

CHAPTER 15 The Bureaucracy

Objectives

In this chapter, both the distinctiveness and the size of the federal government bureaucracy are examined. After reading and reviewing the material in this chapter, the student should be able to do each of the following:

1. Compare and contrast the United States and British models of government bureaucracy.
2. Sketch the history of the executive branch bureaucracy and the different uses to which it has been put.
3. Discuss the recruitment, retention, and demographic profiles of federal bureaucrats.
4. Show how the roles and missions of the agencies are affected by internal and external factors.
5. Review congressional measures to control the bureaucracy and evaluate their effectiveness.
6. List the “pathologies” that may affect bureaucracies and discuss why it is so difficult to reform the executive branch bureaucracy.

Overview

Bureaucracy is characteristic of almost all aspects of modern life, not just the government. Government bureaucracies, however, pose special problems. Four factors are particularly influential in the United States. Here, government bureaucracies (1) must answer to competing sources of political authority, (2) must function in a constitutional system that fragments power, (3) are asked to achieve vague and competing goals, and (4) lack incentive systems that value efficiency.

The power of a bureaucracy should be measured by its discretionary authority, not by the number of its employees or the size of its budget.

War and economic depression have been the principal sources of bureaucratic growth. These were aided, in the 1930s, by important changes in constitutional interpretation that permitted Congress to delegate broad grants of authority to administrative agencies. With only partial success, Congress seeks to check or recover that grant of power by controlling budgets, personnel, and policy decisions, and through the exercise of legislative vetoes. The uses to which bureaucrats put their authority can be explained in part by their recruitment and security, their personal political views, and the nature of the tasks that their agencies are performing.

Many of the popular solutions for bureaucratic “problems”—red tape, duplication, conflict, agency imperialism, and waste—fail to take into account that these are, to a degree, inherent in any organization that serves competing goals and is supervised by competing officials. Nevertheless, some reform efforts have succeeded in making government work better and cost less to operate.

Chapter 15 Outline with Keyed-in Resources

- I. Distinctiveness of the United States bureaucracy (THEME A: SIZE AND POWER OF THE BUREAUCRACY)
 - A. Bureaucracy: a large, complex organization composed of appointed officials
 1. MEANT TO BE NON PARTISAN AND UNBIASED IN EXECUTION OF THE LAW
 - B. Size, complexity and political context can create problems
 - C. Distinctiveness of the American bureaucracy
 1. Political authority over the bureaucracy is shared by president and Congress
 2. Federal agencies share functions with related state and local government agencies
 3. Adversary culture leads to closer scrutiny and makes court challenges more likely
 - D. Fairly large bureaucracy

1. Little public ownership of industry in the U.S.
2. High degree of regulation of private industries in the U.S.
- II. The growth of the bureaucracy
 - A. Constitution provides little guidance
 1. One early controversy ended when the Supreme Court gave the president sole removal power
 2. Congress still funds and investigates agencies, and shapes the laws they administer
 - B. The appointment of officials
 1. Officials affect how laws are interpreted, tone and effectiveness of administration, party strength
 2. Patronage in nineteenth and early twentieth centuries rewarded supporters, induced congressional support, built party organizations
 3. Civil War a watershed in bureaucratic growth; it showed the administrative weakness of federal government and increased demands for civil service reform
 4. Post-Civil War period saw industrialization, emergence of a national economy—power of national government to regulate interstate commerce became necessary and controversial – ALSO PENDLETON ACT
 - C. A service role. More Departments as government functions changed and expanded
 1. 1861–1901: new agencies primarily performed service roles : Agriculture, Labor, Commerce
 - a) Constraints of limited government, states' rights, and federalism
 - b) Laissez-faire philosophy
 - c) Supreme Court held that, under the Constitution, executive agencies could only apply statutes passed by Congress
 2. Wars led to reduced restrictions on administrators and an enduring increase in executive branch personnel
 - D. A change in role
 1. Depression and World War II led to government activism
 2. Supreme Court upheld laws that granted discretion to administrative agencies
 3. Heavy use of income taxes supported war effort and a large bureaucracy
 4. Public believes in continuing military preparedness and various social programs
- III. The federal bureaucracy today (THEME B: CONTROL OF THE BUREAUCRACY)
 - A. Direct and indirect growth
 1. Modest increase in number of government employees
 2. Significant indirect increase in number of employees through use of private contractors, state and local government employees
 - B. Growth in discretionary authority—the ability to choose courses of action and to make policies not set out in the statutory law
 1. Delegation of undefined authority by Congress greatly increased
 2. Primary areas of delegation
 - a) Subsidies to groups and organizations
 - b) Grant-in-aid programs, transferring money from national to state and local governments
 - c) Devising and enforcing regulations, especially for the economy
 - C. Factors explaining the behavior of officials
 1. Recruitment and reward systems
 2. Personal and political attributes
 3. Nature of work
 4. Constraints imposed on agencies by various outside actors

- D. Recruitment and retention
 - 1. Competitive service: bureaucrats compete for jobs through OPM: manages the civil service
 - a) Appointment by merit based on written exam or through selection criteria
 - b) Competitive service system has become more decentralized, less reliant on OPM referral
 - (1) Agencies have need of professionals who cannot be ranked by examination
 - 2. Excepted service: bureaucrats appointed by agencies, typically in a nonpartisan fashion
 - a) About 3 percent of excepted employees are appointed on grounds other than merit—presidential appointments, Schedule C jobs, noncareer executive assignments
 - b) Merit system protects president from pressure and protects patronage appointees from removal by new presidents (blanket in)
 - 3. The buddy system
 - a) Name-request job: filled by a person whom an agency has already identified for middle- and upper-level jobs
 - b) Job description may be tailored for person
 - c) Circumvents the usual search process
 - d) Encourages issue networks based on shared policy views
 - 4. Firing a bureaucrat
 - a) Most bureaucrats cannot be easily fired, although there are informal methods of discipline
 - b) Senior Executive Service (SES) was established to provide the president and cabinet with more control in personnel decisions
 - c) But very few SES members have actually been fired or even transferred
 - 5. The agencies' point of view
 - a) Agencies are dominated by lifetime bureaucrats who have worked for no other agency
 - b) Long-term service assures continuity and expertise
 - c) Long-term service also gives subordinates power over new bosses: can work behind their boss's back through sabotage, delaying, etc.
 - E. Personal attributes
 - 1. Includes social class, education, political beliefs
 - 2. Occupational self-interest
 - 3. Surveys of bureaucrats
 - a) Bureaucrats are somewhat more liberal or conservative, depending on the appointing president, than the average citizen
 - b) Bureaucrats do not take extreme positions
 - 4. Correlation found between the type of agency and the attitudes of the employees
 - a) Activist agency bureaucrats tend to be more liberal (FTC, EPA, FDA)
 - b) Traditional agency bureaucrats tend to be less liberal (Agriculture, Commerce, Treasury)
 - c) Bureaucrats' policy views reflect the type of work that they do
 - F. Do bureaucrats sabotage their political bosses?
 - 1. Most bureaucrats try to carry out policy, even those they disagree with
 - 2. But bureaucrats do have obstructive powers—Whistleblower Protection Act (1989), in the public interest
 - 3. Most civil servants have highly structured jobs that make their personal attitudes irrelevant
 - 4. Professionals' loosely structured roles may cause their work to be more influenced by personal attitudes
 - a) Professional values help explain how power is used

- b) Example: lawyers vs. economists at the Federal Trade Commission
- G. Culture and careers
 - 1. Each agency has its own culture, an informal understanding among employees about how they are supposed to act
 - 2. Strong agency culture motivates employees but makes agencies resistant to change
- H. Constraints
 - 1. Much greater on government agencies than on private bureaucracies
 - 2. Hiring, firing, pay, and other procedures are established by law, not by the market
- a) General constraints
 - (1) Administrative Procedure Act (1946)
 - (2) Freedom of Information Act (1966)
 - (3) National Environmental Policy Act (1969)
 - (4) Privacy Act (1974)
 - (5) Open Meeting Law (1976)
 - (6) Several agencies are often assigned to a single policy
- b) Effects of constraints
 - (1) Government moves slowly
 - (2) Government sometimes acts inconsistently
 - (3) Easier to block action than take action
 - (4) Reluctant decision making by lower-ranking employees
 - (5) Red tape
- 3. Constraints come from citizens: agencies try to respond to citizen demands for openness, honesty, fairness, etc.
- I. Agency allies
 - 1. Agencies often seek alliances with congressional committees and interest groups
- a) Iron triangle—a tight, mutually advantageous alliance
- b) Resulted in client politics
 - 2. Far less common today—politics has become too complicated
- a) More interest groups, more congressional subcommittees—more competing forces
- b) Courts have also granted more access
- 3. Issue networks: groups that regularly debate government policy on certain issues
- a) Contentious—split along partisan, ideological, economic lines
- b) New presidents often recruit from networks.
- IV. Congressional oversight
 - A. Forms of congressional supervision
 - 1. Congress creates agencies
 - 2. Congress authorizes funds for programs
 - 3. Congressional appropriations provides funds for the agency to spend on its programs
 - B. The Appropriations Committee and legislative committees
 - 1. Appropriations Committee may be the most powerful of all the congressional committees
 - a) Most expenditure recommendations are approved by House
 - b) Tends to recommend an amount lower than the agency requested
 - c) Has power to influence an agency's policies by "marking up" an agency's budget
 - d) But becoming less powerful
 - (1) Trust funds operate outside the regular government budget and are not controlled by the appropriations committees
 - (2) Annual authorizations allow the legislative committees greater oversight

- (3) Budget deficits have necessitated cuts
 - 2. Informal congressional controls over agencies
 - a) Individual members of Congress can seek privileges for constituents
 - b) Congressional committees may seek committee clearance, the right to approve certain agency decisions in advance and without passing a law
 - C. The legislative veto
 - 1. Definition: a requirement that an executive decision must lie before Congress for a specified period before it takes effect
 - 2. Declared unconstitutional by Supreme Court in *Chadha* (1983)
 - D. Congressional investigations
 - 1. Power inferred from the congressional power to legislate
 - 2. Means for checking agency discretion and also for authorizing agency actions independent of presidential preferences
 - V. Bureaucratic “pathologies” (THEME C: BUREAUCRATIC “PATHOLOGIES”)
 - A. Five major complaints about the bureaucracy:
 - 1. Red tape—complex and sometimes conflicting rules (see the Politically Speaking box, Red Tape)
 - 2. Conflict—agencies work at cross-purposes
 - 3. Duplication—two or more agencies seem to do the same thing
 - 4. Imperialism—tendency of agencies to grow, irrespective of programs’ benefits and costs
 - 5. Waste—spending more than is necessary to buy some product or service
 - B. Each complaint has logical origins in the constitutional order and policy-making process
 - VI. Reforming the Bureaucracy
 - A. Numerous attempts to make the bureaucracy work better for less money
 - 1. Eleven reform attempts in the 1900s
 - 2. Prior reforms stressed increasing centralized control on behalf of efficiency, accountability, and consistency
 - 3. National Performance Review (NPR) in 1993 designed to reinvent government calling for a new kind of organizational culture
 - a) Less centralized management
 - b) More employee initiatives
 - c) Fewer detailed rules, more customer satisfaction
 - B. Bureaucratic reform is always difficult to accomplish.
 - 1. Most rules and red tape are due to struggles between president and Congress or to agencies’ efforts to avoid alienating influential voters
 - 2. Periods of divided government worsen matters, especially in implementing policy
 - a) Presidents of one party seek to increase political control (executive micromanagement)
 - b) Congresses of another party respond by increasing investigations and rules (legislative micromanagement)

Theme A: Size and Power of the Bureaucracy

Summary

A bureaucracy is a large organization composed of appointed officials in which authority is divided among several managers. Bureaucracy is an obvious feature of all modern societies, but the United States governmental bureaucracy is distinctive in three ways. First, political authority over the bureaucracy is shared among several institutions. Second, most federal agencies share their functions with agencies of state and local government. Finally, America’s adversary culture means that the actions of bureaucrats are often fought in court.

The Constitution makes little mention of the bureaucracy, other than to give the president power to

appoint various sorts of officials. In 1789, Congress gave the president power to remove officials without congressional assent, but the question of who (if anyone) would actually control the bureaucracy has continued to be hotly contested.

Throughout most of American history, *patronage* was the chief means of determining who would hold federal jobs. Congress was the dominant institution, the president usually accommodated congressional preferences in appointments, and thus appointments were made to reward local supporters of Congressional members or to build up local party organizations. By the middle of the nineteenth century there were a lot of federal jobs: from 1816 to 1861 the number of federal employees increased eightfold, with the Post Office accounting for most of this increase. The Civil War and postwar period saw the creation of many additional bureaus. A strong commitment to *laissez-faire* meant that these agencies did not for the most part regulate, but rather served specialized constituencies such as farmers or veterans. The bureaucracy as we know it today is most clearly the product of the New Deal and the Great Society (whose programs gave broad but vaguely defined powers to agencies) and of World War II (during which the government made use of the vastly increased revenues the income tax allowed).

The Supreme Court has interceded to restrict political patronage on constitutional grounds. The first step was taken in *Elrod v. Burns* (1976) in which the Court noted that important First Amendment interests in the protection of free speech must be taken into consideration in patronage firings. According to the majority, the public's interest in the effective implementation of policy "can be fully satisfied by limiting patronage dismissals to policy-making positions." Four years later, in *Branti v. Finkel*, the Supreme Court elaborated by explaining that "the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the office." As such, the mere fact that a bureaucrat occupied a policy-making position no longer constituted the ultimate factor in a patronage firing. This line of cases was brought to conclusion with *Rutan v. Republican Party of Illinois* (1990), when the Court extended the *Branti* standard to "promotion, transfer, recall, and hiring decisions based on party affiliation and support." Thus patronage has reached the point of nearing political extinction.

People often think of big government in terms of the size of the bureaucracy, but the number of civilian federal employees has not been growing since World War II. What has increased is the number of indirect federal employees—those working for state or local governments or private firms funded by federal programs. However, the power of the bureaucracy is a function not of its size but of the degree to which appointed officials have *discretionary authority*, the ability to choose courses of action and to make policies not spelled out in advance by laws. The vast increase in expenditures channeled through the bureaucracy, as well as the vast expansion in the number of regulations issued during the past thirty years, shows that the bureaucracy has indeed become very powerful.

Theme B: Control of the Bureaucracy

Summary

Federal bureaucrats exercise a great deal of power, especially when operating under discretionary authority. It is therefore important to understand what influences bureaucratic conduct. In general, four factors explain the behavior of governmental officials:

1. *Recruitment and reward.* In the nineteenth century, presidents could appoint virtually every federal employee on the basis of *patronage*. This practice, sometimes referred to as the *spoils system*, was based on the belief that a winning candidate was entitled to reward supporters. Government employment could function in this manner for two reasons. First, the number of federal employees was small, making a relatively wholesale change of personnel a simple task to accomplish. From 1816 to 1851, total federal employment grew from 4,479 to just 25,713. And second, the jobs required little expertise or specialized knowledge, with the postal service accounting for over two-thirds of all positions. The spoils system became obsolete as the size of the federal government spiraled after the Civil War, and as professional training became necessary to perform the more complex tasks assigned the federal bureaucracy. The assassination of President Garfield by a

disgruntled office seeker, Charles Guiteau, was also an impetus for change. The *Pendleton Act*, enacted in 1883, began the process of transferring federal hiring to a *merit system*.

Once hired, a federal bureaucrat normally serves a one-year trial period before being granted tenure. A tenured bureaucrat is extremely difficult to fire, with the average termination process (including appeals) lasting about two years. Thus, in practice, almost no one is ever fired and executives develop informal strategies for dealing with incompetent employees.

The *Senior Executive Service* (SES) was created in 1978 to provide presidents with a core group of neutral, professional managers in the upper grades of the bureaucracy. To ensure competence, members of the SES—who join on a voluntary basis—are subject to easier transfer and firing procedures as well as to pay increases determined by performance. The SES has not worked out as intended, however. Almost no member of the group has been fired and salary raises have been fairly automatic.

In spite of the merit system, hiring in federal agencies remains political, especially at the middle and upper levels. An agency can hire a particular individual on a *name-request* basis, giving rise to the *buddy system*. This practice allows the maintenance of *issue networks* based on shared policy views. Bureaucrats in consumer protection agencies, for example, may hire people from Nader's public interest groups (PIRGs). The end-product of the recruitment and reward structure is that most bureaucrats become quite comfortable in their position and defensive of their agency, adopting an agency point of view.

2. *Personal attributes.* Bureaucrats at the middle and upper levels of government are not representative of the American public. They tend to be highly educated, middle-aged white males. But none of these factors explains much about the attitudes bureaucrats hold. Surveys have found top-level bureaucrats to be slightly more liberal than the average voter but not as liberal as members of the media. Yet even this generalization is a bit misleading. Attitudes tend to vary depending on the agency for which a bureaucrat works. Those employed by activist agencies and departments (FTC, EPA) are much more liberal than those who work in traditional agencies and departments (Commerce).

While attitudes differ, they do not necessarily influence bureaucratic behavior because much of bureaucratic work is governed by standardized rules and procedures. It is only where roles are loosely structured that a civil servant's attitudes come into play.

3. *The nature of the job.* Some agencies have a sense of mission, a clear doctrine that is shared by its members. Such agencies (which include the Forest Service, the FBI, and the Public Health Service) are easy to manage and have high morale but are hard to change and are resistant to political direction. To be sure, a sense of mission probably infiltrates most agencies to some degree. A survey by Kenneth Meier and Lloyd Nigro, for example, revealed that federal bureaucrats generally believe in the importance of their agency's work. Thus the mission of the agency may become synonymous with the public interest in the minds of many bureaucrats. An agency's mission, however, must be accomplished within an array of laws, rules, and regulations—dealing with hiring and firing, freedom of information, accounting for money spent, affirmative action, environmental impact, and administrative procedures. Agencies also have overlapping and even conflicting missions. These characteristics make controlling the bureaucracy difficult, no matter which party occupies the White House.
4. *External forces.* All government bureaus must cope with seven external forces: executive branch superiors, the president's staff, congressional committees, interest groups, the media, the courts, and other government agencies. All federal agencies are nominally subordinate to the president. In practice, agencies that distribute benefits among significant, discrete groups, regions, or localities within the United States (such as HUD, Agriculture, and Interior) tend to be closely overseen by Congress and are correspondingly oriented toward the Congress. Others (such as State, Treasury, or Justice) are more under the control of the president and are oriented more toward the president.

Bureaucrats, like people generally, desire autonomy—to be left alone, free of bureaucratic rivals and

close political supervision. They may obtain autonomy through the skillful use of publicity to build public support, as did the FBI and NASA. A less risky strategy is to develop strong allies in the private sector that will provide political support in Congress. However, this limits the freedom of the agency; it must serve the interests of its clients. Thus the Maritime Administration supports high subsidies for the shipping industry and the Department of Labor could never recommend a decrease in the minimum wage.

External forces have also influenced agency decisions through *iron triangles*—the informal and exclusive policy relationships that bring together an agency, an interest group, and a congressional committee. More often, though, an agency will be faced with conflicting interest-group demands. The National Farmers Union favors high subsidies to farmers, whereas the American Farm Bureau Federation takes a free-market position. Organized labor favors strict enforcement by the Occupational Safety and Health Administration, whereas business is opposed. In these instances, issue networks emerge. These are an array of groups and individuals, often contentious, split along ideological, partisan, and economic lines.

Congress has a formidable array of powers to deal with the bureaucracy. First, congressional statutes establish the existence of an agency and occasionally specify in detail how agencies should behave. Lately, however, Congress has given broad discretion to agencies. For many decades, Congress made use of the *legislative veto* to control bureaucratic or presidential actions by vetoing particular decisions within a thirty- to ninety-day period. However, in June 1983, the Supreme Court declared the legislative veto unconstitutional (the *Chadha* case). This decision's exact effect on congressional oversight of the bureaucracy is still uncertain.

As a second check on the bureaucracy, money must be *authorized* and then *appropriated* by Congress. Finally, congressional investigations are the most visible and dramatic form of oversight.

Theme C: Bureaucratic Pathologies

Summary

There are five major problems with bureaucracies: *red tape*, *conflict*, *duplication*, *imperialism*, and *waste*.

1. *Red tape* is the existence of complex rules and procedures that must be followed to get something done. Any large organization must have some way of ensuring that one part of the organization does not operate out of step with another.
2. *Conflict* exists when some agencies work at cross-purposes with other agencies. The Agricultural Research Service tells farmers how to grow crops more efficiently, while the Agricultural Stabilization and Conservation Service pays farmers to grow fewer crops. Because Congress has 535 members and little strong leadership, it is not surprising that it passes laws that promote inconsistent or even contradictory goals.
3. *Duplication* occurs when two government agencies seem to be doing the same thing, as when the Customs Service and the Drug Enforcement Administration both attempt to intercept illegally smuggled drugs.
4. *Imperialism* refers to the tendency of agencies to grow without regard to the benefits their programs confer or the costs they entail. Because government agencies seek vague goals and have vague mandates from Congress, it is not surprising that they often take the broadest possible view of their powers. If they do not, interest groups and judges may prod them into doing so.
5. *Waste* occurs when an agency spends more than is necessary to buy some product or perform some service. An example would be the much-publicized purchase of \$300 hammers by the military.

It should be clear that bureaucratic problems are hard to correct. Congress cannot always make the hard policy choices and set the clear priorities necessary to eliminate conflict and duplication. Government exists partly to achieve the kind of vague goals that resist clear cost-benefit analysis; eliminating red tape

might make coordination more difficult. Although Americans dislike “the bureaucracy” in general, studies show that they like the bureaucrats with whom they deal.