

MAKING OUR MINISTRY OF JUSTICE

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This Essay evaluates the Judiciary Act of 1925 from an administrative law perspective. It argues that principles ordinarily associated with administrative governance pervade the law's origin, purpose, means, and effect. The cumulative result was to transform the Supreme Court from an appellate court of last resort into a ministry of justice, i.e., an agency at the head of a hierarchically organized federal judicial branch.

INTRODUCTION

As the Judiciary Act of 1925 turns one hundred years old, it is worth reflecting on how it shaped the U.S. Supreme Court into the divisive institution we know today. The Act was colloquially known as the Judges' Bill, reflecting the fact that it was drafted by and passed at the behest of the Supreme Court itself under the direction of Chief Justice Taft.¹ It addressed the real and pressing problem that the Supreme Court's workload had expanded beyond the institution's capacity. But it did so by advancing a novel—even radical—conception of the Supreme Court's role in our constitutional system. In this conception, the Supreme Court's overriding purpose was not to dispense justice to individual litigants but to address the most important national issues through general opinions designed to govern a hierarchical federal judiciary.

This Essay reflects on the Judges' Bill from an administrative law perspective. It argues that an administrative lawyer evaluating the origin, purpose, means, and effect of the Judges' Bill will readily identify principles ordinarily associated with administrative governance: deference to expertise, a shift from case-specific adjudication to generalized rulemaking, the delegation of authority (horizontally and vertically), and expanded norms of reason giving. These principles were

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¹ 1 ROBERT C. POST, *THE TAFT COURT: MAKING LAW FOR A DIVIDED NATION, 1921–1930*, at 480 (2024).

marshalled to shape the Supreme Court into a collegial head of a hierarchically organized branch of government that could more efficiently and effectively meet the demands of expanded governmental activity.² Perhaps it should come as no surprise that Chief Justice Taft—the only former President ever to serve on the U.S. Supreme Court—reformed the judiciary in the image of the executive branch.³ In any event, as even contemporaries of the Judges’ Bill observed, the result was to transform the Supreme Court into something more like a ministry of justice and less like an appellate court of last resort.⁴ Subsequent developments completed this transformation, but the critical constitutional moment occurred when Congress enacted the Judiciary Act of 1925.⁵

I. JUDICIAL REFORM ACCORDING TO ADMINISTRATIVE PRINCIPLES

A. *Deference to Expertise*

In the origin of the Judiciary Act of 1925, one finds congressional deference to the Supreme Court’s expertise about how best to address the pressures that were exerted on the institution by the expansion of its workload.⁶ The first hint is that the law was known as the Judges’

2 See Tara Leigh Grove, *Tiers of Scrutiny in a Hierarchical Judiciary*, 14 GEO. J.L. & PUB. POL’Y 475, 483 (2016).

3 This included a presidential vision of the Chief Justice’s role. “Desiring both centralization and managerial efficiency, Taft envisioned a judicial hierarchy premised on the notion that the Chief Justice should be not only the most important judicial officer in the nation but also the operational director of the federal judiciary.” Justin Crowe, *The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft*, 69 J. POL. 73, 81 (2007).

4 POST, *supra* note 1, at 484–85. I use “ministry of justice” to suggest that the Supreme Court functions as an administrative institution at the head of Article III. Others have used the term in a slightly different way, to refer to a potential agency that would exist outside of—and serve to mediate between—the courts and the legislature. See Benjamin N. Cardozo, *A Ministry of Justice*, 35 HARV. L. REV. 113, 114 (1921). For a discussion of whether the Supreme Court’s certiorari power can “be justified as a form of administrative rather than judicial power,” see Edward A. Hartnett, *Questioning Certiorari: Some Reflections Seventy-Five Years After the Judges’ Bill*, 100 COLUM. L. REV. 1643, 1713 (2000).

5 For a broader evaluation of how the Supreme Court today operates as the administrative head of the judicial branch, see Jonathan Petkun & Joseph Schottenfeld, *The Judicial Administrative Power*, 93 GEO. WASH. L. REV. 349 (2025).

6 Such deference has long been a cornerstone of administrative governance, although typically it is courts that are expected to defer to the expertise and policy judgments of administrative agencies. See, e.g., Reuel E. Schiller, *The Era of Deference: Courts, Expertise, and the Emergence of New Deal Administrative Law*, 106 MICH. L. REV. 399, 441 (2007) (“The profound deference of New Deal-era administrative law was not to last long, but it firmly defined the role of expertise in the administrative state . . .” (footnote omitted)). There is some uncertainty about the place and power of this principle in the wake of the Supreme

Bill because it was proposed, drafted, and lobbied for by the Justices themselves.⁷ Taft began advocating for Supreme Court reform as early as 1908, continued to do so as President, and carried the mission into his appointment as Chief Justice in 1921.⁸ Reform was needed because the Supreme Court's caseload had become "torrential" and exceeded the institution's capacity.⁹ Although there is some "mystery" surrounding the origins of the legislation,¹⁰ historical accounts consistently report that Chief Justice Taft convened a committee of Justices promptly upon his appointment to study possibilities that would allow the Court to address its significant backlog and meet the expanded needs of the modern justice system.¹¹ The members of the committee drafted the

Court's "overruling" of the *Chevron* doctrine. See generally Emily Hammond, *Finding a Place for Expertise After Loper Bright*, 31 GEO. MASON L. REV. 559 (2024).

7 E.g., POST, *supra* note 1, at 480 ("Taft lobbied hard for the legislation, and the result was his second great judicial reform as chief justice, the Judiciary Act of February 13, 1925, often called the Judges' Bill because it was authored by the Court itself." (footnote omitted)); Paxton Blair, *Federal Appellate Procedure as Affected by the Act of February 13, 1925*, 25 COLUM. L. REV. 393, 394 (1925) (explaining that "the draftsmen of the statute . . . were a Committee of the Justices of the Supreme Court") (citing S. REP. NO. 68-362, at 1 (1924)).

8 See POST, *supra* note 1, at 477, 479–80.

9 *Id.* at 477; see also *id.* at 478 (providing a table showing the appellate caseload of the Supreme Court, by term, from 1888–1930); Jonathan Sternberg, *Deciding Not to Decide: The Judiciary Act of 1925 and the Discretionary Court*, 33 J. SUP. CT. HIST. 1, 4 (2008) ("After the Civil War, however, the number of cases the Court was obligated to decide under the 1789 Act's system 'grew dramatically,' because of 'the array of legal issues multiplied with the growing scale and complexity of federal law in American life.'" (quoting Margaret Meriwether Cordray & Richard Cordray, *The Philosophy of Certiorari: Jurisprudential Considerations in Supreme Court Case Selection*, 82 WASH. U. L.Q. 389, 392 (2004))). Professor Robert Post suggests that Taft first developed his vision for the Supreme Court and later hitched it to the need for reform. See POST, *supra* note 1, at 479; see also Sternberg, *supra*, at 7–9 (describing Chief Justice Taft's career and efforts to reform the Supreme Court).

10 Post writes that "[t]he origins of the bill remain shrouded in mystery," POST, *supra* note 1, at 480, but makes a persuasive case that the Justices themselves wrote, proposed, and lobbied for the law under Chief Justice Taft's leadership and motive power, see *id.* at 480, 482–84. The shroud seems primarily to emanate from the reluctance of certain Justices (especially Justice Van Devanter) to frankly acknowledge their role in the legislative process. See *id.* at 482. Indeed, part of Chief Justice Taft's lobbying strategy was to "engag[e] the Court intimately in the drafting of the proposed Judiciary Act, while publicly downplaying the Court's role." Jeremy Buchman, *Judicial Lobbying and the Politics of Judicial Structure: An Examination of the Judiciary Act of 1925*, 24 JUST. SYS. J. 1, 10 (2003).

11 Accounts of the 1925 Judiciary Act are generally consistent on this point. See, e.g., Sternberg, *supra* note 9, at 8–9 ("As soon as Taft's first Court Term as Chief Justice began in October of 1921, he called together a committee composed of Justices William Day, Willis Van Devanter, and James McReynolds to draft a bill for reform of the Supreme Court's jurisdiction."); accord William Howard Taft, *The Jurisdiction of the Supreme Court Under the Act of February 13, 1925*, 35 YALE L.J. 1, 2 (1925); Hartnett, *supra* note 4, at 1662; Buchman, *supra* note 10, at 10–11.

legislation and testified before Congress in support of its passage.¹² Although Chief Justice “Taft did not have unanimous support from his colleagues,” those who did not agree remained publicly silent, and thus Chief Justice Taft was able to “present a unified front to Congress.”¹³ In public, at least, the Judges’ Bill was the Supreme Court’s own proposal.

The course and character of the legislative proceedings strongly suggest that, in the end, Congress deferred to the Supreme Court’s expert judgment about how best to address the challenges it faced. Given the significance of the structural reform that was proposed, one might expect there to have been vigorous opposition and scrutiny in Congress.¹⁴ And there was initially some opposition to the bill, from lower court judges, the American Bar Association (ABA), and a handful of legislators.¹⁵ Over time, these voices became fewer and quieter and, in the end, “the Judges’ Bill passed with little resistance, even from legislators who had been vocal in their disapproval of the Court’s conservative direction.”¹⁶ Some have read the legislative history and come to the conclusion that Congress was insufficiently attentive to (and critical of) the proposal and simply capitulated to the judgment of Chief Justice Taft and his committee of Justices as to how the Supreme Court should be fundamentally restructured.¹⁷ In the language of administrative law, deference to expertise seems to have played a sizeable role in the development and enactment of the Judges’ Bill.¹⁸

12 See POST, *supra* note 1, at 480; Sternberg, *supra* note 9, at 9–10; Hartnett *supra* note 4, at 1648, 1675–81; Crowe, *supra* note 3, at 80.

13 Buchman, *supra* note 10, at 12. Justice Brandeis did not support the bill, but he did not publicly air his disagreement, and there is evidence that he came around after the law was enacted. See *id.*; POST, *supra* note 1, at 499 n.59.

14 See Buchman, *supra* note 10, at 2.

15 See Sternberg, *supra* note 9, at 11–12. The American Bar Association (ABA) at first preferred a plan to expand the number of Justices on the Court, but after it became clear that the Justices were opposed to this plan, the ABA came around and lobbied in favor of the Judges’ Bill. *Id.*; see Buchman, *supra* note 10, at 12.

16 Buchman, *supra* note 10, at 2. “Congress was remarkably willing to delegate to the Court the case selection power sought by Taft, even as it resisted for another decade delegating to the Court the power to promulgate rules of civil procedure.” Hartnett, *supra* note 4, at 1644.

17 *E.g.*, Buchman, *supra* note 10, at 2 (“Case studies of the history of the act’s passage . . . emphasize how Taft’s lobbying strategy succeeded in convincing legislators that they should defer to the justices’ wishes because of the bill’s technical complexity.”); Sternberg, *supra* note 9, at 12.

18 “Judicial deference is a foundational principle of administrative law.” Lisa Schultz Bressman & Kevin M. Stack, Essay, *Chevron Is a Phoenix*, 74 VAND. L. REV. 465, 466 (2021).

B. *A Shift from Adjudication to Rulemaking*

The purpose of the Judges' Bill—understood in administrative terms—was to shift the Court's function from adjudication (the disposition of individual cases) to the development of policy through rulemaking (the generalized resolution of important, national issues).¹⁹ Chief Justice Taft's vision for the Court was revolutionary.²⁰ He believed that the Court's function should not be to dispense justice to individual litigants but instead to hear and determine the issues of national importance that would have implications for the disposition of many cases pending before the lower federal courts.²¹ The Judiciary Act of 1925 embraced this vision.²² Following the model of the Judiciary Act of 1916, which succeeded in “shutting off cases of minor importance . . . by giving finality to the decisions of state courts and circuit courts of appeals in certain types of litigation,”²³ the 1925 Act freed the Supreme Court “[t]o resolve conflicts among coördinate appellate tribunals and to determine matters of national concern.”²⁴ This had an intended effect on the content of the Supreme Court's output, shifting the focus to federal constitutional and statutory issues.²⁵ It also transformed the form and character of Supreme Court dispositions. Law declaration—not the provision of justice to individual litigants—

19 In administrative law, the shift from adjudication to rulemaking as the preferred means of policymaking occurred in the 1960s and 1970s. For the canonical account, see Antonin Scalia, *Vermont Yankee: The APA, the D.C. Circuit, and the Supreme Court*, 1978 SUP. CT. REV. 345, 376 (“[P]erhaps the most notable development in federal government administration during the past two decades” is “the constant and accelerating flight away from individualized, adjudicatory proceedings to generalized disposition through rulemaking.”).

20 It was revolutionary in the sense that it ran directly contrary to the idea that the Supreme Court—established early in the republic and still prevailing in the early 20th century—had a constitutional duty to be the final arbiter of justice for individual litigants. See Sternberg, *supra* note 9, at 1. Chief Justice Taft himself “acknowledged that it was radical.” *Id.* at 10.

21 POST, *supra* note 1, at 477, 479; Grove, *supra* note 2, at 481; Buchman, *supra* note 10, at 1–2; Sternberg, *supra* note 9, at 9.

22 See Buchman, *supra* note 10, at 1.

23 Felix Frankfurter & James M. Landis, *The Business of the Supreme Court of the United States—A Study in the Federal Judicial System: VII. The Judiciary Act of 1925*, 40 HARV. L. REV. 834, 834 (1927); see also *id.* at 836 (explaining that “[e]xperience with the Act of 1916” demonstrated “the potentialities of discretionary jurisdiction”).

24 *Id.* at 836–39.

25 Hartnett, *supra* note 4, at 1704–13. As early as 1914, Taft argued that “[t]he most important function of the court is the construction and application of the constitution of the United States.” POST, *supra* note 1, at 479 (quoting William H. Taft, *The Attacks on the Courts and Legal Procedure*, 5 KY. L.J. 3, 18 (1916)). As a number of scholars have recognized, this shift also changed the way the Supreme Court develops doctrine, see Grove, *supra* note 2, at 483–85, including in administrative law, see Peter L. Strauss, *One Hundred Fifty Cases Per Year: Some Implications of the Supreme Court's Limited Resources for Judicial Review of Agency Action*, 87 COLUM. L. REV. 1093 (1987).

became the Supreme Court's primary function.²⁶ This function demanded more general, prospectively oriented decisions establishing doctrines susceptible of application by lower courts to resolve classes of individual cases.²⁷ It required, in administrative terms, a shift to making federal constitutional policy through rulemaking.²⁸ Cases became mere vehicles for the Court's rulemaking.²⁹

C. Delegation of Authority

Delegation of authority—both horizontal and vertical—was the principal means the Judiciary Act of 1925 employed to effectuate the Supreme Court's new function. Delegation and subdelegation are, of course, hallmarks of federal administrative governance.³⁰

Horizontally, Congress delegated discretion to the Supreme Court to select the cases that it would hear and decide.³¹ This delegation was effectuated by eliminating much of the Court's mandatory appellate jurisdiction—i.e., contracting the number of cases that the Supreme Court was required to take—and expanding its certiorari jurisdiction.³² Congress thus relinquished the job of deciding what

26 See Grove, *supra* note 2, at 483; see also Merlo J. Pusey, *The "Judges' Bill" After Half a Century*, 1976 SUP. CT. HIST. SOC'YY.B. 73, 76 ("Congress voted to allow the Supreme Court to put aside litigation that was interfering with its primary function to clarify the law of the land.").

27 E.g., POST, *supra* note 1, at 485 ("The Judges' Bill meant that a Supreme Court decision would henceforth be less like the definitive resolution of a particular case based on preexisting law, than, as Justice Stephen Breyer has written, 'an instruction, with respect to law and judicial action, aimed at the future.'" (footnote omitted) (quoting STEPHEN BREYER, *THE AUTHORITY OF THE COURT AND THE PERIL OF POLITICS* 86 (2021))).

28 For example, the Administrative Procedure Act defines "rule making" as the "process for formulating, amending, or repealing" a "statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." 5 U.S.C. § 551(4)–(5) (2018).

29 Hartnett, *supra* note 4, at 1733–34.

30 E.g., ATT'Y GEN.'S COMM. ON ADMIN. PROC., FINAL REPORT OF ATTORNEY GENERAL'S COMMITTEE ON ADMINISTRATIVE PROCEDURE, S. DOC. NO. 77-8, at 21 (1941) ("[T]he very characteristics of administrative agencies necessitate that delegation of function and authority be a predominant feature of their organization and procedure."); see generally Jennifer Nou, *Subdelegating Powers*, 117 COLUM. L. REV. 473 (2017) (examining the important role of subdelegation within the federal bureaucracy).

31 E.g., Felix Frankfurter & James M. Landis, *The Supreme Court Under the Judiciary Act of 1925*, 42 HARV. L. REV. 1, 1–2 (1928) ("The remedy [for the Court's caseload crisis] proposed by the Supreme Court and adopted by Congress was a transference of numerous classes of cases from obligatory review by appeal or writ of error to discretionary review by certiorari.").

32 See Buchman, *supra* note 10, at 1–2.

cases the Court should hear and gave the Supreme Court the autonomy to determine its own docket.³³

Vertically, Congress blessed the subdelegation of judicial decisionmaking power to courts and judges below the Supreme Court in the judicial hierarchy. That is, “[t]he Act curtailed the litigation coming to the Court by drastically transferring existing Court business to the circuit courts” and to the state courts.³⁴ Some of the groundwork had been laid earlier. For example, the Circuit Court of Appeals Act of 1891, also known as the Evarts Act of 1891, “establish[ed] a system of intermediate appellate courts and vest[ed] them with the jurisdiction to hear the initial appeal in most cases decided by the federal trial courts.”³⁵ Another important development “came in 1922, when, at the suggestion and urging of Taft, Congress provided 24 additional district court judges,” granted the Chief Justice greater managerial authority over district court staffing, and established what is today known as the Judicial Conference.³⁶ In the 1925 Act, by contracting the Court’s mandatory jurisdiction and expanding its certiorari jurisdiction, Congress effectively authorized the Supreme Court to subdelegate most judicial decisionmaking to the lower courts and judges that previously had been established. The result was to transfer an enormous volume of final judicial decisionmaking from the Supreme Court

33 See Crowe, *supra* note 3, at 74. Chief Justice Taft memorably described this autonomy as “absolute and arbitrary discretion.” Harnett, *supra* note 4, at 1661 (quoting Taft, *supra* note 25, at 18). One consequence was to give the Supreme Court agenda-setting authority. The scope of this authority arguably has expanded over time, as the number of petitions filed has grown and the grant rate has shrunk. In 1927, the Supreme Court granted 102 of the 587 petitions filed. Frankfurter & Landis, *supra* note 31, at 13. Today, it grants about eighty of the 7,000–8,000 petitions filed. See *FAQs - General Information*, SUP. CT. U.S., https://www.supremecourt.gov/about/faq_general.aspx [<https://perma.cc/L3VC-DLFV>] (last visited Nov. 1, 2025); see also *infra* note 37.

34 See Stephen C. Halpern & Kenneth N. Vines, *Institutional Disunity, the Judges’ Bill and the Role of the U.S. Supreme Court*, 30 W. POL. Q. 471, 474 (1977).

35 Arthur D. Hellman, *The Business of the Supreme Court Under the Judiciary Act of 1925: The Plenary Docket in the 1970’s*, 91 HARV. L. REV. 1711, 1712 (1978); see also Buchman, *supra* note 10, at 2 (“Before the passage of the Evarts Act of 1891, which created the modern-day federal courts of appeals, the Supreme Court was obligated to decide all cases brought before it.”); see generally Sternberg, *supra* note 9, at 5–7 (discussing the 1891 Act and its effects on the Supreme Court’s jurisdiction).

36 Crowe, *supra* note 3, at 73.

to the courts of appeals,³⁷ limiting Supreme Court review “to cases of exceptional importance.”³⁸

D. *Expanded Norms of Reason Giving*

Reducing the Supreme Court’s workload freed up the Justices to devote more time and energy to opinion writing, which had the effect of increasing the expectation and volume of reason giving on the Court.³⁹ As the Court has taken fewer and fewer cases, its opinions have grown longer and longer.⁴⁰ Performing the function of providing generalizable guidance to lower courts on issues of national importance seems simply to require more reasoning.

At the same time, separate opinions—including dissents—became more common.⁴¹ This development is one that Chief Justice Taft may not have intended or welcomed, but it was evident almost immediately after the Judges’ Bill became law.⁴² One reason is that the law was drafted with the intention—and had the immediate effect—of weeding out easy cases that were “unworthy” of Supreme Court review.⁴³ And as the composition of the docket changed to include more normatively freighted constitutional law cases, “the external issues of the cases themselves bec[a]me more important than the maintenance of

37 In its report of “Judicial Caseload Indicators,” the Administrative Office of the U.S. Courts does not even bother to include caseload information for the Supreme Court. See *Judicial Caseload Indicators - Federal Judicial Caseload Statistics 2024*, U.S. CTS., <https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/judicial-caseload-indicators-federal-judicial-caseload-statistics-2024> [https://perma.cc/8N4X-DJ8U] (last visited Nov. 1, 2025). While the U.S. courts of appeals decide tens of thousands of cases per year, the U.S. Supreme Court’s caseload is down to two digits. Compare *id.*, with *FAQs - General Information*, *supra* note 33 (“The Court receives approximately 7,000–8,000 petitions for a writ of certiorari each Term. The Court grants and hears oral argument in about 80 cases.”).

38 Frankfurter & Landis, *supra* note 31, at 7.

39 “Reason giving is central to U.S. administrative law and practice.” Jodi L. Short, *The Political Turn in American Administrative Law: Power, Rationality, and Reasons*, 61 DUKE L.J. 1811, 1813 (2012).

40 See generally Ryan C. Black & James F. Spriggs II, *An Empirical Analysis of the Length of U.S. Supreme Court Opinions*, 45 Hous. L. REV. 621 (2008).

41 See Halpern & Vines, *supra* note 34, at 471.

42 See, e.g., *id.* at 481 (“The trend toward increased dissents began ironically during Taft’s tenure as Chief Justice, despite his strong antipathy to dissent . . .”); Frankfurter & Landis, *supra* note 31, at 15 (noting an uptick in dissents).

43 See Frankfurter & Landis, *supra* note 31, at 7. “Since such litigation can now come to the Court only by permission, the probability is enhanced that cases on the docket present more doubtful issues than characterized the litigation prior to the present Judiciary Act.” *Id.*

internal solidarity” among the Justices.⁴⁴ “The Judges’ Bill was instrumental in bringing those kinds of cases to the Court and, indirectly, in eroding institutional norms which made the justices reluctant to write opinions airing their differences.”⁴⁵ Although some have derided this development, others have argued that expanded norms of reason giving—including expectations that the Justices will air their disagreements in separate opinions—may help to legitimate the Supreme Court’s decisions.⁴⁶ To the administrative lawyer, the argument is profoundly familiar.⁴⁷

II. THE RESULT: OUR MINISTRY OF JUSTICE

Given the ubiquitous presence of foundational administrative principles in the origin, purpose, means, and effect of the 1925 Judiciary Act, its overall consequence should come as no surprise: it transformed the Supreme Court from an appellate court of last resort into a ministry of justice at the head of a hierarchically organized federal judicial branch.⁴⁸

Subsequent reforms brought to fruition Chief Justice Taft’s revolutionary vision. For example, in 1934, Congress authorized the Supreme Court to act as the procedural rulemaker for Article III.⁴⁹ In

44 Halpern & Vines, *supra* note 34, at 481 (quoting SIDNEY VERBA, SMALL GROUPS AND POLITICAL BEHAVIOR: A STUDY OF LEADERSHIP 29 n.25 (1961)); *see also* Frankfurter & Landis, *supra* note 31, at 15 (“The more constitutional adjudications turn upon judgment upon social and economic data, the more will they provoke differences of opinion among members of the Court. The last five terms reflect a rise in dissents . . .”).

45 Halpern & Vines, *supra* note 34, at 481.

46 *Id.* at 481–83. Writing in 1928, Felix Frankfurter and James Landis seemed to suggest that dissents are valuable precisely because they keep doctrine squishy, allowing it to be more readily corrected or improved in subsequent cases. *See* Frankfurter & Landis, *supra* note 31, at 15, 18. That may be true, although less-rigid doctrines, which are developed through majority (or worse, plurality) opinions accompanied by dissents that suggest paths for future litigants to seek reform, may be more unstable and susceptible to collapsing in the wake of changes in the composition of the Court. This is one way to understand recent developments in administrative law. *See, e.g.,* *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2273 (2024) (“*Chevron* is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires.”).

47 *See generally* Short, *supra* note 39, at 1823 (describing theories of how “reason giving legitimates the exercise of administrative power”).

48 This was the judgment of contemporary observers. *See* POST, *supra* note 1, at 484.

49 *See, e.g.,* Pusey, *supra* note 26, at 78 (explaining that Chief Justice Taft “pleaded with Congress to allow the Supreme Court to unify the Federal rules of procedure in law and equity,” but this development was “not achieved during his lifetime”); *see also* Petkun & Schottenfeld, *supra* note 5, at 364–68 (discussing this aspect of the Article III administrative power); *see generally* Stephen B. Burbank, *The Rules Enabling Act of 1934*, 130 U. PA. L. REV. 1015 (1982) (providing a thorough account of the enactment of the Rules Enabling Act).

1938, the Supreme Court declared in *Erie Railroad Co. v. Tompkins*,⁵⁰ that “[t]here is no federal general common law,” which furthered statutory efforts to shift the Supreme Court’s focus to more important, constitutional issues by removing private law cases from its docket. In 1948, Congress rationalized the federal judicial system through the codification of Title 28, cementing the judicial hierarchy.⁵¹ In 1988, Congress “eliminated almost all remaining categories of mandatory appeals.”⁵² The Supreme Court has used its agenda-setting authority as Chief Justice Taft intended: to hear the most divisive cases of national importance and to focus on the development of federal public law (i.e., by addressing constitutional and statutory issues). The cumulative effect has been to enable the Supreme Court “to function effectively as a national agency for clarification of the law.”⁵³

CONCLUSION

The observations this Essay has offered are not novel, but they are worth renewed statement, collection, and evaluation in this moment of crisis and upheaval for the Supreme Court. It was not inevitable that the Supreme Court should function as it does today—as an oracle and a lightning rod—atop the federal judiciary. This function was a deliberate choice that predominately was made in the Judiciary Act of 1925. There were reasons for that choice, and it has helped to deliver the substantial benefits of a more rational and well-organized federal judiciary.⁵⁴ But it altered the fundamental nature of the Supreme Court, and many of the challenges the institution faces today are directly downstream of Chief Justice Taft’s successful revolution.

50 *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

51 This was another part of Chief Justice Taft’s vision that was not completed in 1925. See Gregory C. Sisk, *Lifting the Blindfold from Lady Justice: Allowing Judges to See the Structure in the Judicial Code*, 62 FLA. L. REV. 457, 461 (2010); see also Taft, *supra* note 25, at 14–15.

52 Buchman, *supra* note 10, at 2. Many mandatory-appeal statutes had already been repealed by the 1970s. Robert L. Stern, Eugene Gressman & Stephen M. Shapiro, *Epitaph for Mandatory Jurisdiction*, 74 A.B.A. J. 66, 66 (1988); cf. Sternberg, *supra* note 9, at 13 (“Rather than a piece of sweeping legislation, [the 1988 Act] simply was an amendment of the 1925 Act to meet the Court’s existing practice,” which included summary affirmance and dismissal to mitigate its remaining mandatory jurisdiction.).

53 Pusey, *supra* note 26, at 73.

54 For a brief discussion of the movement that delivered this larger reform, see John H. Wigmore, *Roscoe Pound’s St. Paul Address of 1906: The Spark that Kindled the White Flame of Progress*, 20 J. AM. JUDICATURE SOC’Y 176 (1937).