

CONTENTS

Acknowledgments ix

Introduction 1

- I. The Specter of Bureaucratic Domination in Modern Political Theory 4
- II. Reconstructive Political Theory 11
- III. The Public's Law, Constitutionalism, and Administrative Legitimacy 12
- IV. Plan of the Book 18

1. Origins of Progressivism: German Theories of the State from Hegel to Habermas 23

- I. Introduction 23
- II. Administration in Hegel's Philosophy of Law 25
- III. Hegel and German Administrative History 33
- IV. The Survival of Hegelian Public Law in the Wake of Revolutionary Failure 37
- V. From the Substantive to the Formal *Rechtsstaat* 42
- VI. Max Weber's Theory of Bureaucracy in Context 44
- VII. The *Rechtsstaat* in Crisis 47
- VIII. Administrative Law in the Federal Republic 54
- IX. Conclusion 58

2. The Hegelian Progressives: Democratic Spirit in the New American State 61

- I. Introduction 61
- II. W.E.B. Du Bois's Bureau of Freedom 66
- III. Woodrow Wilson's Democratization of the Hegelian State 72
- IV. John's Dewey Communicative Constitution of the Administrative State 84
- V. Mary Follett's Theory of Creative Administration 95
- VI. Frank Goodnow's Democratic *Rechtsstaat* 102
- VII. Conclusion 111

3. The Institutional Architecture of Progressive Democracy: From the New Deal to the Second Reconstruction 113
 - I. Introduction 113
 - II. Progressive Administration in the Agricultural New Deal 118
 - III. Progressive Administration in the Second Reconstruction 130
 - IV. Assessing the Administrative Legacies of the Second Reconstruction 142
 - V. Conclusion 146
4. The Normative Architecture of Progressive Democracy: Reconstructing the Administrative State 149
 - I. Introduction 149
 - II. Arguments from Efficiency 152
 - III. Arguments from Constitutional Norms 154
 - IV. Arguments from Republicanism 157
 - V. The Progressive Critique of the Market 161
 - VI. Public Deliberation 163
 - VII. The Public's Law 165
 - VIII. Administrative Agencies at the Interface of Law and the Public 168
 - IX. Deepening Democratic Rule-Making 172
 - X. Judicial Technocracy in the Review of Administrative Action 176
 - XI. Democratic Virtues and Authoritarian Dangers of Presidential Administration 181
 - XII. Conclusion 184
- Conclusion: Progress in Times of Peril 185
 - I. The Cost-Benefit State, or Market Mimesis 187
 - II. The Presidential State, or Weimar-on-Potomac 193
 - III. Outlook 203

Notes 205

Index 263