

# Administrative Law

## Introduction

Jud Mathews

Penn State Dickinson Law

January 13, 2026

# Today's Agenda

- 1 About administrative law
- 2 About this course
- 3 About today's reading

# Information cards

Please fill out the index card with:

- 1 Your name
- 2 Your degree program (JD, LLM, exchange) and year (2L, 3L)
- 3 Where you are from
- 4 Where you went to college
- 5 What you studied in college
- 6 What you did between college and law school, if anything
- 7 Anything else you'd like me to know about you

## Three administrative law controversies I



# Three administrative law controversies II



**USAID**  
FROM THE AMERICAN PEOPLE

## Notification of Administrative Leave

As of 11:59 p.m. EST on Sunday, February 23, 2025, all USAID direct hire personnel, with the exception of designated personnel responsible for mission-critical leadership and/or specially designated programs, will be placed on administrative leave globally.

Concurrently, USAID is beginning to implement a Reduction-in-Force that will affect approximately 1,600 USAID personnel with duty stations in the United States.

Individuals that are impacted will receive specific notifications on February 23, 2025, with further instructions and information about their benefits and rights.

Designated essential personnel who are expected to continue working will be informed by Agency leadership February 23, 2025, by 5 p.m. EST.

For overseas personnel, USAID intends a voluntary Agency-funded return travel program and other benefits. USAID is committed to keeping its overseas personnel safe to return home, personnel will retain access to Agency systems and to diplomatic and other resources.

In the coming week, we will provide details on how to retrieve personal items from the former USAID workspaces and return government issued devices.

Additional guidance is forthcoming, and all future updates/notices will continue to be communicated through official USAID channels and posted on USAID.gov. We will ensure access to USAID systems.

[USAID Office of Inspector General](#)

## Three administrative law controversies III



<https://youtu.be/KckGHaBLSn4?si=gmuLxqf9xa1nqDso>

# The Legislative Power: Constitutional Text

## U.S. Const., Art. I, Section I

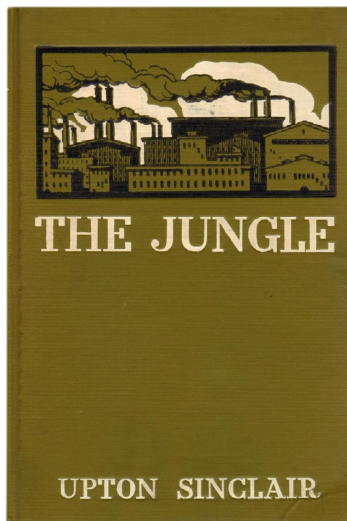
All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

# Delegation: good and bad reasons for it



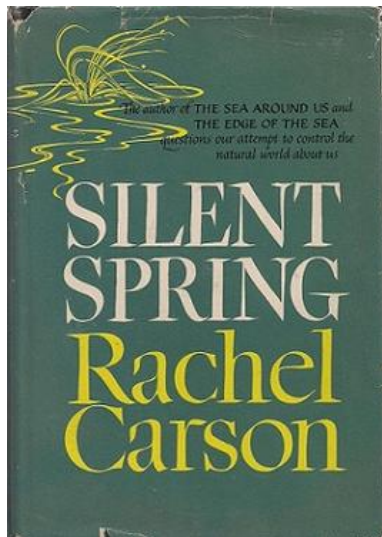
# Upton Sinclair, The Jungle

1906



# Rachel Carson, *Silent Spring*

1962



# Administrative Law

## Non-delegation doctrine

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January 15, 2026

# The Legislative Power: Constitutional Text

## U.S. Const., Art. I, Section I

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

# Non-delegation doctrine: *Wayman v. Southard* (1825)

## The Judiciary Act of 1789 says:

[C]ourts of the United States shall have power . . . to make all necessary rules for the orderly conducting business in the said courts . . . .

Constitutional? **yes.**

## Supreme Court says:

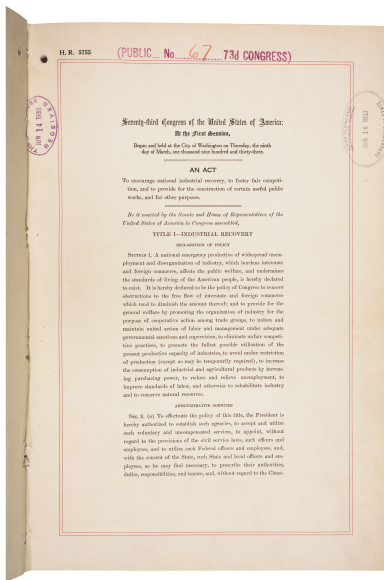
The line has not been exactly drawn which separates those important subjects which must be entirely regulated by the legislature itself from those of less interest in which a general provision may be made and power given to those who are to act under such general provisions to fill up the details.

# Non-delegation Doctrine: The Intelligible Principle Test

## J.W. Hampton, Jr. & Co. v. United States (1928)

If Congress shall lay down by legislative act an intelligible principle to which the [agency] is directed to conform, such legislative action is not a forbidden delegation of legislative power.

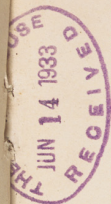
# National Industrial Recovery Act



# National Industrial Recovery Act

H. R. 5755

(PUBLIC No. 67 73d CONGRESS)



Seventy-third Congress of the United States of America;  
At the First Session,

Begun and held at the City of Washington on Thursday, the ninth  
day of March, one thousand nine hundred and thirty-three.

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AN ACT

To encourage national industrial recovery, to foster fair competi-  
tion, and to provide for the construction of certain useful public  
works, and for other purposes.

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*Be it enacted by the Senate and House of Representatives of the  
United States of America in Congress assembled,*

TITLE I—INDUSTRIAL RECOVERY

# National Industrial Recovery Act

## TITLE I—INDUSTRIAL RECOVERY

### DECLARATION OF POLICY

SECTION 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

### ADMINISTRATIVE AGENCIES

SEC. 2. (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies to accept and utilize

## Non-delegation doctrine: Panama Refining v. Ryan (1935)

### The National Industrial Recovery Act says:

The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State.

Constitutional? **no**.

### Supreme Court says:

The Congress in § 9(c) thus declares no policy as to the transportation of the excess production.

# Nondelegation Doctrine

## What the Court Requires from Congress

### Panama Refining Co. v. Ryan

“[W]e look to the statute to see [1] whether the Congress has declared a policy with respect to [whether that transportation shall be prohibited by law]; [2] whether the Congress has set up a standard for the President’s action; [3] whether the Congress has required any finding by the President in the exercise of the authority to enact the prohibition.”

## Panama Refining: Cardozo's View



# Non-delegation doctrine: Schechter Poultry Corp. v. U.S. (1935)

The National Industrial Recovery Act says:

Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision . . . .

Constitutional? **no**.

Supreme Court says:

Instead of prescribing rules of conduct, [the statute] authorizes the making of codes to prescribe them. For that legislative undertaking, § 3 sets up no standards, aside from the statement of the general aims of rehabilitation, correction and expansion described in section one.

# Schechter Poultry: Cardozo's View



## Whitman v. American Trucking Assns. (2001)

The Clean Air Act says:

[EPA Administrator shall set] ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health.

# Non-delegation Doctrine: The Intelligible Principle Test

## J.W. Hampton, Jr. & Co. v. United States (1928)

If Congress shall lay down by legislative act an intelligible principle to which the [agency] is directed to conform, such legislative action is not a forbidden delegation of legislative power.

# The Intelligible Principle Test rides again

## FCC v. Consumers' Research (2025)

When Congress amended the Communications Act in 1996, it provided the Commission with clear guidance on how to promote universal service using carrier contributions. Congress laid out the “general policy” to be achieved, the “principle[s]” and standards the FCC must use in pursuing that policy, and the “boundaries” the FCC may not cross. J. W. Hampton; American Power & Light. Our precedents do not require more.

# Subdelegation

## U.S. Telecom Ass'n v. FCC (2004)

We therefore hold that, while federal agency officials may subdelegate their decision-making authority to subordinates absent evidence of contrary congressional intent, they may not subdelegate to outside entities — private or sovereign — absent affirmative evidence of authority to do so.