 U.S. at 20 (citations and quotations omitted).

²¹² *Id.* at 23. *See generally* Benjamin Eidelson, *Reasoned Explanation and Political Accountability in the Roberts Court*, 130 YALE L.J. 1748, 1758 (2021) (“Political accountability sometimes de-

For those more skeptical of the administrative state, the idea of presidential control of the administrative state is a partial solution to concerns about democratic legitimacy. A unitary executive can democratically legitimate the administrative state, at least for some critics of the administrative state.²¹³ As Chief Justice John Roberts wrote, “the Framers made the President the most democratic and politically accountable official in Government” because it is “[o]nly the President (along with the Vice President)” who is accountable to the entire Nation.²¹⁴

It is difficult, however, for headquarters officials making themselves open to public input to be democratic and/or a President supposedly accountable to the entire nation to be democratic when the most important administrative officials are connected to and working from a single place.²¹⁵ Administrative officials making the most important agency decisions will often be selected from a pool of candidates all of whom are talented in generating agency action but all of whom are less likely to have recent or substantial experience interacting with those outside of the federal government community. These headquarters officials will be embedded in a community in which they are hearing from many national-level representatives of different interests or learning from other agency actors in Washington. They will hear from Washington lobbying representatives speaking for private firms or state and local government or collections of private individuals. They will see members of Congress and their staff at social and professional events. Agency officials will be more likely to be selected if they are part of that community. Once in power, agency officials will benefit from the knowledge communicated regularly and easily from that community.

Having this background shaping the thinking of an agency official and having these constant connections continue to shape what they are thinking will be democratically useful for many administrative functions. It will provide agency officials with a sense of what a cross-section of actors with connections to important people in Washington are thinking about an issue. They will have

depends on the public’s understanding not only *what* the government has done, but *why*. That premise . . . reflects a more general truth about how we assess decisions and decisionmakers. Such evaluations ordinarily depend on the attitudes, or ways of responding to reasons, that a decision expresses.”).

²¹³ To be clear, for some critics of the administrative state, even presidential control is insufficient to legitimate the administrative state. *See, e.g.*, Lawson, *supra* note 19, at 1231 (“The post-New Deal administrative state is unconstitutional, and its validation by the legal system amounts to nothing less than a bloodless constitutional revolution.” (citations omitted)).

²¹⁴ *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 224 (2020).

²¹⁵ Consider along with the fact that administrative officials work, and for many, are entrenched in one place at the time they are appointed to work in the administrative state. *See* O’Connell, *supra* note 166, at 1646.

more of a sense of what the White House is thinking, and the White House is to some degree trying to consider the sentiments of “the entire Nation.”²¹⁶

On other occasions, though, headquarters officials face democratic limitations whether their hearings are open to the public and/or whether they are accountable to the President. Administrative officials in headquarters will not easily hear directly from many citizens or groups of citizens²¹⁷ and instead will hear from their national lobbying representatives. And many groups of people in the country will not have the resources to retain a Washington representative to be a part of the community in which headquarters officials operate—meaning regulators will not hear from them at all. If “the right to engage directly with government”²¹⁸ is considered an important constitutional concern, then this system poses a problem.²¹⁹

It is not just that individuals from around the country do not have easy in person access to the leading administrative officials. Face-to-face meetings with leading federal officials are largely a relic of a period in American history when that was the only or the primary means of communication. In our more virtual world, the concern is the same in principle but slightly different in practice.

The concern is more or also that administrative officials in Washington are part of an entirely different “epistemic community”²²⁰ than the rest of the country, regardless of who these officials are meeting with directly. Since information still diffuses much more locally,²²¹ particularly more valuable types

²¹⁶ *Seila Law*, 591 U.S. at 224.

²¹⁷ See Cass R. Sunstein, *The Administrative State, Inside Out*, 26 U. PA. J. CONST. L. 1, 2 (2024) (“The agency might well elect to consult with other federal offices or agencies, again to inform its own judgments about whether and how to proceed.”).

²¹⁸ Maggie McKinley, *Lobbying and the Petition Clause*, 68 STAN. L. REV. 1131, 1133 (2016) (discussing “the right to engage directly with government” featured in the First Amendment).

²¹⁹ See, e.g., *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 44 (1867) (stating the importance of a citizen being able “to come to the seat of government to assert any claim he may have upon that government, or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions.”). For a discussion of this in the federalism context, see *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (stating that “a decentralized government . . . will be more sensitive to the diverse needs of a heterogeneous society; it increases opportunity for citizen involvement in democratic processes”).

²²⁰ For discussion of this idea, see, for instance, Koh, *supra* note 26, at 2648; Haas, *supra* note 159, at 4.

²²¹ For the classic statement about this, see MARSHALL, *supra* note 159, at 271 (noting that when workers are physically proximate “[t]he mysteries of the trade become no mysteries; but are as it were in the air”). For more recent data, see, for instance, Centola, *supra* note 161, at 1197 (“Whereas locally clustered ties may be redundant for simple contagions, like information or disease, they can be highly efficient for promoting behavioral diffusion.” (citations omitted)); Diana Mok, Barry Wellman & Juan Carrasco, *Does Distance Matter in the Age of the Internet?*, 47 URB. STUDS. 2747, 2750 (2010) (finding that place matters less, but that it is still the case that more and better information diffuses locally); David Schleicher, *Stuck! The Law and Economics of Residential Stagnation*, 127 YALE L.J. 78, 97 (2017) (noting the empirical literature about how “information spillovers between neighbors” are greater).

of information,²²² being in Washington means that the top administrative officials are being exposed to “argument pools” more defined by that community.²²³ The epistemic community also increases reputational costs for doing something that defies local expectations. It is easier to monitor behavior locally.²²⁴ There is a large selection of literature about how much official behavior is shaped by the “peer effects” of a particular community located in a particular place; headquarters officials are subject to different peer effects because they are embedded within the federal community.²²⁵

One of the best pieces of evidence that individuals who are physically proximate to regulators matter the most is the existence of the lobbying community in Washington—and not to the same degree elsewhere.²²⁶ There are many billions of dollars spent every year trying to shape policy, and that money is spent paying lobbyists *in* Washington. The origin of the term “lobbyist” likely has something to do with being physically proximate to those in power. It referred to those that were “hang[ing] around the lobbies of legislative buildings and hotels”²²⁷ Being a lobbyist in Washington means you are learning from those next to you about what is happening in government, and you can more easily arrange an intimate conversation with those in government to shape policies and deci-

²²² See Meric S. Gertler, *Tacit Knowledge and the Economic Geography of Context, or the Undefinable Tacitness of Being (There)*, 3 J. ECON. GEOGRAPHY 75, 79–85 (2003) (identifying language, conventions, codes, or communication, and trust as hard to transmit across distance).

²²³ See generally Kuran & Sunstein, *supra* note 160, at 715–35 (noting that preferences are shaped by limited argument pools). Indeed, Cass Sunstein’s defense of the democratic nature of the administrative state portrays administrative officials as constantly interacting mostly with other administrative officials largely in Washington. See Sunstein, *supra* note 217, at 2 (“The agency might well elect to consult with other federal offices or agencies, again to inform its own judgments about whether and how to proceed.”).

²²⁴ Daniel Carpenter’s work is particularly important in this area, noting how “political and social networks” can shape official behavior. See CARPENTER, *supra* note 140, at 15.

²²⁵ See BREHM & GATES, *supra* note 154, at 73–74. For perspectives on how this impacts regulators, see Brehm & Hamilton, *supra* note 161, at 449–50 n.5; Hedge, *supra* note 161, at 388.

²²⁶ See generally D.C. Fed’n of Civic Ass’ns, Inc., v. Volpe, 434 F.2d 436, 461 (D.C. Cir.) (Mackinnon, J., dissenting) (“[T]heir close proximity to the seat of Government . . . and the frequency with which members of Congress, long resident in the District and its environs, tend to acquire similar local interests to those of local residents, . . . gives [Washington] . . . influence . . .”), *remanded to*, 316 F. Supp 754 (D. D.C. 1970), *rev’d*, 459 F.2d 1231 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 1030 (1972); Rodriguez & Schleicher, *supra* note 48, at 651 (“Firms locate on K Street because it puts them close to their clients, who don’t want to travel far to find their service providers, and because it puts them close to each other.”).

²²⁷ ZEPHYR TEACHOUT, CORRUPTION IN AMERICA: FROM BENJAMIN FRANKLIN’S SNUFF BOX TO CITIZENS UNITED 149–50 (2014).

sions.²²⁸ It would be odd for a company to create a lobbying headquarters to shape administrative policy in Boise or Seattle.²²⁹

The result is not just that administrative process is democratically flawed because it systematically excludes decentralized interests from the administrative process. It is also that the results of the administrative process do not always reflect issue priorities and perspectives from outside of Washington—making it more countermajoritarian in output and not just input. In perhaps what is the best study on local sentiments, Chris Tausanovitch and Christopher Warshaw found differences across metropolitan areas in what people valued and thought, meaning many sentiments across the nation would not be part of the Washington epistemic community.²³⁰

For instance, the leaders of the two parties in Washington agree in some areas, like on many foreign policy issues.²³¹ One of President Barack Obama's key advisors, Benjamin Rhodes, referred to this self-reinforcing bipartisan Washington foreign policy establishment as "the Blob."²³² For many years, international trade policy was set by a "Washington consensus" that was not beloved in the rest of the country. This was the view that "tethers development money to 'conditionalities' that include market deregulation . . . [and] privatization of state-owned enterprises"²³³ Ashley Deeks and Kristen E. Eichensehr have called this "frictionless government" in the context of foreign relations.²³⁴ We would not expect the administrative state to feature many officials sensitive to other

²²⁸ See Rodriguez & Schleicher, *supra* note 48, at 651 ("A lobbyist talking to another lobbyist about congressional procedure is producing information spillovers that will improve the listener's productivity at work.").

²²⁹ See *BLM Disorganization: Examining the Proposed Reorganization and Relocation of the Bureau of Land Management Headquarters to Grand Junction, Colorado: Hearing Before H. Comm on Nat. Res.*, 119th Cong. 5 (2019) (statement of William Perry Pendley, Deputy Dir., Pol'y & Programs Bureau of Land Mgmt.) <https://www.doi.gov/ocl/blm-reorganization> [perma.cc/2HMU-Q99D] ("Over the decades, western governors, tribal leaders, and rural residents, represented by mayors, commissioners, and citizen groups, have chafed at the fact that in order to address matters of critical importance to them, they had to travel to Washington, D.C. to make their case.").

²³⁰ See generally Chris Tausanovitch & Christopher Warshaw, *Representation in Municipal Government*, 108 AM. POL. SCI. REV. 605 (2014) (discussing these findings).

²³¹ See Eric A. Posner & Adrian Vermeule, *Constitutional Showdowns*, 156 U. PA. L. REV. 991, 1036 (2008) (noting that "the American constitutional system . . . displays both separation of powers and parties in a complicated interaction").

²³² See David Samuels, *The Aspiring Novelist Who Became Obama's Foreign Policy Guru*, N.Y. TIMES (May 5, 2016), <https://www.nytimes.com/2016/05/08/magazine/the-aspiring-novelist-who-became-obamas-foreign-policy-guru.html> [perma.cc/T8V4-3GAY] ("He referred to the American foreign-policy establishment as the Blob. According to Rhodes, the Blob includes Hillary Clinton, Robert Gates and other Iraq-war promoters from both parties . . .").

²³³ Dirk Olin, *The Way We Live Now: 5-25-03: Crash Course; New Washington Consensus*, N.Y. TIMES MAG. (May 25, 2003), <https://www.nytimes.com/2003/05/25/magazine/the-way-we-live-now-5-25-03-crash-course-new-washington-consensus.html> [perma.cc/SM3D-ZH4M].

²³⁴ See Ashley Deeks & Kristen E. Eichensehr, *Frictionless Government and Foreign Relations*, 110 VA. L. REV. 1815, 1815 (2024) ("[E]xtreme consensus should sometimes trigger concern . . .").

perspectives on foreign relations. Regardless of whether it featured these officials, one would be skeptical that administrative officials would even regularly hear from those with other perspectives on foreign relations.

Administrative actions are different when produced from outside of Washington and might be more consistent on some issues with what the public desires in different parts of the country. Decentralized actions will reflect a different set of actors and produce a different set of outcomes. Providing decentralized officials with more authority can therefore generate democratic legitimacy because it can reflect popular sentiment that is not nationally uniform. Federalism achieves this by permitting state governments to adopt different regulatory regimes. But so can decentralizing administrative power to ensure that administrative action reflects different sentiments in different places. Decentralized officials can produce policies that reflect a “disuniform implementation of national law.”²³⁵

As a former SEC official observed, it can be helpful to regulate differently in different communities because “aggressive sales practices which are standard in Los Angeles would evoke cries of horror in Boston” and “[t]rading practices in penny mining stocks that are considered a normal aspect of speculation in the Northwest would probably be looked upon as outright manipulation in other parts of the country.”²³⁶ Disability benefits administered by the Social Security Administration were treated very differently in Utah than in New Mexico.²³⁷ This gives individuals and institutions affected by federal regulation a chance to choose between different places and their federal regulatory regimes. There is empirical evidence that private firms choose their headquarters based on the different approaches used by SEC regional offices.²³⁸

Providing decentralized officials with more authority can not only better involve more people in the administrative process, and better reflect the range of popular preferences, but it can generate the type of dialogue that can be so useful in a democracy. Precisely because decentralized officials are *federal* officials, they can have a louder microphone when they act.²³⁹ The administra-

²³⁵ Gluck, *supra* note 87, at 2020. Consider as an example from the federalism context the use of waivers under the Patient Protection and Affordable Care Act (“ACA”). The federal government permits different states to have different rules about fundamental issues related to health insurance by waiving certain federal requirements. *Id.* at 2032.

²³⁶ David L. Ratner, *The SEC: Portrait of the Agency as a Thirty-Seven Year Old*, 45 ST. JOHN’S L. REV. 583, 590 (1971).

²³⁷ See Lael R. Keiser, *Street-Level Bureaucrats, Administrative Power and the Manipulation of Federal Social Security Disability Programs*, 1 STATE POL. & POL’Y Q. 144, 149 (2001) (discussing how many more awards of Social Security are applied for and granted in Utah).

²³⁸ See *id.*

²³⁹ See, e.g., Heather K. Gerken, *Dissenting by Deciding*, 57 STAN. L. REV. 1745, 1762–64 (2005) (discussing how having the power to act as a governmental official can uniquely shape the debate and the agenda); Bulman-Pozen, *supra* note 78, at 1011 (“[S]tate choices to legalize marijuana have changed conversations across the nation about drug policy, and the implementation of the Common

tive state can try different regulatory approaches to see which approaches work better or worse. One SEC office can try one approach, and a different SEC office can try a different approach, and then Congress and the President and the SEC can discuss and decide which approach works better—or whether it would be better to still have different sets of rules in different places.

The point is not that decentralized administrative officials are democratically preferable in all or even most situations. It is instead that they offer different democratic benefits than headquarters officials. Decentralized officials will have their own democratic problems. Decentralized administrative officials will not have the experience with nor connections to those who can help them navigate the entirety of the complicated bureaucracy. They will not know as well how to secure funding from Congress to ensure that a regulatory agenda the public desires is enacted. They will not hear from colleagues about how to write regulations to please the current D.C. Circuit and ensure that these regulations can be enforced. They have their own democratic problems, in other words, and the goal (discussed more in Part IV) is to design the administrative state so that decentralized administrative officials can be more empowered when they are more useful—and less empowered when they are less useful.

B. Expertise

Administrative agencies are seen as legitimate by their supporters because of their expertise. The Supreme Court has noted that agencies have a particular type of “substantive expertise.”²⁴⁰ But what precisely are the unique skills that comprise the “expertise” that administrative officials are supposed to possess? Answering that question can clarify how centralization can be problematic for expertise reasons, at least for some regulators.

Expertise is usually defined as involving specific training in and background with handling a series of matters that others would not be able to handle if they did not have that training or background.²⁴¹ Agencies require some actions that might better be provided by the types of expertise obtained by being connected to the Washington regulatory community. But not all actions that

Core standards has reshaped discourse around education policy.” (citation omitted)); Ernest A. Young, *Two Cheers for Process Federalism*, 46 VILL. L. REV. 1349, 1358 n.42 (2001) (“States cannot function as checks on the power of the central government, or as laboratories of experimental regulation, if they lack the institutional ability to govern themselves in meaningful ways.”).

²⁴⁰ *Kisor v. Wilkie*, 588 U.S. 558, 577 (2019), *remanded to*, 969 F.3d 1333 (Fed. Cir.), *modified and superseded by* 995 F.3d 1316 (Fed. Cir. 2020), *cert. denied*, 142 S.Ct. 756 (2022).

²⁴¹ See, e.g., ANDREW ABBOTT, *THE SYSTEM OF PROFESSIONS: AN ESSAY ON THE DIVISION OF EXPERT LABOR* 59–69 (1988) (discussing how professions claim “jurisdiction” over certain substantive areas because of their expert knowledge).

agencies take would benefit from trading off other types of expertise for that specific *regulatory* expertise that headquarters officials possess.²⁴²

The Pendleton Act and other statutory rules require competitive examinations for entry into the civil service more generally.²⁴³ There are often agency-specific expertise requirements indicated in organic statutes. The head of the Federal Emergency Management Agency (FEMA), for instance, must have “a demonstrated ability in and knowledge of emergency management and homeland security” and must also possess “not less than 5 years of executive leadership and management experience in the public or private sector.”²⁴⁴

Administrative law is replete with doctrines meant to ensure that agencies consider *all* types of expert evidence. The Administrative Procedure Act (APA) has been interpreted to require that agencies engage in “reasoned decisionmaking” and that their actions can be set aside if they did not engage in this reasoned process.²⁴⁵ Agency actions can be set aside if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”²⁴⁶ Tools like cost-benefit analysis and procedures like formal rulemaking have in common their desire to improve the deliberative quality—and therefore the expert nature—of agency actions.

But what exactly is the expertise that this vast apparatus of doctrine is meant to ensure that the administrative state provides? One type of expertise is present when agency personnel engage in decisions related to a “pure legal question.”²⁴⁷ The doctrine now is that these agency decisions are particularly

²⁴² See, e.g., DeShazo & Freeman, *supra* note 189, at 2219 (discussing the “substantive or procedural” mandates that agencies have which tend to “impose obligations to consider additional factors, perform a particular analysis, or consult with specific players”).

²⁴³ See 5 U.S.C. § 2301(b)(1)–(2) (identifying merit-related criteria and distinguishing impermissible criteria); see also Civil Service Reform Act of 1978 § 3(2), Pub. L. No. 95-454, 92 Stat. 1111, 1111–12 (codified at 5 U.S.C. § 1101).

²⁴⁴ Department of Homeland Security Appropriations Act, 2007, Pub. L. No. 109-295, § 503(c)(2)(A)–(B), 120 Stat. 1355, 1397 (2006) (codified at 6 U.S.C. § 313). The FEMA Administrator “shall be appointed by the President, by and with the advice and consent of the Senate,” seemingly conceding that the Administrator is a principal officer. See *id.* § 503(c)(1). President George W. Bush issued a signing statement challenging the constitutionality of this requirement as part of signing this statutory provision into law. See Statement on Signing the Department of Homeland Security Appropriations Act, 2007, 42 WEEKLY COMP. PRES. DOC. 1742, 1742–43 (Oct. 4, 2006).

²⁴⁵ Michigan v. EPA, 576 U.S. 743, 750–51 (2015) (internal quotation marks omitted).

²⁴⁶ Motor Vehicle Mfrs. Ass’n v. State Farm Mut., 463 U.S. 29, 43 (1983); see, e.g., Mark Seidenfeld, *Demystifying Deossification: Rethinking Recent Proposals to Modify Judicial Review of Notice and Comment Rulemaking*, 75 TEX. L. REV. 483, 491 (1997) (discussing how judicial review is meant to ensure “that the agency carefully deliberated about the issues raised by its decision”).

²⁴⁷ Loper Bright Enters. v. Raimondo, 603 U.S. 369, 389 (2024).

ill-suited to receive deference from courts.²⁴⁸ Headquarters offices will feature officials with experience in regulatory drafting and regulatory interpretation and any litigation related to that which might ensue. They are relatively well-equipped to handle these types of issues.

The Supreme Court has talked in other contexts about an agency's expertise as "comparative"—with the comparison being to Congress.²⁴⁹ Agency determinations featuring a combination of more legally or policy-oriented questions as well as technical questions related to regulation is another type of expertise.²⁵⁰ These determinations could be made by lawyers, or by scientists, but in either situation would be made by someone who understands a technical area of expertise *and* understands the regulatory issues related to that technical area of expertise.

These agency decisions can often be made by the headquarters officials immersed in the epistemic community of the federal government. It can be the environmental scientist at the EPA familiar with climate change *and* familiar with how to manage the process of writing regulations at the EPA that satisfy a cost-benefit analysis. It would be difficult for an agency official without that dual background to be able to engage in "reasoned decisionmaking,"²⁵¹ considering every "important aspect of the problem"²⁵² if the official in charge had a background purely in climate science and not in cost-benefit analysis.

The APA requires that agencies must engage in a "process by which it reaches [a] result" which is "logical and rational."²⁵³ The process that headquarters officials engage in will be substantially more likely to consider "all relevant factors"²⁵⁴ if the process was geared toward resolving the details of how a regulation will operate. To return to cost-benefit analysis: an official with a background in and a connection to a regional office (e.g., Boston) would be exposed to the cost-benefit analysis experts that exist in headquarters and therefore would be less able to navigate the various inputs necessary to ensure that analysis is done correctly.

When someone without the federal experience is inserted into positions that require this type of mixed Washington and non-Washington expertise, disaster can ensue. One of the secretaries of energy during the Obama Administration was Steven Chu, who came to the office as such a technical expert

²⁴⁸ See *id.* at 391–92 ("The APA thus codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment.").

²⁴⁹ See *Kisor v. Wilkie*, 588 U.S. 558, 578 (2019), *remanded to*, 969 F.3d 1333 (Fed. Cir.), *modified and superseded by* 995 F.3d 1316 (Fed. Cir. 2020), *cert. denied*, 142 S.Ct. 756 (2022).

²⁵⁰ *Gonzales v. Oregon*, 546 U.S. 243, 257 (2006).

²⁵¹ *Michigan v. EPA*, 576 U.S. at 743 (internal quotation marks omitted).

²⁵² *Motor Vehicle Mfrs. Ass'n v. State Farm Mut.*, 463 U.S. 29, 43 (1983).

²⁵³ *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374 (1998).

²⁵⁴ *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 55 (citation omitted).

that he had a Nobel Prize from his prior career, and also had administrative expertise running research institutions interested in technology.²⁵⁵ Given that his department was involved in major legislative negotiations with Congress at the time, though, Secretary Chu's lack of experience in and therefore lack of knowledge about Washington caused him problems.²⁵⁶ Secretary Chu made statements to Senator John McCain (R-AZ) without realizing they would be taken so literally and seriously.²⁵⁷ He spent enormous amounts of stimulus money without knowing well enough how it would be utilized within the cabinet department.²⁵⁸

For some agency officials, though, expertise will be about a technical matter unrelated to government. These regulatory matters are based "on factual premises within [the agency's] expertise."²⁵⁹ In 2024, in the landmark case *Loper Bright Enterprises v. Raimondo*, the Supreme Court resolved whether and when agencies receive judicial deference.²⁶⁰ *Loper Bright* also suggested that agency decisions which rely on technical expertise unrelated to regulatory expertise would be considered differently. It noted that agency decisions based on expertise tend to be "factbound determinations."²⁶¹ It stated that the expertise is particularly likely to be present when the facts are related to "an agency's technical subject matter expertise."²⁶²

The types of expertise that are not about how to regulate are more geographically distributed.²⁶³ Other locations will have many employment opportunities in a particular domain unrelated to the federal government, which will encourage people to specialize in that domain.²⁶⁴ If you are interested in technology, there are many opportunities in Silicon Valley, so it will make sense to work there so you can specialize in technology and know there will be many

²⁵⁵ See John M. Broder, *Energy Secretary Serves Under a Microscope*, N.Y. TIMES (Mar. 22, 2009), <https://www.nytimes.com/2009/03/23/us/politics/23chu.html> [perma.cc/E7HK-47N4].

²⁵⁶ See *id.* (discussing these problems).

²⁵⁷ See *id.* (describing how Secretary Chu was "verbally slapped around" by Senator McCain at a Senate hearing).

²⁵⁸ See *id.*

²⁵⁹ *Bureau of Alcohol, Tobacco & Firearms v. Fed. Lab. Rel. Auth.*, 464 U.S. 89, 98 n.8 (1983).

²⁶⁰ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

²⁶¹ *Id.* at 389.

²⁶² *Id.* at 374.

²⁶³ For formal models or empirical evidence of the geographical distribution of specialized human capital, see, for instance, James R. Baumgardner, *The Division of Labor, Local Markets, and Worker Organization*, 96 J. POL. ECON. 509 (1988) (modeling and documenting regional economic specialization); Sukkoo Kim, *Expansion of Markets and the Geographic Distribution of Economic Activities: The Trends in U.S. Regional Manufacturing Structure, 1860–1987*, 110 Q.J. ECON. 881 (1995) (providing empirical evidence); Sukkoo Kim, *Regions, Resources, and Economic Geography: Sources of U.S. Regional Comparative Advantage, 1880–1987*, 29 REG'L SCI. & URB. ECON. 1 (1999) (same).

²⁶⁴ See Rodriguez & Schleicher, *supra* note 48, at 638 (discussing "market depth"); Glaeser, *supra* note 183, at 141–42 (same); Paul Krugman, *Increasing Returns and Economic Geography*, 99 J. POL. ECON. 483, 484 (1991) (same).

employment opportunities there. Working in Silicon Valley also means learning from the other leaders in that industry.²⁶⁵

When regulation requires expertise that is not as much about how to *regulate* an issue area, then giving the greatest power to those inside the federal governmental epistemic community will be more problematic. Consider the experience of the Department of Defense during the Obama Administration. President Obama's Secretary of Defense Ashton Carter was frustrated by the "technological backwardness" that had characterized American defense policy.²⁶⁶ He had found that national security officials had been isolated in Washington from the "new ideas" and "ecosystem" of technological expertise emerging in other locations outside of the Washington metropolitan area.²⁶⁷ Secretary Carter therefore opened a new office in Silicon Valley entitled the Defense Innovation Unit (DIU) to place national security officials next to technology experts. He placed an experienced Silicon Valley leader in charge of the office instead of an experienced Washington leader.²⁶⁸

Leveraging this expertise from decentralized officials, though, is substantially restricted by the limited power these officials outside of Washington are permitted to exercise. When the SEC Office of the Inspector General investigated why earlier and more action was not taken to target the Ponzi scheme organized by Bernard Madoff, the Washington office was a big focus of the investigation. The investigation wondered whether the fact that Madoff "was a very well-connected, powerful, person" shaped the analysis in the Washington office in a way that constrained how the financial experts in regional offices would have decided to pursue the matter given their knowledge of Madoff's financial schemes.²⁶⁹

IV. ADMINISTRATIVE DECENTRALIZATION'S PROMISE

The administrative state is a massive entity, so suggesting reforms to it can be complicated. Each agency has its own structure and reforming that structure will be hard to evaluate without considering the particular facts related to that agency. Some agencies are more involved in regulating and others more involved in distributing benefits. These variations can be found not just

²⁶⁵ See, e.g., Schleicher, *supra* note 48, at 1523 (highlighted research that focuses "the ability . . . to learn from others . . . by adopting best practices and sharing in industry-specific knowledge").

²⁶⁶ Hempel, *supra* note 11.

²⁶⁷ See Carter, *supra* note 11.

²⁶⁸ See Fred Kaplan, *The Pentagon's Innovation Experiment*, MIT TECH. REV. (Dec. 19, 2016), <https://www.technologyreview.com/2016/12/19/155246/the-pentagons-innovation-experiment/> [perma.cc/392N-UQUP] (noting that "Ray Shah . . . after flying F16s in Iraq had earned an MBA at the Wharton School of Business and emerged as a Valley entrepreneur").

²⁶⁹ See OFF. OF INSPECTOR GEN., U.S. SEC. & EXCH. COMM'N, REPORT OF INVESTIGATION: INVESTIGATION OF FAILURE OF THE SEC TO UNCOVER BERNARD MADOFF'S PONZI SCHEME, CASE NO. OIG-509, 15 (2009), <https://www.sec.gov/files/oig-509-exec-summary.pdf> [perma.cc/9532-BX65].

across agencies but within agencies, suggesting that sometimes the proper approach might be to consider decentralization at the office-level rather than at the agency-level.

The main ambition of this Part is therefore to provide tentative and preliminary illustrations of institutional designs that might work, rather than to present final rules that definitely would work. The goal of this Part is not to provide a specific and universal agenda for decentralizing reform, but instead to provide a “proof of concept.” The point is to suggest that administrative decentralization is a constructive mechanism for administrative reform—and a different mechanism than the problematic decentralization discussed by the first and pursued even more by the second Trump Administration. This Part highlights specific situations when decentralized officials might be particularly useful. It also considers general administrative procedures that can reduce the binary between headquarters and decentralized offices.

Because the goal of this Part is to show the normative positives and possibilities of administrative decentralization, this Part will not engage with questions about how and whether this decentralization could actually transpire.²⁷⁰ Leading federal officials across the branches and across the agencies are divided by agency and ideology and party and other variables, but they almost all work and live in Washington. Existing officials at the top might be unified in their opposition to decentralization because of the disruption it could provide to their personal and professional existence. That is an important question to consider—but a question for another day.

A. Decentralization's Pretexts

The Trump Administration—in its first and second terms—identified some of the same concerns with administrative centralization that were specified in Part III.²⁷¹ Democrats in the House of Representatives at first indicated their support for administrative decentralization legislation in some form for similar reasons during the earliest moments of the first Trump Administration. After observing what the Trump Administration was doing, though, sentiments significantly changed.

The decentralization efforts pursued by the first and second Trump Administrations are indeed motivated by a sense that federal officials regulate differently based on where they are located. But rather than using place as a

²⁷⁰ See Heather K. Gerken, Keynote Address, *Getting from Here to There in Redistricting Reform*, 5 DUKE J. CONST. L. & PUB. POL'Y 1, 6–12 (2010) (discussing the “here to there” problem and means of resolving it).

²⁷¹ Just as one example, during a hearing before the House of Representatives, one Republican member of Congress stated that “I do believe conceptually in my heart that if you want a government that is reflective of the people, they need to be closer to the people.” Portnoy, *supra* note 101 (quoting then-Representative Jason Chaffetz (R-UT)).

tool to empower officials with the right authority, it has been used to single out certain types of officials to ensure that they have very little authority. Headquarters officials have been relocated to places where they cannot use their Washington-created and Washington-based experience, and decentralized officials have not been empowered in any correspondingly better way.

The result has been catastrophic. The Government Accountability Office evaluated one of these programs used by the Department of Agriculture in the first Trump Administration. It found “critical costs” generated by “disruption of [agency] activities and lower productivity” resulting from a relocation.²⁷² It took two years for the Department of Agriculture to recover from the productivity problems posed by these efforts.²⁷³

First, the Trump Administration has made clear its desire to target the class of administrative officials identified in Part II as “headquarters” officials. During his 2016 presidential campaign, President Trump promised to “drain the swamp” by targeting administrative officials who had “rigged the system against everyday Americans.”²⁷⁴ Steve Bannon, a former advisor to and constant influence on President Trump, called more precisely for the “deconstruction of the administrative state” during the first Trump Administration.²⁷⁵

As the second term approached, Bannon was even more specific still: he wanted to go “to war with the existing administrative state and the Praetorian Guard deep state.”²⁷⁶ Russell Vought, the leader of the Office of Management and Budget during both of President Trump’s terms, has said that he “want[s] the bureaucrats to be traumatically affected. When they wake up in the morning, we want them to not want to go to work, because they are increasingly viewed as the villains.”²⁷⁷ Vought was given substantial authority to pursue this mission during the first year of the second Trump Administration—and a big part of that was by relocating headquarters officials. In February of 2025, Vought issued a memorandum to agencies giving them until April 14 to submit

²⁷² U.S. GOV’T ACCOUNTABILITY OFF., GAO-22-104540, EVIDENCE-BASED POLICY MAKING: USDA’S DECISION TO RELOCATE RESEARCH AGENCIES TO KANSAS CITY WAS NOT FULLY CONSISTENT WITH AN EVIDENCE-BASED APPROACH 20–21 (2022), <https://www.gao.gov/assets/gao-22-104540.pdf> [perma.cc/JG7J-TSH5].

²⁷³ See Press Release, National Farmers Union, *NFU Urges Congress to Halt Relocation, Reorganization of Research Agencies* (May 16, 2019), <https://nfu.org/news/nfu-urges-congress-to-halt-relocation-reorganization-of-research-agencies/> [perma.cc/PEP4-THZC] (summarizing GAO findings).

²⁷⁴ Kenneth P. Vogel, Michael LaForgia & Hailey Fuchs, *Trump Vowed to ‘Drain the Swamp,’ but Lobbyists Are Helping Run His Campaign*, N.Y. TIMES (July 6, 2020), <https://www.nytimes.com/2020/07/06/us/politics/trump-lobbyists-swamp-campaign.html> [perma.cc/RDE3-AHQR].

²⁷⁵ See Rucker & Costa, *supra* note 2 (quoting Bannon).

²⁷⁶ See Szalai, *supra* note 29 (quoting Bannon).

²⁷⁷ *Id.* (quoting Vought).

plans to relocate thousands or possibly even hundreds of thousands of officials from Washington.²⁷⁸

During the first Trump Administration, one of the primary targets was the Department of the Interior, particularly the Bureau of Land Management (BLM) located within the Department. The Department of Interior identified 252 officials within BLM performing “headquarters duties” in Washington.²⁷⁹ These were precisely the types of officials who belonged in Washington. They were legislative affairs specialists and lawyers with experience drafting environmental regulations. A letter from former BLM officials about relocating these officials noted how officials like these were crucial to the success of BLM “in the daily legislative, budget, and policy discussions and interaction with the Department, OMB, other agencies, and Congress in Washington, D.C.”²⁸⁰

Of these 252 headquarters officials BLM wanted to relocate from Washington, though, 39 would be relocated to Grand Junction, Colorado, a location where an experienced Washington regulator could add very little value. An unknown number were to be located to subject-matter specific BLM offices in Denver, Colorado and Phoenix, Arizona,²⁸¹ and an unknown number were to be relocated to BLM offices scattered among multiple states.²⁸² Given that this would essentially be a career change, eighty-seven percent of these officials decided to stay in Washington and pursue other opportunities.²⁸³ It did not help matters that those BLM officials who were told to relocate to Grand Junction, Colorado from Washington had to do so within six months or be terminated.²⁸⁴

²⁷⁸ See Chris Megerian, *Trump Administration Sets Stage for Large-Scale Federal Layoffs*, PBS (Feb. 26, 2025), <https://www.pbs.org/newshour/politics/trump-administration-sets-stage-for-large-scale-federal-layoffs#:~:text=%E2%80%9CWe're%20cutting%20down%20the,as%20a%20human%20resources%20agency> [perma.cc/K6K7-B8RF] (quoting from Vought’s memorandum).

²⁷⁹ See Letter from Anne-Marie Fennell, Dir., Nat. Res. & Env’t, and Frank Rusco, Dir., Nat. Res. & Env’t, to The Hon. Raúl Grijalva, Chairman, Comm. on Nat. Res., House of Representatives (Mar. 6, 2020), <https://www.gao.gov/assets/gao-20-397r.pdf> [perma.cc/HA8R-QDWX].

²⁸⁰ Letter from Former Bureau of Land Mgmt. Offs., to David Bernhardt, Sec’y of the Interior (Sep. 5, 2019), <https://publicland.org/wp-content/uploads/2019/09/SES-Letter-Final-09-05-2019.pdf> [perma.cc/J3TB-XUKH].

²⁸¹ BLM has its National Operations Center in Denver, Colorado and its National Training Center in Phoenix, Arizona. See National Operations Center, BUREAU LAND MGMT., U.S. DEP’T INTERIOR, <https://www.blm.gov/office/national-operations-center> [perma.cc/92F6-NGCA]; National Training Center, U.S. DEP’T INTERIOR, BUREAU LAND MGMT., <https://www.blm.gov/office/national-training-center> [perma.cc/GQP6-5HAR].

²⁸² See Letter from Former Bureau of Land Mgmt. Offs., *supra* note 280.

²⁸³ See Rebecca Beitsch, *Bureau of Land Management Exodus: Agency Lost 87 Percent of Staff in Trump HQ Relocation*, THE HILL (Jan. 28, 2021), <https://thehill.com/policy/energy-environment/536384-blm-exodus-agency-lost-87-percent-of-staff-in-trump-relocation/> [perma.cc/45LZ-G2JD].

²⁸⁴ See *BLM Disorganization*, *supra* note 229 and accompanying text; see also Juliet Eilperin, *Trump Officials Moved Most Bureau of Land Management Positions out of D.C. More Than 87 Percent Quit Instead.*, WASH. POST (Jan. 28, 2021), <https://www.washingtonpost.com/climate-environment/2021/01/28/trump-blm-reorganization/>.

During the second Trump Administration, a similar attack on headquarters officials because of their Washington location-based advantages continued. The Federal Bureau of Investigation (FBI) has been led by Kash Patel since Patel was confirmed by a 51–49 vote in the Senate on February 20, 2025.²⁸⁵ Patel had indicated many times before he was nominated that he wanted to relocate FBI officials outside of the Washington metropolitan area so they were no longer part of the “deep state,” and this was part of the reason for his nomination.²⁸⁶ After assuming his position, Patel identified those in the Washington office of the FBI that would be relocated to “cities with high crime rates.”²⁸⁷ Journalists covering the story have made it clear that many of those being relocated were experienced FBI officials whose particular portfolio involved working with the Justice Department’s Washington office.²⁸⁸ These officials were not qualified to engage in FBI raids of drug laboratories in places such as Huntsville, Alabama or Worcester, Massachusetts.

Second, there have also been efforts that reduce the place-based advantages of agency officials operating *outside* of the Washington metropolitan area. The second Trump Administration has radically reshaped the regional structure of the SEC. Some reports suggest that Regional Directors with long-standing experience in their locations were simply removed.²⁸⁹ Other reports suggest that these officials are working in more headquarters-focused positions that do not involve them working in and for these regions that they know so well.²⁹⁰ Another change is that “formal orders of investigation . . . [must] be approved by a majority of

²⁸⁵ See Ryan Lucas, *Senate Confirms Kash Patel, Fierce Critic of FBI, to Head the Bureau*, NPR, (Feb. 20, 2025), [https://www.npr.org/2025/02/20/g-s1-49696/trump-cabinet-picks-kash-patel#:~:text=The%20Republican%20Dled%20Senate%20voted,all%20Democrats%20in%20opposing%20him\[perma.cc/E2R4-JZ2E\]](https://www.npr.org/2025/02/20/g-s1-49696/trump-cabinet-picks-kash-patel#:~:text=The%20Republican%20Dled%20Senate%20voted,all%20Democrats%20in%20opposing%20him[perma.cc/E2R4-JZ2E]).

²⁸⁶ See *id.*

²⁸⁷ Adam Goldman & Devlin Bartlett, *F.B.I. Director Plans to Move Hundreds of Agents to Field Offices*, N.Y. TIMES (Feb. 21, 2025), <https://www.nytimes.com/2025/02/21/us/politics/kash-patel-fbi-staff-transfer.html?smid=nytcore-ios-share&referringSource=articleShare> [perma.cc/2J96-GMQP].

²⁸⁸ See Adam Goldman, *Justice Dept. Watchdog to Review Shift in Plan to Move F.B.I. Headquarters*, N.Y. TIMES (June 3, 2019), <https://www.nytimes.com/2019/07/03/us/politics/fbi-headquarters-inspector-general-investigation.html> [perma.cc/9F8J-DPGC] (“[A] decision to stay in Washington, while perhaps more costly, makes sense for the F.B.I., former agents say. It allows the F.B.I. to remain close to the Justice Department, where many agents and prosecutors conduct daily business.”); Williamson & Savage, *supra* note 39 (“Most of the F.B.I. personnel who work in Washington are not special agents but support staff who are not qualified for law enforcement roles. The F.B.I. also needs a presence in Washington to deal with the rest of the executive branch, especially the Justice Department’s national security division.”).

²⁸⁹ See Chris Prentice & Douglas Gillison, *Exclusive: US SEC Plans to Cut Regional Directors as Agency Prepares for DOGE Scrutiny*, SOURCES SAY, REUTERS (Feb. 24, 2025), [perma.cc/ZYR5-HCAX] (“The U.S. Securities and Exchange Commission plans to remove the top leaders at regional offices across the country as part of its cost-cutting recommendations to the Trump administration, according to two sources familiar with the matter.”).

²⁹⁰ See Ladan Stewart et al., *SEC Enforcement 2.0: Chairman Atkins Has Arrived*, WHITE & CASE LLP (Apr. 22, 2025), [perma.cc/72GV-GN9U].

the SEC Commissioners” in Washington, meaning that investigations starting or focused mostly outside of Washington because of expertise outside of Washington still must go through headquarters in Washington.²⁹¹

The motivation for these reforms to decentralized offices have sounded in loyalty and ideological battles rather than a commitment to the virtues of administrative decentralization. The Head of the Small Business Administration, for instance, announced plans to relocate regional offices to metropolitan areas without legislation promoting local immigrants.²⁹² FEMA might be relocated to Texas because supporters of the Trump Administration who work on those issues are located there.²⁹³

B. Decentralization's Powers

The goal of a constructive version of administrative decentralization would be to identify when administrative officials more experienced in and connected to the federal government should be empowered, and when it makes more sense to empower those immersed in a different epistemic community. There will be occasions when the need for federal knowledge is great. There will be other occasions when there is a reason why an administrative function should *not* be performed in Washington, and other occasions still when an administrative function *should* be performed somewhere because of what that other place has to offer. Part III identified some of these categories broadly speaking in evaluating the existing rules.²⁹⁴ This Section is meant to build on that analysis by considering specific institutional reforms.

There are many administrative officials regularly working with other federal government actors. These can be agency officials working on appropriations matters with Congress or advising Congress on how legislation should be crafted.²⁹⁵ These can be agency officials working with other headquarters officials in other agencies on coordinating regulatory programs across agencies.²⁹⁶

²⁹¹ See *id.*

²⁹² See News Release 25-33, U.S. Small Bus. Admin., *Administrator Loeffler Announces SBA Reforms to Put American Citizens First* (Mar. 6, 2025) [perma.cc/BCQ4-CC7Q].

²⁹³ See Isabel Keane, *Trump Team Considering Moving FEMA Headquarters from DC to Texas*, THE INDEPENDENT (Nov. 18, 2025), <https://www.yahoo.com/news/articles/trump-team-considering-moving-fema-175041684.html?guccounter=1> [perma.cc/UMV6-E4FN].

²⁹⁴ See *supra* note 194–269 and accompanying text.

²⁹⁵ See Christopher J. Walker, *Legislating in the Shadows*, 165 U. PA. L. REV. 1377, 1378 (2017) (“Federal agencies help draft statutes. They are involved in the foreground of the legislative process when, in coordination with the White House, they propose substantive legislation to Congress that advances agency and Administration objectives, and when they weigh in substantively with agency and Administration policy positions on pending legislation.”).

²⁹⁶ See generally Jody Freeman & Jim Rossi, *Agency Coordination in Shared Regulatory Space*, 125 HARV. L. REV. 1131, 1134 (2012) (“[I]nteragency coordination is one of the central challenges of modern governance. Many areas of regulation and administration are characterized by fragmented and overlapping delegations of power to administrative agencies.” (citation omitted)).

These can be agency officials involved in drafting and defending regulations and considering how expertise should affect that drafting process. Each of these categories of administrative officials would—generally speaking—benefit from long experience in the federal government and continued easy access to that community.²⁹⁷ For these reasons, it will often make sense for the leadership of certain agencies to be in Washington because their responsibilities often involve these types of interactions. In the private sector, there is comparable data that when chief executive officers work distantly from headquarters, their companies perform worse.²⁹⁸

Consider the case of Rochelle Walensky, the former Director of the Centers for Disease Control (CDC). The CDC was placed in Atlanta because of the existing knowledge that federal officials there had about infectious diseases and the relationship with experts at Emory University working on those issues.²⁹⁹ Walensky was selected for the position by President Biden in substantial part because of her knowledge of infectious diseases from her time as a professor at the Harvard Medical School and her time running the Division of Infectious Disease at Massachusetts General Hospital. After much criticism that the CDC had been too connected with politics during the first Trump Administration, many supporters of Walensky noted her status as more of a pure technical expert.³⁰⁰

At first, Walensky struggled in the job because she did not have a sense of the federal government since she had not spent much time in Washington.³⁰¹

²⁹⁷ See A.W. Eoff, II, *The Navy and the Congress*, 22 JAG J. 123, 123–25, 127 (1968) (discussing these reasons as the motivation behind the creation of the Office of Legislative Affairs within the Department of the Navy by the Secretaries of Defense and of the Navy).

²⁹⁸ See Ran Duchin & Denis Sosyura, *Remotely Productive: The Efficacy of Remote Work for Executives*, REV. FIN. STUDS. 1, 28–31 (2026) (finding that the greater the distance between the C.E.O.'s home and the company's headquarters, the greater the performance gap).

²⁹⁹ See *Roots of CDC*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://stacks.cdc.gov/view/cdc/123081/cdc_123081_DS1.pdf (“The Public Health Service established the Communicable Disease Center (CDC) in 1946 to work on malaria, typhus, and other infectious diseases. The center was located in Atlanta (rather than Washington, DC) because the South was the area of the country with the most malaria transmission.”); Nolan, *supra* note 45 (“[T]he CDC is in Atlanta because of Emory The CDC lent employees to the university to work on curriculum and teach early classes, at least in part at the behest of CDC leadership who wanted a place where CDC personnel could receive more training in public health.”).

³⁰⁰ See, e.g., Selena Simmons-Duffin, *Who Is Rochelle Walensky, Biden's Pick for CDC Director*, NPR (Dec. 9, 2020), <https://www.npr.org/2020/12/09/944739752/who-is-rochelle-walensky-bidens-pick-for-cdc-director> [perma.cc/AE2U-HK9J] (describing Walensky as having “deep intellect” and noting that “she never planned to go into government service”); Tyler Pager, *To Rebuild CDC, Biden Picks Rochelle Walensky*, POLITICO (Dec. 6, 2020), <https://www.politico.com/news/2020/12/06/rochelle-walensky-cdc-biden-443384> [perma.cc/2WUT-QKFJ] (“Biden and his advisers have emphasized that they want to prioritize scientists over politics in responding to the pandemic.”).

³⁰¹ See Alex Thompson, Max Tani & Tina Sfondeles, *Walensky's Growing Pains*, POLITICO (Jan. 12, 2022), <https://www.politico.com/newsletters/west-wing-playbook/2022/01/12/walenskys-growing-pains-495704> [perma.cc/MK47-PTJF] (describing how other high-ranking officials “dwarfed [Wa-

Because she was also not in Washington while running the CDC (she was actually still living in Boston but going back and forth between there, Atlanta, and Washington), she was learning about the federal government and was not at important White House meetings.³⁰² A major, bipartisan task force convened to evaluate the CDC suggested that the CDC have a greater presence in Washington to remedy these problems.³⁰³

On the other hand, there will be categories of administrative officials who should feel pushed away from headquarters officials and others within the federal community. These will sometimes even be the leadership of agencies, who might better be selected from those outside of Washington. One category of official that will function better outside of Washington across agencies is officials needing the reality and appearance of complete independence from political actors.³⁰⁴ The most frequently decentralized branch around the world is the highest court in a country. This is precisely because their geographical independence is seen as crucial to their judicial independence.³⁰⁵

There are administrative officials who would benefit from geographical independence as a means of producing agency independence. These officials can be those in an independent agency or those within an independent office within another agency or department. When the Federal Reserve System was being created more than one hundred years ago, some of its supporters in Congress thought it could not exist entirely within Washington because of the risk to its independence.³⁰⁶ Given the attacks that President Trump directed at the

lensky] in bureaucratic prowess” and that “routine features of Washington . . . caught Walensky off-guard” so she hired a “veteran Democratic consultant” to help her understand Washington).

³⁰² See *id.*

³⁰³ See Tom Inglesby & J. Stephen Morrison, *How to Overhaul the C.D.C.*, N.Y. TIMES (May 7, 2023), <https://www.nytimes.com/2023/05/07/opinion/cdc-overhaul.html> [perma.cc/8WCK-54AV] (“If the agency is to be effective inside the federal government, it needs to engage with key members of Congress, and that requires operational power in the capital. That doesn’t mean relocating C.D.C. headquarters from Atlanta, but it does mean creating a competent Washington team of senior, seasoned C.D.C. officials . . .”). See generally J. STEPHEN MORRISON & TOM INGLESBY, BUILDING THE C.D.C. THE COUNTRY NEEDS, CTR. FOR STRATEGIC & INT’L STUDS., 11–12, 20–21 (Jan. 2023), https://cis-website-prod.s3.amazonaws.com/s3fs-public/publication/230112_Morrison_Building_CDC.pdf?kTKB3urWn1bfZpXuCqixfxzHfT8AUcIM [perma.cc/RP5E-J22W] (discussing other suggestions about distributing power between Atlanta and Washington).

³⁰⁴ See Sean Flynn, Andra C. Ghent & Vasudha Nair, *Determinants and Consequences of Return-to-Office Policies* (June 3, 2026) (manuscript at 1), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4757876. The United States Coast Guard has actually used this exact formulation to decide where to place many of its officials. See *Frequently Asked Questions on the Remote Work Program for Civilian Employees*, U.S. COAST GUARD (Oct. 31, 2022), <https://www.dcms.uscg.mil/Portals/10/CG-1/cg121/docs/Benefits/Civilian%20Remote%20Work%20FAQs%2010-31-22.pdf?ver=GHKMaYfW-AWqJSqaDqJQqw%3D%3D> [perma.cc/25WE-HHS9].

³⁰⁵ See Fontana, *supra* note 11, at 731–32 (discussing geographically separated high courts in different countries).

³⁰⁶ See CARTER GLASS, AN ADVENTURE IN CONSTRUCTIVE FINANCE 1–15, 249–50 (1927); see also H.R. REP. NO. 68-69, at 12 (1913) (“In the United States, with its immense area, numerous natu-

former chairman of the Federal Reserve Board, Jerome F. Powell, for his connections to Washington actors,³⁰⁷ perhaps even the entire Federal Reserve structure should be outside of Washington.³⁰⁸

If these officials achieve their position in an agency because of their successful navigation of Washington political forces,³⁰⁹ that already might compromise their independence. Then their constant exposure to the political battleground of Washington undermines their independence further. These individuals also have their own revolving door issues to consider. It might be hard for them to maintain the appearance and/or the reality of independence if they will be looking for a job in town soon enough—and therefore in that federal government community.

Consider also the concerns about President Trump's decision to fire the head of the Bureau of Labor Statistics (BLS) after he complained that the job numbers that she released were "rigged."³¹⁰ The BLS is supposed to have a mandate demanding "the fearless publication of the facts."³¹¹ That fearless dedication is made more difficult when the BLS features someone who has been and will be a part of the political—and even partisan—community in Washington. Or consider the Office of Legal Counsel (OLC) in the Department of Justice, which is supposed to provide value to the executive branch because of its reasonably independent legal advice.³¹² OLC has been substantially undermined in the recent past—and particularly in the current Trump Administra-

ral divisions, still more numerous competing divisions, and abundant outlets to foreign countries, there is no argument, either of banking theory or of expediency, which dictates the creation of a single central banking institution, no matter how skillfully managed, how carefully controlled, or how patriotically conducted.”).

³⁰⁷ See Alan Rappeport, *Criminal Inquiry of Powell Draws Backlash from Some Republicans*, N.Y. TIMES (Jan. 12, 2026), <https://www.nytimes.com/2026/01/12/us/politics/jerome-powell-fed-investigation-republicans-backlash.html> [perma.cc/G3HX-PJKF] (discussing Trump's attacks).

³⁰⁸ It is worth noting that Powell's life-long experience in Washington was what led him to retain the powerhouse Washington law firm Williams & Connolly to represent the Federal Reserve in its battle with the President. See Nick Timiraos, *For Years, Powell Had Avoided Fighting Trump. That's Over.*, WALL ST. J. (Jan. 12, 2026), [perma.cc/PRH5-FV7W] (discussing Powell's decision to retain that law firm).

³⁰⁹ Any position that requires some sort of political support to achieve it will necessarily involve the people receiving that position in politics. See Horton & Lewis, *supra* note 165, at 20–28.

³¹⁰ See Tony Romm, Ben Casselman & Lydia DePillis, *Trump, Seeking Friendlier Economic Data, Names New Statistics Chief*, N.Y. TIMES (Aug. 11, 2025), <https://www.nytimes.com/2025/08/11/business/economy/trump-bls-commissioner.html> [perma.cc/X8UQ-JSF3] (quoting President Trump).

³¹¹ *About the U.S. Bureau of Labor Statistics*, U.S. BUREAU OF LAB. STATS., <https://www.bls.gov/bls/about-bls.htm> [perma.cc/QQ9W-PTKD] (quoting the first commissioner of the BLS, Carol D. Wright's description of the Bureau's mandate).

³¹² See, e.g., Trevor W. Morrison, *Stare Decisis in the Office of Legal Counsel*, 110 COLUM. L. REV. 1448, 1457 (2010) (“[A]dministrations of both political parties have recognized the instrumental value of ensuring OLC is broadly perceived as reasonably independent and credible.”).

tion—because its leaders have a strong background in and connection to White House officials.³¹³

For other categories of administrative functions, locations outside of the Washington metropolitan area will have a unique pull that would suggest greater powers decentralized to officials in that location could be desirable. There will be regulated entities and affected parties outside of headquarters who will need the agency to show up in person to meet with them and hear their concerns and see their situation because these interactions cannot transpire in Washington.³¹⁴

There will be regulatory matters that need the experience with and connections to people or places outside of Washington. For instance, the Securities and Exchange Commission created an “Asset Management Unit” that was initially based in New York City’s SEC office but was then relocated to Los Angeles’s SEC office once the primary lawyer with that relevant expertise moved from the New York City office to the Los Angeles office.³¹⁵ Region 6 of the Environmental Protection Agency, which includes Arkansas, Louisiana, New Mexico, Oklahoma, and Texas, focuses on hurricane response and mosquito control because of the unique experience for those housed in those offices with those specific issues.³¹⁶

There can be time and task-limited subdelegations of power to decentralized administrative officials giving them power beyond mere enforcement.³¹⁷ The Environmental Protection Agency (EPA) will sometimes delegate to a regional administrator the authority to approve or disapprove a rulemaking petition on a matter within that region.³¹⁸ The EPA has designated the Administrator of Region 5, who sits in Chicago, as a leader on stratospheric ozone protec-

³¹³ See Charlie Savage, *Trump Sidelines Justice Dept. Legal Office, Eroding Another Check on His Power*, N.Y. TIMES (Apr. 4, 2025), <https://www.nytimes.com/2025/04/04/us/politics/trump-office-of-legal-counsel-doj> [perma.cc/MRA2-HWCS] (“The Justice Department’s Office of Legal Counsel has traditionally been a powerful guardrail in American government. . . . But in President Trump’s second term so far, the office has largely been sidelined.”).

³¹⁴ See, e.g., *What We Do*, NLRB, <https://www.nlrb.gov/about-nlrb/what-we-do> [perma.cc/TRSP-KKV2] (describing many examples of external-facing actions taken by the NLRB, including conducting elections, investigating charges, facilitating settlements, deciding cases, and enforcing orders).

³¹⁵ See Press Release, U.S. Sec. & Exch. Comm’n, *C. Dabney O’Riordan Named as Co-Chief of the Asset Management Unit* (July 12, 2016), <https://www.sec.gov/news/pressrelease/2016-134.html> [perma.cc/T9JC-ZY8Q].

³¹⁶ See *EPA Region 6 (South Central)*, EPA, (Mar. 27, 2026), <https://www.epa.gov/aboutepa/epa-region-6-south-central> [perma.cc/AKN7-Q73P].

³¹⁷ Consider, for instance, the numerous temporary delegations to regional officials in the delegation book produced by the Environmental Protection Agency. See Memorandum from Lisa P. Jackson on Approval of Temporary Delegation of Authority to Propose a Rule Approving or Disapproving Certain Aquifer Exemptions in Wyoming to James B. Martin, Adm’r of Region 8, 1 (June 25, 2012) (on file with author).

³¹⁸ See *id.*

tion, with “the authority to take action . . . in *all* U.S. Environmental Protection Agency regions.”³¹⁹

C. Decentralization's Process

The prior Section considered decentralizing reforms that were more specific and targeted. It focused on specific types of officials who should be given more regulatory authority. This Section considers broader reforms that would break down the dichotomy that exists between headquarters and decentralized officials across many more domains. Headquarters officials can be sensitized to decentralized officials, and decentralized officials can become more like headquarters officials.

Decentralized officials can have a greater voice in the procedures of headquarters. A seat at the table in Washington provides a voice in the process in Washington.³²⁰ In the administrative law context, there are many tools of inter-agency or intra-agency coordination that are utilized to integrate agency officials.³²¹ These insights can be separated into those that integrate decentralized officials over a long-term or over a short-term basis.

A long-term vision for reform would imagine officials outside of Washington having more direct access to the top of the agency hierarchy in Washington. Agency officials outside of Washington can be empowered by ensuring their representation on the committees and in the exchanges that happen within and between agencies on a more regular basis in Washington. As one example from the inter-agency context, the Toxic Substances Control Act requires that members of different agencies populate a committee making suggestions to the EPA about which substances should be targeted.³²² The highest level official—the Administrator of the EPA—must then respond to the suggestions of this

³¹⁹ EPA Delegation 7-177, in ENVIRONMENTAL PROTECTION AGENCY, DELEGATIONS MANUAL (2026) (emphasis added).

³²⁰ See Bulman-Pozen & Gerken, *supra* note 26, at 1268–69 (“When an actor is embedded in a larger system, a web of connective tissues binds higher- and lower-level decisionmakers. Regular interactions generate trust and give lower-level decisionmakers the knowledge and relationships they need to work the system.”).

³²¹ See, e.g., Freeman & Rossi, *supra* note 296, at 1134 (“[I]nteragency coordination is one of the central challenges of modern governance. Many areas of regulation and administration are characterized by fragmented and overlapping delegations of power to administrative agencies.” (citation omitted)); Jennifer Nou, *supra* note 142, at 422 (“By and large, however, agency heads have been neglected as important determinants of institutional design. Indeed, like the need for interagency coordination, the bureaucracy requires intra-agency coordination.”).

³²² See 15 U.S.C. § 2603(e)(1)(A) (“There is established a committee to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the development of information . . .”).

committee.³²³ These types of committees could also feature decentralized officials as a matter of legal obligation rather than agency choice.

Second, in addition to these more permanent procedures empowering decentralized officials, there could be opportunities for shorter-term but more substantial procedural integration. Officials outside of Washington can do temporary stints in headquarters offices in Washington. Headquarters officials can do temporary stints in offices outside of Washington.³²⁴

In the federal government, there are statutes authorizing executive officials to spend time temporarily working in different positions in the federal government in Washington.³²⁵ These officials working temporarily in other positions are labeled detailees.³²⁶ These officials can usually only be detailed, though, to a different Washington office in the executive branch³²⁷ and even less frequently to the legislative branch.³²⁸ There is no general provision authorizing Headquarters officials to work in offices outside of Washington, or decentralized officials to work in Washington—but there should be.³²⁹

If headquarters and decentralized officials were detailed to one another's offices, these officials would then possess durable and otherwise unavailable

³²³ *Id.* § 2603(e)(1)(B) (“[T]he Administrator shall publish in the Federal Register the list with such revision [suggested by the Committee and] the reasons for such revision”); *see also* Outer Continental Shelf Lands Act, 43 U.S.C. § 1345(c) (“The Secretary shall communicate . . . in writing[] the reasons for his determination to accept or reject such . . . recommendations.”).

³²⁴ Regional Directors of agencies will sometimes have prior experience working with key figures in a current administration during a prior presidential administration.

³²⁵ 3 U.S.C. § 112 (“The head of any department, agency, or independent establishment of the executive branch of the Government may detail, from time to time, employees of such department, agency, or establishment”).

³²⁶ *See Detail Opportunity: OIRA's Regulatory Exchange and Training Program*, OFF. MGMT. & BUDGET, https://obamawhitehouse.archives.gov/omb/recruitment/detail_oira [perma.cc/CL6Q-DB8Y] (“The purpose of this program is to help develop a cadre of agency experts in Executive Order regulatory review and planning, and to foster better cooperation among the agencies and OMB.”).

³²⁷ 3 U.S.C. § 112 (discussing how detailees are sent to “the White House Office, the Executive Residence at the White House, the Office of the Vice President, the Domestic Policy Staff, and the Office of Administration.”).

³²⁸ *See* 2 U.S.C. § 4301(f) (contemplating detailees working for Congress but requiring the “written permission of the Committee on Rules and Administration of the Senate or the Committee on House Oversight of the House of Representatives”). One successful example of this has been the State Department's Office of the Legal Adviser. Lawyers in that office rotate between different sub-offices, each with a focus on a different area of international law. *See* Harold Hongju Koh, *The State Department Legal Adviser's Office: Eight Decades in Peace and War*, 100 GEO L.J. 1747, 1773 (2012) (“[O]ur [office's] system of attorney rotation, which keeps lawyers in L for long tenures while allowing them to work on an ever-expanding set of issues, thus avoid[s] intellectual calcification while maintaining institutional continuity and knowledge.”).

³²⁹ There are already very few detailees between the branches in Washington in the first place. *See* U.S. GEN. ACCOUNTABILITY OFF., GAO/GGD-93-14, REPORT TO THE CHAIRMAN, SUBCOMMITTEE ON HUMAN RESOURCES, COMMITTEE ON POST OFFICE AND CIVIL SERVICE, HOUSE OF REPRESENTATIVES: PERSONNEL PRACTICES: SCHEDULE C AND OTHER DETAILS TO THE EXECUTIVE OFFICE OF THE PRESIDENT 3 (1992) (noting that a minimum of 115 officials and a maximum of 342 officials participated in this program in a given calendar year).

information about how other offices work.³³⁰ These experiences also generate durable relationships between headquarters officials and other officials that can bypass the absence of access that decentralized officials often face.³³¹ A Regional Director of an administrative agency can learn from their stint at headquarters about how to enforce as much as possible without upsetting headquarters. Headquarters can learn about the unique issues and interests present in a region outside of Washington.

In the labor economics literature, this type of program is usually called a “job rotation”³³² or (depending on the specifics) a “Type Z” organization.³³³ Programs like these are increasingly common in large corporations with geographically distributed operations.³³⁴ The returns have proven to be enormous and, in the literature about private firms, the capacity to utilize these approach-

³³⁰ See Prithwiraj Choudhury, *Return Migration and Geography of Innovation in MNEs: A Natural Experiment of Knowledge Production by Local Workers Reporting to Return Migrants*, 16 J. ECON. GEOGRAPHY 585, 587 (2016) (“[R]eturn migrants may act as a ‘bridge’ for transferring knowledge from the MNE headquarters to the local employees who work for them.” (citation omitted)).

³³¹ See generally Ajay Agrawal, Iain Cockburn & John McHale, *Gone but Not Forgotten: Knowledge Flows, Labor Mobility, and Enduring Social Relationships*, 6 J. ECON. GEOGRAPHY 571 (2006) (discussing the empirical literature demonstrating that enduring social relationships are built from these temporary employment situations); Prithwiraj (Raj) Choudhury, *Intra-Firm Geographic Mobility: Value Creation Mechanisms and Future Research Directions*, (noting that “[c]areer advancement may occur because mobile employees have broader informal networks” and that “[t]he networks [across offices] themselves may also be a form of firm-specific human capital that increases the value of mobile employees within their organizations”), in 41 ADVANCES IN STRATEGIC MANAGEMENT: EMPLOYEE INTER- & INTRA-FIRM MOBILITY 179, 191 (2020).

³³² See, e.g., Metin M. Coşgel & Thomas J. Miceli, *Job Rotation: Cost, Benefits, and Stylized Facts*, 155 J. INSTITUTIONAL & THEORETICAL ECON. 301, 301 (1999) (describing this strategy as not involving assigning an employee “to a single and specific task but [instead] to a set of several tasks among which he or she rotates with some frequency” (citation omitted)).

³³³ See, e.g., WILLIAM G. OUCHI, *THEORY Z: HOW AMERICAN BUSINESS CAN MEET THE JAPANESE CHALLENGE* 28–32 (1981) (“[L]ifelong job rotation [means] . . . a technician may work on a different machine or in a different division every few years, and all managers will rotate through all areas of the business.”); Eaton H. Conant & Maurice D. Kilbridge, *An Interdisciplinary Analysis of Job Enlargement: Technology, Costs, and Behavioral Implications*, 18 INDUS. & LAB. RELS. REV. 377, 377 (1965) (noting an option of “restoring to jobs some of the skill, responsibility, and variety that have been lost through work simplification”).

³³⁴ See, e.g., Shinjinee Chattopadhyay & Prithwiraj Choudhury, *Sink or Swim: The Role of Workplace Context in Shaping Career Advancement and Human-Capital Development*, 28 ORG. SCI. 211, 216 (2017); Martin Dewhurst, Matthew Pettigrew & Ramesh Srinivasan, *How Multinationals Can Attract the Talent They Need*, MCKINSEY & CO. (June 1, 2012), <https://www.mckinsey.com/capabilities/people-and-organizational-performance/our-insights/how-multinationals-can-attract-the-talent-they-need/#/perma.cc/GC4L-RZ7R> (“[E]xecutives will spend 70 percent of their total careers working outside their home countries. Similarly, a leading mining company expects its people to have experience in at least two different geographic regions, two different businesses or functions, and even two different economic environments (high and low growth, say) before they can move into senior-leadership roles. . . . Having spent a couple of years at the center, recruits then compete for senior roles in local or regional markets. They return with a solid understanding of the organization and its strategy, as well as an extended network based on trust gained from working intensively with leaders across the company.”).

es is one of the primary explanations for the success of geographically distributed corporations.³³⁵

CONCLUSION

The federal government of the United States differs in many fundamental ways from its ancestor created more than two centuries ago. The Civil War increased the power of the federal government because of a few constitutional amendments. Then the New Deal increased the power of the federal government in general and the executive branch in particular. Change has been a constant for the federal government.

One basic feature of the federal government has remained the same though: It has been the case since the beginning of the Republic that about eighty-five percent of federal officials worked outside of the Washington metropolitan area.³³⁶ When there were just the 153 full-time officials working for the federal government in Washington,³³⁷ there were at least 3,752 federal officials working outside of Washington.³³⁸ There was a meaningful discussion about changing this reality after the Civil War. One member of Congress, for instance, proposed a Constitutional Convention at the end of the nineteenth century to clarify that executive decentralization was both constitutionally possible and normatively desirable.³³⁹ But just as soon as these ideas had energy, presidents and congressional leaders would publicly oppose them and they would be defeated.³⁴⁰ The discussion was resumed during the New Deal and World War II—and defeated once again.³⁴¹

³³⁵ See, e.g., Choudhury, *supra* note 330, at 585 (“There is an established literature that studies the geography of innovation of the multinational enterprise. . . . [T]his literature has long posited that MNEs exist because of their ability to transfer and exploit knowledge more efficiently in the intrafirm context than through external market mechanisms.”).

³³⁶ See Abbott, *supra* note 21, at 1376 tbl.1.

³³⁷ See BALOGH, *supra* note 92, at 112.

³³⁸ See Peter Kastor, *The Early Federal Workforce*, BROOKINGS INST. PAPERS 1, 2 (May 5, 2018), [https://www.brookings.edu/wp-content/uploads/2018/05/the-early-federal-workforce-by-p-kastor.pdf?utm_campaign=Brookings%20Executive%20Education&utm_source=hs_email&utm_medium=email\[perma.cc/D34H-2Y8T\]](https://www.brookings.edu/wp-content/uploads/2018/05/the-early-federal-workforce-by-p-kastor.pdf?utm_campaign=Brookings%20Executive%20Education&utm_source=hs_email&utm_medium=email[perma.cc/D34H-2Y8T]) (“In 1802 . . . the federal government employed 3,905 people. By 1826, that number had more than doubled to 10,415.”). The number of federal officials outside of Washington was likely even larger than that. See *id.* (“These numbers do not include two groups for whom there is no reliable data: enlisted personnel in the United States military and officeholders in the numerous federal territories.”).

³³⁹ See *Removal of the Capital*, CHI. TRIB., July 5, 1869, at 2 (“It is time that the public mind, at least of the Western, Southwestern and Pacific States, were definitely turned to the question of the future location of our National Capital, as one demanding, not merely discussion, but speedy action.”).

³⁴⁰ See *The “Welcome” Demonstration*, *supra* note 114, at 4 (quoting President Ulysses Grant).

³⁴¹ See John Crowe Ransom, *A Capital for the New Deal*, 2 AM. REV. 129, 142 (1933) (“The fight which Mr. Roosevelt makes every day is chiefly against an opposition which has its centre in the money markets of the East How could he better claim to represent [Southern and Western] sections against the East . . . than by setting in to move the seat of government to a place where it will be

With the election of President Donald J. Trump to a second term, the possibility of change is the greatest it has ever been in American history. President Trump took the idea and moved it from “off the wall” to “on the wall” using his vision of executive decentralization.³⁴² Although he has made this domain of institutional design salient, he has simultaneously delegitimated it because of his desire to use it for more partisan goals rather than more neutral, good government goals.

The goal of this Article has been to consider the location of the administrative state as centrally important but also to highlight a different and new path forward. Now is the time to consider the question—from all perspectives—of which officials should be in the Washington metropolitan area and which officials should be outside of it. It is a question that must be asked and answered because every executive official governs from somewhere. Everyone has a place, and it is time for scholars to figure out where those places should be.

fairly representative of the national geography?”); see also Richard L. Neuberger, *Should We Move the Capital to the Rockies?; The Case for a New Washington in a Setting of Natural Beauty Near the Heart of the Country*, N.Y. TIMES, Oct. 6, 1946, at 49 (“Washington, which was to have been the compact, friendly capital of a rural nation, has long since burst the breeches cut for it. Why not a fresh start somewhere along the eastern ramparts of the Rockies, not many miles from the geographic center of the United States?”).

³⁴² See Jack M. Balkin, *How Social Movements Change (or Fail to Change) the Constitution: The Case of the New Departure*, 39 SUFFOLK U. L. REV. 27, 52 (2005) (discussing “off the wall” ideas moving to “on the wall” ideas).

