

## **Bureaucracy**

*What means does Congress have at its disposal to ensure the laws it passes are implemented as intended by the bureaucracy? What are the challenges to overseeing the bureaucracy? On the whole, do you believe Congress is able to provide adequate oversight?*

The size and complexity of the federal government (as well as constitutional separation of powers) prevents Congress from exercising direct control over all facets of bureaucratic action. To accomplish the multitude of tasks carried out daily by the federal government requires wide-ranging expertise, time, and effort that 535 people simply do not have at their disposal. Congress must delegate authority to government agencies. What happens then? Should Congress oversee the actions of the executive branch to ensure its laws are faithfully executed? If so, does it possess adequate powers to do so?

Traditionally, political scientists saw scant evidence that Congress was taking steps to oversee the actions of the bureaucracy (Pearson 1975, Fiorina 1977), going so far as to refer to oversight as Congress' "neglected function" (Bibby 1968). However, it is not clear that oversight is a required function of the legislative branch—while Congress has the power to *write* laws, the Constitution provides that the *President* should "take care that the laws be faithfully executed." The Supreme Court found in several cases, such as *Buckley v. Valeo* and *INS v. Chadha*, that there are limits on the extent that Congress may encroach on the executive's privilege to implement federal programs. Moreover, Moe and Howell (1999) note a variety of instances in which Congress may want to give broad discretion to the executive branch, such as shifting responsibility for tough decisions to the bureaucracy (pg

859). That said, McCubbins, Noll, and Weingast (1987) note that a “central problem” of a democracy is ensuring that policy is responsive to the interests of citizens (pg 243); elected leaders in Congress may be more able to ensure this than the non-elected officials of the bureaucracy (though presidents also frequently claim a “mandate” from the people). Moreover, members of Congress may have a personal stake in the laws enacted and may want to see their wishes come to fruition. Indeed, most of the literature assumes that Congress *should* work to ensure its laws are enacted as intended. The debate has centered, rather, on how and when they do so.

In particular, there has been some challenge to define what it means to oversee the bureaucracy. Traditional views of oversight included comprehensive monitoring, with rewards and sanctions awarded based on monitoring findings. As many authors have pointed out, however, this approach is expensive, difficult, and may not provide sufficient incentives for Congressional action (Mayhew 1974, McCubbins and Schwartz 1984, McCubbins, Noll, and Weingast 1987). If the goal is not simply seeking out bureaucratic malfeasance, but rather a broader goal of ensuring compliance with congressional intent, there may be other mechanisms of congressional action available. McCubbins and Schwartz (1984) introduced the idea of “fire-alarm” oversight, where Congress relies on constituents and interest groups to alert it to problems in the bureaucracy. This approach saves the time and expense of traditional, “police patrol” oversight (i.e., traditional monitoring) and also allows members of Congress to claim credit for solving their constituents’ problems. McCubbins, Noll, and Weingast (1987) expanded on this idea by outlining

the role of administrative law in automating oversight. These authors identified the Administrative Procedures Act of 1946 as a means for Congress to limit the possible actions of the bureaucracy, require the collection and dissemination of relevant information needed for oversight, and empower constituents and the court to take action (e.g., pull a “fire-alarm”) in response to undesired bureaucratic action.

These methods allow Congress to circumvent the principal-agent problem that has plagued analysis of oversight behavior. The principal (Congress) directs the work of the agent (the bureaucracy); the problem stems from the fact that these two actors may have different goals. Moreover, because the agent is actively involved in carrying out the tasks of the principal, the agent may have more information than the principal, permitting the agent to deceive the principal. For Congress, this problem is augmented by the existence of multiple principals—the work of the bureaucracy is overseen by the president and Congress; by the Senate and the House; by various committees within Congress; and by constituents and courts.<sup>1</sup> These various principals may have divergent goals for bureaucratic action; as McCubbins, Noll, and Weingast (1987) note, by representing different interests, these diverse principals “will likely seek to influence an agency’s policy choices in different directions” (pg 248). Moe (1985) found that the National Labor Relations Board may have been able to avoid compliance with congressional demands by playing different subcommittees off one another (see also Ogul and Rockman 1990).

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<sup>1</sup> Though absent from the literature, it may be worth noting that for many issues, there are also multiple agents. For example, GAO recently found the federal government funds 151 different programs in support of early childhood, elementary, and secondary education, administered by 19 different federal agencies (GAO-10-51). It is not immediately clear how the principal-agent problem changes with both multiple principals and multiple agents.

As noted, however, fire-alarm oversight using administrative procedures can circumvent this problem. Administrative procedures structure agency action in such a way that Congress can overcome the challenge of imperfect information. For example, McCubbins, Noll, and Weingast (1987) describe the Administrative Procedures Act of 1946 (APA), which required that agencies announce new initiatives and explicitly describe the evidence in support of major decisions. The authors also note that the APA allows Congress to protect the original interests of a particular statute by requiring that agencies solicit comments from interested parties in making these decisions (pg 257-258). In this way, congressional committees may be able to ensure the desired implementation of their laws, without taking pro-active steps to oversee a particular agency.

It may also be worth noting that recent literature on congressional oversight has found institutional changes that may even encourage the use of traditional, police patrol oversight. In particular, budgetary concerns have limited Congress' ability to propose new government programs; where before the re-election goal prioritized the development of new programs, now congressmen may receive more electoral credit for reviewing and re-shaping the bureaucracy (Ogul and Rockman 1990; Aberbach 1990). Additionally, the shift to divided government has provided an added incentive to engage in oversight activity; Mayhew (2005) found that in the House, committees were more inclined to initiate investigations during periods of divided government, though the Senate was more equitable in their treatment of the executive branch (see also Doyle 1986). Finally, Aberbach notes that funding for

committee staff and congressional support agencies has grown dramatically in recent years, making traditional oversight activity, such as monitoring, less costly.

Even if these changes have only marginally changed the costs and benefits of traditional oversight activities, however, the use of fire-alarm oversight certainly allows for Congress to ensure—at a basic level—that the bureaucracy is following its initial lead. It is nonetheless worth noting that congressional goals can change with future elections—committee chairs can retire, the House or the Senate can change partisan hands, new issues or new perspectives on old issues can emerge. Additionally, the president has wide latitude to take unilateral actions to influence the bureaucracy (Moe and Howell 1999). McCubbins, Noll, and Weingast (1987) maintain that administrative procedures give bureaucracies the flexibility to respond to new situations, but still restrain them to respond to the original interests of a particular statute. It is less clear from this literature that Congress is able to re-shape a bureaucracy to respond to *new* interests. However, findings from Lewis (2002) show that 62 percent of agencies created since 1946 have been eliminated and that a primary cause of agency death is partisan turnover. Given these wide prerogatives, it appears that Congress is able to ensure sufficient fidelity to the laws that it enacts.<sup>2</sup>

## References

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<sup>2</sup> Again, however, “sufficient” is relative; in some cases, Congress is constitutionally unable to take a more active role in bureaucratic functions. In others, it may not want to. In still other cases, the actions desired by one house or one committee may be countermanded by another.

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