

# UNIT 2 Bureaucracies

circumvent court decisions and national law through laws of their own. Proponents of judicial activism also make the argument that the Supreme Court is needed to be a watchdog and fulfill its constitutional responsibility in maintaining the system of checks and balances. As Alexander Hamilton wrote in Federalist No. 78, "Laws are dead letters without courts to expound and define their true meaning and operation."

The critics of judicial restraint believe the interests of government are not realized by a court that refuses to make crucial decisions. They suggest the federal system will be weakened by a court that allows state laws that may conflict with the Constitution to go unchallenged. Proponents of judicial restraint point to the fact that it is the role of the Congress to make policy and the role of the president to carry out policy. They believe the court should facilitate that process rather than initiate it. They point to the fact that in many cases the Constitution does not justify decisions in areas where there are no references. The right to an assisted suicide, for instance, became an issue that advocates of judicial restraint urged the court to reject on the grounds that it was not a relevant federal issue to hear on appeal. The Rehnquist court, in fact, ruled against a group of physicians arguing for the constitutional right to assisted suicide. One of the ironies in the debate is that those favoring judicial restraint would like to see precedent be the guiding light. However, in declaring legislation unconstitutional and in creating new precedent, those advocating restraint have themselves become activists.

## Limitations of Supreme Court Power

The Supreme Court's power can only be limited in the following ways:

- A Constitutional Amendment that would allow a vote to remove a Supreme Court Justice either by the Congress or the electorate. Texas Senator Ted Cruz advocated this after the Supreme Court ruled that same-sex marriage was constitutional.
- Congress authorizing the president to appoint more justices. This was tried by Franklin Roosevelt in the famous court-packing proposal. Congress rejected it.
- The president, Congress, or states not obeying a Supreme Court decision. Andrew Jackson successfully did this when the Supreme Court ruled that Native Americans could not be displaced. That decision resulted in the "Trail of Tears," where thousands of Native-Americans were forcibly displaced from their homelands. Congress and the states have never directly disobeyed a Supreme Court decision. Congress has attempted to offer constitutional amendments, such as making flag burning illegal. States have challenged Supreme Court rulings such as *Brown v Board of Education* (1954) by not immediately implementing the decision.

### KEY CONCEPT 2.D: THE FEDERAL BUREAUCRACY

The organization, function, oversight, and policy-making characteristics of the federal bureaucracy make it a powerful arm of the federal government that has limited accountability.

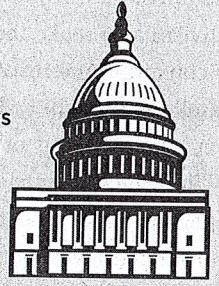
The **Big Idea, Competing Policy-Making Interests**, is reflected by this concept.

## CONSTITUTIONAL REVIEW OF BUREAUCRACIES

- Constitutional basis found in Article II of the Constitution in the reference to the creation of executive departments.
- Bureaucracies developed as a result of custom, tradition, and precedent.

## CONTEMPORARY CONNECTION

Under the Trump administration, the nature and functions of cabinet and bureaucratic agencies have changed. Instead of writing new rules and regulations, agencies have been directed to repeal existing rules written by the Obama administration. This is evident in actions taken by the Environmental Protection Agency and the Department of Education.



## Functions of Bureaucracies Are Key to Policy Making

Bureaucracies are defined as large administrative agencies and have their derivation from the French word *bureau*, which refers to the desk of a government worker, and the suffix *cracy*, indicating a form of government. Bureaucracies have similar characteristics. They reflect a hierarchical authority, there is job specialization, and there are rules and regulations that drive them.

Over four million government workers make up today's federal bureaucracy. The number is even greater if you consider the number of state and local government workers. A little more than 10 percent of the federal employees actually work in Washington, D.C. The majority work in regional offices throughout the country. For instance, each state has many offices dealing with Social Security. About a third of the federal employees work for the armed forces or defense agencies. The number of workers employed by entitlement agencies is relatively small—only about 15–20 percent. The background of federal employees is a mix of ethnic, gender, and religious groups. They are hired as a result of civil service regulations and through political patronage. Even though many people feel bureaucracies are growing, they are in reality decreasing in size.

Year	Executive Branch Civilians (Thousands)	Uniformed Military Personnel (Thousands)	Legislative and Judicial Branch Personnel (Thousands)	Total Federal Personnel (Thousands)
1991	3,048	2,040	64	5,152
1992	3,017	1,848	66	4,931
1993	2,947	1,744	66	4,758
1994	2,908	1,648	63	4,620
1995	2,858	1,555	62	4,475
1996	2,786	1,507	61	4,354
1997	2,725	1,439	62	4,226
1998	2,727	1,407	62	4,196
1999	2,687	1,386	63	4,135
2000	2,639	1,426	63	4,129
2001	2,640	1,428	64	4,132
2002	2,630	1,456	66	4,152
2003	2,666	1,478	65	4,210
2004	2,650	1,473	64	4,187

2005	2,636	1,436	65	4,138
2006	2,637	1,432	63	4,133
2007	2,636	1,427	63	4,127
2008	2,692	1,450	64	4,206
2009	2,774	1,591	66	4,430
2010	2,776	1,602	64	4,443
2011	2,756	1,583	64	4,403
2012	2,697	1,551	64	4,312
2013	2,668	1,500	63	4,231
2014	2,663	1,459	63	4,185
2015	—	—	—	4,083
2016	—	—	—	4,136 (est.)
2017	—	—	—	4,142 (est.)

## How Federal Workers Are Held Accountable

Workers in federal bureaucracies have different ways of being held accountable. They must respond to

- the Constitution of the United States,
- federal laws,
- the dictates of the three branches of government,
- their superiors,
- the “public interest,” and
- interest groups.

Even with the characteristics described, federal workers are complex individuals who are extremely professional in the jobs they are doing.

The federal government is organized by departments, which are given that title to distinguish them from the cabinet. Agencies and administration refer to governmental bodies that are headed by a single administrator and have a status similar to the cabinet. Commissions are names given to agencies that regulate certain aspects of the private sector. They may be investigative, advisory, or reporting bodies. Corporations are agencies headed by a board of directors and have chairmen as heads.

These agencies each have specific responsibilities that facilitate the day-to-day operation of the government. In reality, policy administration of federal bureaucracies has been limited by a number of checks, such as

- the legislative power of Congress through legislative intent, congressional oversight, and restrictions on appropriations to agencies;
- the Administrative Procedure Act of 1946, which defines administrative policy and directs agencies to publicize their procedures;
- a built-in review process, either internal or through the court system, for appeal of agency decisions;
- the oversight function of agencies such as the Office of Management and Budget and the General Accounting Office; and
- political checks, such as pressure brought on by interest groups, political parties, and the private sector, which modifies bureaucratic behavior.

## Relations with Other Branches of Government

Although they have independent natures, bureaucracies are linked to the president by appointment and direction and to Congress through oversight. Agency operations are highly publicized through the media when they have an impact on the public. Interest groups and public opinion try to influence the actions of the agencies.

Bureaucracies are inherently part of the executive branch. Even though the regulatory agencies are quasi-independent, they, too, must be sensitive to the president's policies. The president influences bureaucracies through the appointment process. Knowing their agency heads are appointed by the president makes them respond to his direction for the most part. Bureaucracies such as the Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA) came under executive scrutiny in the 1990s and early 2000s.

Presidents also issue executive orders that agencies must abide by. The Veterans Administration (VA) came under close scrutiny in 2014 after a whistle blower revealed lax procedures and false information regarding care for veterans. The Office of Management and Budget (OMB) can recommend increases and decreases in proposing new fiscal-year budgets. The budgetary process provides the impetus for agency growth. Finally, the president has the power to reorganize federal departments. President Reagan attempted to abolish the departments of Energy and Education but failed to get the approval of Congress. Congress uses similar tactics to control federal bureaucracies. Because the Senate must approve both presidential appointments and agency budgets, these become sensitive to the issues on Congress's agenda. Through the process of congressional oversight, agency heads are called before congressional committees to testify about issues related to the workings of the agency.

You have to only go as far as tracing your daily routine to see how influential regulatory agencies have become. Some examples are the regulation of

- cable television by the Federal Communications Commission,
- food labeling by the Federal Trade Commission,
- meat inspection by the Food and Drug Administration,
- pollution control by the Environmental Protection Agency,
- airline safety by the National Transportation Safety Board,
- safety and reliability of home appliances by the Consumer Product Safety Commission,
- seat belt mandates by the National Highway Traffic Safety Administration,
- gas mileage standards developed by the Department of Transportation,
- the mediation of labor disputes by the National Labor Relations Board,
- factory inspections for worker safety by the Occupational Safety and Health Administration,
- and
- the coordination of relief efforts by the Federal Emergency Management Agency.

## Bureaucracies Are First and Foremost Policy-Making Bodies

The iron-triangle network is a pattern of relationships between an agency in the executive branch, Congress, and special-interest groups lobbying that agency. An example of this kind of relationship was the often-criticized military-industrial complex. During the height of the Vietnam War, this relationship between defense-related government agencies and private industry that profited from the war inspired the antiwar rallying cry of governmental misuse of funds. The close dependence of agencies on interest groups and Congress often results in criticism of agencies. If the Environmental Protection Agency has too close a relationship with the industry heads of factories they are regulating, the potential for abuse certainly exists. If you review how the Department of

Health and Human Services operates, you can visualize the iron-triangle concept. Their budget is reviewed; various congressional committees and interest coalitions—such as insurance groups, senior citizen groups, and the medical community—lobby for their concerns; and legislation often incorporates ideas and proposals from interest groups and lobbyists.

## EXECUTIVE-LEVEL DEPARTMENTS

### The Executive Office of the President

Separate from the cabinet is the executive office of the president. It was created by Franklin Roosevelt in 1939. Today, its four major policy-making bodies are

1. the National Security Council,
2. the Council of Economic Advisors,
3. the Office of Management and Budget, and
4. the Office of National Drug Control Policy.

**The National Security Council**, chaired by the president, is the lead advisory board in the area of national and international security. The other members of the council include the vice president and the secretaries of state and defense as well as the director of the Central Intelligence Agency and the chairman of the Joint Chiefs of Staff. The president's national security advisor is the direct liaison. Even though the function of the council is advisory, under Presidents George W. Bush and Barack Obama, it conducted the warrantless wiretapping program that was very controversial.

**The Council of Economic Advisors** consists of individuals who are recognized as leading economists. They are approved by the Senate and help the president prepare the annual Economic Report to Congress. This report outlines the economic state of the nation.

**The Office of Management and Budget** is the largest agency in the executive office. Its director, appointed with the consent of the Senate, is responsible for the preparation of the massive federal budget, which must be submitted to the Congress in January each year. Besides formulating the budget, the OMB oversees congressional appropriations. It is a key agency because it has tremendous policy-making capacity based on its budget recommendations. The department is also the president's direct link to other agencies and helps prepare executive orders and presidential budget policy.

**The Office of National Drug Control Policy** is a recent addition to the executive office. It is chaired by a director appointed by the president with the consent of the Senate. The head of the agency has been dubbed the nation's "drug czar." The responsibility of the agency is to prepare recommendations on how to combat the problem of drug abuse. It also coordinates the policies of other federal agencies in this area. Other departments that exist in the executive office are the Office of Policy Development, the Office of Science and Technology Policy, the Council on Environmental Quality, the Office of Administration, and the Office of the United States Trade Representative.

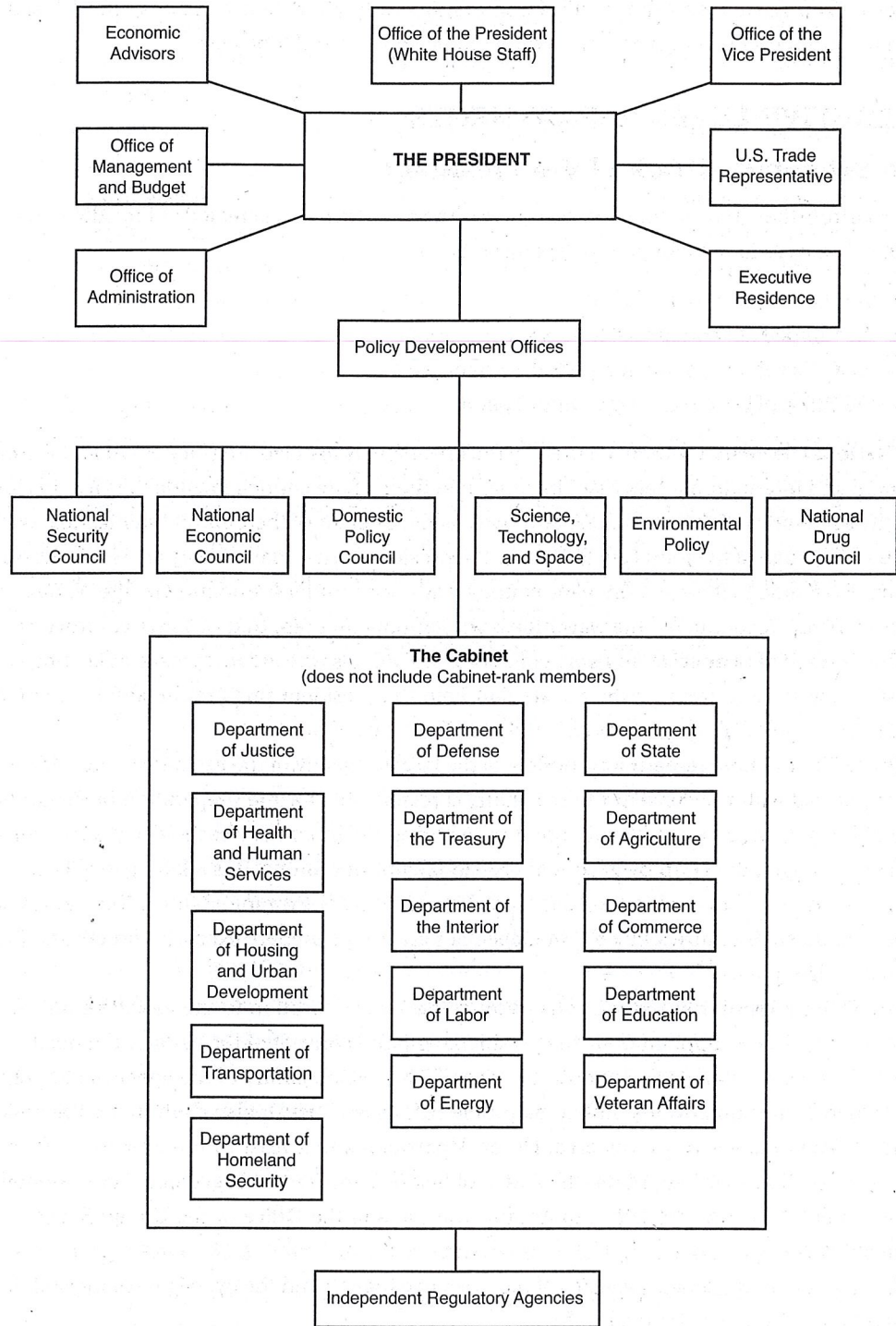
Through the bureaucratic agencies of the executive branch and the oversight responsibilities of Congress, specific policy is made.

Other agencies that are an integral part of the foreign policy arena include:

- The Immigration and Naturalization Service—deals with people from other countries seeking residence in the United States. It is the agency charged with enforcing immigration policy. At times, it becomes embroiled in controversial issues such as when it had to enforce the executive order made by President Obama allowing children of undocumented immigrants to achieve legal status.

The Executive Departments

The White House and the Executive Office of the President



- The Central Intelligence Agency—created by Congress in 1947, it works under the direction of the National Security Council. Its director has the responsibility of
  - coordinating the gathering of information related to foreign affairs and national defense for the other federal agencies;
  - analyzing and evaluating this information; and
  - reporting to the president and National Security Council.

Besides gathering and reporting information, the agency also conducts covert activities abroad and at times has been criticized for some of its actions. When the Iran-Contra affair was investigated by Congress, it became apparent that the CIA helped coordinate the illegal arms-for-hostages negotiations.

- The U.S. Information Agency—acts as the propaganda arm of the United States. It uses the Voice of America shortwave radio station to inform other countries' populations of U.S. policies abroad.
- The U.S. Arms Control and Disarmament Agency—maintains responsibility for negotiations, participation, and implementation of treaties dealing with disarmament. It has focused its attention on monitoring nuclear test ban treaties, the Strategic Arms Reduction Treaty (START), and the Strategic Arms Limitation Talks (SALT), which resulted in the Intermediate Range Nuclear Force (INF) Treaty in 1988. It also has oversight regarding the Chemical Weapons Treaty ratified by the Senate in 1997.
- The Selective Service System—maintains responsibility for coordinating registration of those of military age.
- Even though conscription has been used since the Civil War, the first national draft occurred in 1917 as a result of the Selective Service Act and was renewed in 1940, prior to the United States' entry into World War II. During the Vietnam War it was a source of controversy. Its critics maintained that draft policy favored those who received deferments by attending college while many other lower- and middle-class young men were sent to fight in Vietnam. Since President Nixon established an all-volunteer military, Selective Service has existed on a standby basis, administering a registration requirement that takes effect when young men reach the age of 18.

The federal government is organized around the following executive-level departments:

- **THE CABINET**—There are 15 cabinet departments headed by a secretary (except for the Justice Department, which is headed by the attorney general). The secretaries are appointed by the president with the consent of the Senate. Each department also has undersecretaries, deputies, and assistants. They manage specific policy areas, and each has its own budget and staff.
- **THE REGULATORY AGENCIES**—Known as independent regulatory agencies because they are quasi-legislative (they act in a manner that is legislative when issuing regulations) and quasi-judicial (they act in a manner that is judicial when enforcing penalties for violations of their regulations); they are also known as the “alphabet agencies.” Some examples are:
  - Interstate Commerce Commission (ICC) 1887—The first independent agency, the ICC regulates specific areas of interstate relations. Historically, it determines violations of the Sherman Antitrust Act.
  - Federal Trade Commission (FTC) 1914—The FTC regulates trade, encourages competition, and is responsible for evaluating unfair or deceptive advertising and products that may be unsafe.
  - Food and Drug Administration (FDA) 1931—The FDA regulates the contents, marketing, and labeling of food and drugs.
  - Federal Communications Commission (FCC) 1934—The FCC regulates the television and radio industry and grants licenses to television and radio stations.
  - Securities and Exchange Commission (SEC) 1934—Established during the New Deal, it regulates the sale of securities and the stock markets, preventing such abuses as insider trading.
  - Environmental Protection Agency (EPA) 1970—Responding to the energy crisis, the EPA implements laws such as the Clean Air Act.

- Occupational Safety and Health Administration (OSHA) 1972—OSHA sets safety and health standards for the workplace.
- Consumer Product Safety Commission (CPSC) 1972—CPSC tests and reports about products that may injure the public, and issues warnings for products deemed unsafe.
- Federal Election Commission (FEC) 1975—Created by the Federal Election Campaign Act of 1971 and made even more important as a result of the election abuses uncovered by Watergate, this agency is responsible for monitoring campaign contributions and provides some funding to presidential candidates through matching grants.

## Illustrative Example

### How an Agency Enforces Its Regulations Through Compliance Monitoring

Compliance monitoring is one of the key components EPA uses to ensure that the regulated community obeys environmental laws and regulations. It encompasses all regulatory agency activities performed to determine whether a facility (or group of facilities, such as plants related geographically, by sector, or corporate structure) is in compliance with applicable law. Compliance monitoring includes:

- formulation and implementation of compliance monitoring strategies;
- on-site compliance monitoring: compliance inspections, evaluations, and investigations (including review of permits, data, and other documentation);
- off-site compliance monitoring: data collection, review, reporting, program coordination, oversight, and support; and
- inspector training, credentialing, and support.

—From the EPA website

- **Government corporations** such as the Tennessee Valley Authority (TVA), created during the New Deal, and the Resolution Trust Corporation (RTC), created to deal with bankruptcies and the many bank failures of the 1980s and 1990s. Other such corporations can take over a failed industry or bail out economically essential corporations such as Chrysler.
- **Independent executive agencies**, such as the General Services Administration (GSA), which handles government purchasing; the National Science Foundation (NSF), which supports scientific research and development; and the National Aeronautics and Space Administration (NASA), which coordinates the country's efforts in outer space.

## Congressional Oversight Is Another Way Congress Can Check the President

Besides the legislative power of Congress, it also has non-legislative responsibilities. Constitutional amendments, election of a president and vice president if there is no electoral college majority, impeachment, approval of executive appointments, and congressional oversight (the power used by Congress to review the operation and budgets of the executive branch) are used by Congress to influence and determine public policy. Congress uses the power of congressional oversight to gather information useful for the formation of legislation, to review the operations and budgets of executive departments and independent regulatory agencies, to conduct investigations through committee hearings, and to bring the need for public policy to the public's attention. The same report issued by the service in 2001 stated, "Oversight, as an outgrowth of this principle, ideally serves a number of overlapping objectives and purposes:

- improve the efficiency, economy, and effectiveness of governmental operations;
- evaluate programs and performance;



- detect and prevent poor administration, waste, abuse, arbitrary and capricious behavior, or illegal and unconstitutional conduct;
- protect civil liberties and constitutional rights;
- inform the general public and ensure that executive policies reflect the public interest;
- gather information to develop new legislative proposals or to amend existing statutes;
- ensure administrative compliance with legislative intent; and
- prevent executive encroachment on legislative authority and prerogatives.”

In sum, oversight is a way for Congress to check on, and check, the executive branch of government.

Attempts at legislative vetoes of presidential actions have been declared unconstitutional by the Supreme Court. In *INS v Chadha* (1983) the court ruled that “we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution.” Congress does have oversight responsibilities over the intelligence agencies through committee hearings.

## Illustrative Example

### Congressional Oversight: Congressional Budget and Impoundment Control Act of 1974

Efforts to control the budget started with reforms of the actual process. Prior to 1974 Congress budgeted in a haphazard manner. The process was decentralized with subcommittees of each house reviewing every request on an agency-by-agency basis. Until the bottom line was totaled, there was never any certainty what the final budget would be.

The Congressional Budget and Impoundment Control Act of 1974 was passed to streamline the process. A secondary objective of the measure was to place controls on the president’s ability to determine allocations without appropriate congressional checks. Before the law was passed, President Nixon used his authority to cut off funds for programs he believed would increase the deficit. Congress responded by passing this law, which placed an additional check on the president. It prevented the president from impounding previously passed allocations without congressional approval. The law also provided for

- a budget calendar with a series of built-in procedures,
- the creation of a budget committee in each house whose responsibility it was to recommend to the Congress a total budget by April 1, and
- the creation of the Congressional Budget Office, which acted as a check on the OMB.

The law established a timeline of procedural steps Congress had to take in order to pass a budget. These include the passage of budget resolutions, budget reconciliation aimed at achieving savings from taxes, other revenue adjustments and authorization bills that established discretionary government programs, and finally appropriations bills that covered the budget year and gave final authorization for spending. Even though the deficit and debt continued to rise after passage of the law, its supporters pointed to the fact that Congress was able to view the entire process from start to finish and therefore was able to understand fully where revenue was coming from and where money was being allocated.