

■ Internal Revenue Service
Commissioner Charles O. Rossotti
appears before the Senate Finance
Committee during a congressional
probe into alleged abuses of
taxpayers by employees of the IRS.
As a result of the hearings,
numerous positive changes were
made in the way the IRS deals with
the public.

Photo courtesy: Joe Marquette/AP/Wide World Photos



MAKING AGENCIES ACCOUNTABLE

THE QUESTION OF to whom bureaucrats should be responsible is one that continually comes up in any debate about governmental accountability. Should the bureaucracy be answerable to itself? To organized interest groups? To its clientele? To the president? To Congress? Or to some combination of all of these? At times an agency becomes so removed from the public it serves that Congress must step in. This is what happened with the Internal Revenue Service (IRS). Throughout 1997 and 1998, Congress held extensive hearings about abuses at the IRS, one of the most hated and feared federal agencies in America. Senate hearings in particular exposed abuses of ordinary citizens who found themselves in a nightmare of bureaucratic red tape and agency employee abuse of power. As a result of these hearings, Congress ordered the new IRS commissioner to overhaul the way the IRS deals with the public.²⁵ The IRS's attempt to ease online tax filing in 2002 was another example of the use of technology to improve relations with the public. The IRS also redesigned its Web site, <http://www.irs.gov>. The public responded positively to

TABLE 9.3 Making Agencies Accountable**The president has the authority to:**

- Appoint and remove agency heads and a few additional top bureaucrats.
- Reorganize the bureaucracy (with congressional approval).
- Make changes in an agency's annual budget proposals.
- Ignore legislative initiatives originating within the bureaucracy.
- Initiate or adjust policies that would, if enacted by Congress, alter the bureaucracy's activities.
- Issue executive orders.
- Reduce an agency's annual budget.

Congress has the authority to:

- Pass legislation that alters the bureaucracy's activities.
- Abolish existing programs.
- Investigate bureaucratic activities and compel bureaucrats to testify about them.
- Influence presidential appointments of agency heads and other top bureaucratic officials.
- Write legislation to limit the bureaucracy's discretion.

The judiciary has the authority to:

- Rule on whether bureaucrats have acted within the law and require policy changes to comply with the law.
- Force the bureaucracy to respect the rights of individuals through hearings and other proceedings.
- Rule on the constitutionality of all rules and regulations.

these changes, and by 2002, 67 percent of the American public reported that they had confidence in the IRS.²⁶

Although many critics of the bureaucracy might argue that federal employees should be responsive to the public interest, the public interest is difficult to define. As it turns out, several factors work to control the power of the bureaucracy, and to some degree, the same kinds of checks and balances that operate among the three branches of government serve to check the bureaucracy (see Table 9.3).

Many political scientists argue that the president should be in charge of the bureaucracy because it is up to him to see that popular ideas and expectations are translated into administrative action. But, under our constitutional system, the president is not the only actor in the policy process. Congress creates the agencies, funds them, and establishes the broad rules of their operation. Moreover, Congress continually reviews the various agencies through oversight committee investigations, hearings, and its power of the purse. And, the federal judiciary, as in most other matters, has the ultimate authority to review administrative actions.

Executive Control

As the size and scope of the American national government, in general, and of the executive branch and the bureaucracy, in particular, have grown, presidents have delegated more and more power to bureaucrats. But, most presidents have continued to try to exercise some control over the bureaucracy, although they have often found that task more difficult than they first envisioned. As president, John F. Kennedy, for example, once lamented that to give anyone at the Department of State an instruction was comparable to putting your request in a dead-letter box.²⁷ No response would ever be forthcoming.

Recognizing these potential problems, presidents try to appoint the best possible persons to carry out their wishes and policy preferences. Presidents make hundreds of appointments to the executive branch; in doing so, they have the opportunity to appoint individuals who share their views on a range of policies. Although presidential appointments make up a very small proportion of all federal jobs, presidents or the Cabinet secretaries usually fill most top policy-making positions.

Presidents, with the approval of Congress, can reorganize the bureaucracy. They also can make changes in an agency's annual budget requests and ignore legislative initiatives originating within the bureaucracy. Several presidents have made it a priority to try to tame the bureaucracy to make it more accountable. Thomas Jefferson was the



E-GOVERNMENT

In 1992, the White House first went up on the World Wide Web. Now all government agencies and bureaus have Web sites and provide a plethora of information to the American public that formerly would have taken numerous trips to the library or even Washington, D.C., to obtain.

By 1998, the Government Paperwork Elimination Act required that federal agencies allow persons transacting business with the government to have the option of submitting information or transacting business with them electronically. It is from this act that you or members of your family now have the option of submitting your tax returns electronically.

In 2002, the Bush administration took additional advantage of changing technologies and the increasing number of Americans' access to it, whether in their homes, at local public libraries, or at Internet cafes. The E-Government Act of 2002 was an effort to mandate that all government agencies use "Internet-based information technologies to enhance citizens' access to government information and services."^a

According to the E-Gov Web site, E-Gov is not simply about putting forms online; its major purpose is to harness technology to make it easier for citizens to learn more about government services. GovBenefits.gov, for example, has been created so that citizens can find answers to a range of questions dealing with their individual circumstances and will immediately receive a list of government programs for which they may be eligible. Recreation.gov allows individuals to find out about national parks and recreation sites and to make online reservations at those facilities.

The newest addition to the e-government effort under the Bush administration is its eRulemaking Initiative. Managed by the Environmental Protection Agency, this new use

of technology is designed to transform "the federal rule-making process by enhancing the public's ability to participate in their government's regulatory decision making."^b Regulations.gov was launched in 2002 to allow the public to "search, view, and comment on proposed federal regulations open for comment."^c While the regulatory process almost exclusively involved interest groups and affected industries, this new initiative allows the public to search proposed regulations easily. Agencies are in the process of posting their proposed regulations on this central site, although some agencies still have their own sites. One 2004 study revealed that some agencies had failed to post proposed regulations on the central site, but efforts are being made to remedy these lapses.

By 2006, individuals should be able to track and comment on regulations from the 173 rule-making entities of the federal government as each of these units adapts to this new technology. OMB Watch, a nonprofit group that monitors government actions as they affect citizen participation, has applauded the notion of a centralized, one-stop method to allow concerned citizens input into the policy process.

1. Will the bureaucracy become more responsive to citizens and less captured by special interests as e-government increases?
2. Is there any downside to eRulemaking?

^aAbout E-Gov, http://www.whitehouse.gov/omb/egov/about_leg.htm.

^b<http://www.regulations.gov>.

^c<http://www.regulations.gov>.

first president to address the issue of accountability. He attempted to cut waste and bring about a "wise and frugal government." But, it wasn't until the Progressive era (1890–1920) that calls for reform began to be taken seriously. Later, President Calvin Coolidge urged spending cuts and other reforms. His Correspondence Club was designed to reduce bureaucratic letter writing by 30 percent.²⁸

As discussed in chapter 8, presidents also can shape policy and provide direction to bureaucrats by issuing executive orders.²⁹ **Executive orders** are rules or regulations issued by the president that have the effect of law. All executive orders must be published in the *Federal Register*. Even before Congress acted to protect women from discrimination by the federal government, for example, the National Organization for Women convinced President Lyndon B. Johnson to sign a 1967 executive order that amended an earlier one prohibiting the federal government from discriminating on the basis of race, color, religion, or national origin in the awarding of federal contracts, by adding to it the category of "gender." Although the president signed the order, the Office of Federal Contract Compliance, part of the Department of Labor's Employment Standards Administration, failed to draft appropriate guidelines for implementation of the order until several years later.³⁰ A president can direct an agency to act, but it may take some time for the order to be carried out. Given the many jobs of any president, few can ensure that all their orders will be carried out or that they will like all the rules that are made.

executive orders

Rules or regulations issued by the president that have the effect of law. All executive orders must be published in the *Federal Register*.

Congressional Control

Congress, too, plays an important role in checking the power of the bureaucracy. Constitutionally, it possesses the authority to create or abolish departments and agencies as well as to transfer agency functions, as was recently the case in the protracted debate over the creation of the Department of Homeland Security. In addition, it can expand or contract bureaucratic discretion. The Senate’s authority to confirm (or reject) presidential appointments also gives Congress a check on the bureaucracy. Congress exercises considerable oversight over the bureaucracy in several ways. Table 9.4 contains data from a study conducted by the Brookings Institution detailing this authority.

Congress uses many of its constitutional powers to exercise control over the bureaucracy. These include its investigatory powers. It is not at all unusual for a congressional committee or subcommittee to hold hearings on a particular problem and then direct the relevant agency to study the problem or find ways to remedy it. Representatives of the agencies also appear before these committees on a regular basis to inform members about agency activities and ongoing investigations.

Political scientists distinguish between two different forms of congressional oversight: police patrol and fire alarm oversight.³¹ As the names imply, police patrol oversight is proactive and allows Congress to set its own agenda for programs or agencies to review. In contrast, fire alarm oversight is reactive and generally involves a congressional response to a complaint filed by a constituent or politically significant actor.

Given the prevalence of iron triangles, issue networks, and policy coordinating committees, it is not surprising that the most frequently used form of oversight and the most effective is communication between house staffers and agency personnel. Various forms of program evaluations make up the next most commonly used forms of congressional control. Congress and its staff routinely conduct evaluations of programs and conduct oversight hearings.



Photo courtesy: © Peter Jones/Reuters/Corbis

■ U.S. Secretary of State Designate Condoleezza Rice shakes hands with Senator Christopher Dodd (D-CT), as Senator Joseph Biden (DE) and Senator Barack Obama (D-IL) look on, after her second day of testimony before the U.S. Senate Foreign Relations Committee during her confirmation hearings. On January 19, 2005, Rice was confirmed as Secretary of State by the committee.

TABLE 9.4 Frequency and Effectiveness of Oversight Techniques in a Single Congress

Oversight Technique	Number of Cases in Which Technique Was Used	Effectiveness Ranking
Staff communication with agency personnel	91	1
Member communication with agency personnel	86	2
Program reauthorization hearings	73	3
Oversight hearings	89	4
Hearings on bills to amend ongoing programs	70	5
Staff investigations	90	6
Program evaluations done by committee staff	89	7
Program evaluations done by congressional support agencies	89	8
Legislative veto	82	9
Analysis of proposed agency rules and regulations	90	10
Program evaluations done by outsiders	88	11
Agency reports required by Congress	91	12
Program evaluations done by the agencies	87	13
Review of casework	87	14

Source: Joel Aberbach, *Keeping a Watchful Eye* (Washington, DC: Brookings Institution, 1990), 132, 135.



THE EPA AND LEAD IN WATER

OVERVIEW: Government bureaucracies influence life in the United States in many beneficial and, sometimes, not so beneficial ways. Most are charged with securing the common good and are dedicated to serving the American public. Administrative agencies, however, do not operate in a vacuum—they have mandates from the government and are ultimately subject to congressional, executive, and judicial supervision. The idea of bureaucratic oversight is to ensure that agencies and departments are held accountable for their activities. These administrative units have more or less discretion and freedom of action depending on their mandates. But, though considered expert in their respective policy domains, bureaucracies may receive from the government ill-conceived or poorly researched directives that can interfere with an agency's mission or hinder proper administrative functioning. As with any organization under human control, they also reflect the effect of human foibles and corruption. Nevertheless, because of the unique nature of government bureaucracies in that they can affect the lives of millions, there must be accountability when bureaucracies fail in their mission.

In February 2004, it was revealed that the District of Columbia's drinking water contained dramatically increased levels of lead, which can increase the risk of cancer. The problem affected approximately 23,000 residences in the District. It was later determined that the District's Water and Sewer Authority (WASA) neglected to follow the Environmental Protection Agency's (EPA) mandated language when informing citizens of high lead levels in D.C.'s water supply, and that WASA also neglected to do follow-up water testing

in areas where lead service pipes had been partially replaced. And, the EPA stands accused of neglecting oversight of WASA by taking too long to notice and act on the violations, some of which occurred in 2002.

Ironically, the increased lead levels were caused by the Army Corps of Engineers' attempt in 2000 to increase the quality of the water supply. The Army Corps of Engineers oversees the Washington Aqueduct that supplies drinking water to the city, while WASA manages operations of the water supply. In 2000, the Army Corps of Engineers sought to improve water quality by switching from chlorine to chloramine (a combination of chlorine and ammonia) to purify water. This change had the unintended effect of further corroding lead pipes and thus increasing the amount of lead in the water supply. Once word of the problem became public, the EPA had the Corps of Engineers replace chloramine with chlorine, and lead levels dropped immediately and significantly.

What is the lesson to be learned from this case? Where does accountability lie—with the EPA, with WASA, or with the Corps of Engineers? With all? All of these agencies were pursuing a public good: lower lead levels in the water supply that could reduce the risk of cancer for D.C. residents. Should motive and intent be taken into account when determining accountability? On the one hand, doesn't the fact that the water supply was immediately fixed demonstrate bureaucratic accountability? On the other, WASA was demonstrably negligent when informing D.C. residents of the problem by ignoring federal language guidelines in notices, pamphlets, and public service announcements, and WASA was negligent as well for not doing follow-up testing after replacing pipes, as required by EPA guidelines. Additionally, a Cato Institute scholar accused the EPA of

Congress also has the power of the purse. To control the bureaucracy, Congress uses its ability to fund or not to fund an agency's activities like the proverbial carrot and stick. The House Appropriations Committee routinely holds hearings to allow agency heads to justify their budget requests. Authorization legislation originates in the various legislative committees that oversee particular agencies (such as Agriculture, Veterans Affairs, Education, and Labor) and sets the maximum amounts that agencies can spend on particular programs. While some authorizations, such as those for Social Security, are permanent, others, including the Departments of State and Defense procurements, are watched closely and are subject to annual authorizations.

Once funds are authorized, they must be appropriated before they can be spent. Appropriations originate with the House Appropriations Committee, not the specialized legislative committees. Often the Appropriations Committee allocates sums smaller than those authorized by legislative committees. Thus, the Appropriations Committee, a budget cutter, has an additional oversight function.

To help Congress's oversight of the bureaucracy's financial affairs, in 1921 Congress created the General Accounting Office, now the General Accountability Office (GAO), at the same time that the Office of the Budget, now the Office of Management and Budget (OMB), was created in the executive branch. With the establishment

bowing to interest-group pressure to replace chlorine with chloramine—pressure that advocated change based on questionable science and experience. Should bureaucracies heed private interests outside government?

Arguments for EPA Accountability

- **Accountability is ultimately the responsibility of the agency in question.** In the end, the parent agency is responsible for ensuring oversight and the proper functioning of all bureaucratic agencies and departments within its purview. Since the EPA is the ultimate authority for protecting the water supply, it should be held accountable.
- **Agencies are accountable for the science and methods used.** If science or methodology has not been scrupulously proved safe or effective, change should not be implemented until the science or methods have been demonstrated to be sound.
- **Government bureaucracies should not be influenced by interest groups.** If it is true that the EPA bowed to the wishes of interest groups—in this case, the environmental lobby—it is not performing its function as intended. Bureaucracies are accountable to the government, not outside interests.

Arguments Against EPA Accountability

- **Those in charge of regulation may sometimes be unaware of mid- and low-level problems.** Many times lower-level bureaucrats hide their actions from superiors in order to protect themselves. It is unreasonable to expect senior managers to know what is consciously being hidden at lower departmental levels. Those directly culpable should be disciplined accordingly.

- **The EPA was following federal law.** According to National Public Radio, weak federal laws regulating drinking water are to blame for water quality in the United States. What happened in the District of Columbia is to be expected when those engaged in oversight have little knowledge and understanding of, or little concern for, the domain being regulated. Ultimately, bureaucracies are to be held accountable to established law.
- **Bureaucratic efficiency and quality are only as good as current research and science.** The EPA cannot be held accountable for acting on possibly flawed science. The intent behind changing the water purification system in D.C. was to reduce the risk of cancer and affiliated illness. Practice showed the change to chloramine caused increased lead levels, and once the problem was noticed, it was fixed.

Questions

1. What agency or agencies were at fault in the above case study? What would be a means to determine accountability?
2. Should Congress be more diligent in exercising its oversight authority? If so, is the government not ultimately accountable?

Selected Readings

- John Burke. *Bureaucratic Responsibility*. Baltimore, MD: Johns Hopkins University Press, 1988.
- David Osborne and Peter Plastrik. *Banishing Bureaucracy: Five Strategies for Reinventing Government*. Boston: Addison Wesley, 1997.

of the GAO, the Congressional Research Service (CRS), and later, the Congressional Budget Office (CBO), Congress essentially created its own bureaucracy to keep an eye on what the executive branch and bureaucracy were doing. Today, the GAO not only tracks how money is spent in the bureaucracy, but it also monitors how policies are implemented. The CBO also conducts oversight studies. If it or the GAO uncovers problems with an agency's work, Congress is notified immediately.

Legislators also augment their formal oversight of the executive branch by allowing citizens to appeal adverse bureaucratic decisions to agencies, Congress, and even the courts. Congressional review, a procedure adopted by the 104th Congress, by which agency regulations can be nullified by joint resolutions of legislative disapproval, is another method of exercising congressional oversight. This form of oversight is discussed in greater detail in chapter 7.

Judicial Control

Whereas the president's and Congress's ongoing control over the actions of the bureaucracy is very direct, the judiciary's oversight function is less apparent. Still, federal judges, for example, can directly issue injunctions or orders to an executive agency even

before a rule is promulgated formally, giving the federal judiciary a potent check on the bureaucracy. The courts also have ruled that agencies must give all affected individuals their due process rights guaranteed by the U.S. Constitution. A Social Security recipient's checks cannot be stopped, for example, unless that individual is provided with reasonable notice and an opportunity for a hearing. On a more informal, indirect level, litigation, or even the threat of litigation, often exerts a strong influence on bureaucrats. Injured parties can bring suit against agencies for their failure to enforce the law, and can challenge agency interpretations of the law. In general, however, the courts give great weight to the opinions of bureaucrats and usually defer to their expertise.³²

Research by political scientists shows that government agencies are strategic. They often implement Supreme Court decisions “based on the costs and benefits of alternative policy choices.” Specifically, the degree to which agencies appear to respond to Supreme Court decisions is based on the “specificity of Supreme Court opinions, agency policy preferences, agency age, and *amicus curiae* support.”³³

The development of specialized courts has altered the relationship of some agencies with the federal courts, apparently resulting in less judicial deference to agency rulings. Research by political scientists reveals that specialized courts such as the Court of International Trade, because of their expertise, defer less to agency decisions than do more generalized federal courts. Conversely, decisions from executive agencies are more likely to be reversed than those from more specialized independent regulatory commissions.³⁴

SUMMARY

THE BUREAUCRACY plays a major role in America as a shaper of public policy, earning it the nickname the “fourth branch” of government. To explain the evolution and scope of bureaucratic power, in this chapter we have made the following points:

1. The Executive Branch and the Development of the Federal Bureaucracy

According to Max Weber, all bureaucracies have similar characteristics. These characteristics can be seen in the federal bureaucracy as it developed from George Washington's time, when the executive branch had only three departments—State, War, and Treasury—through the Civil War. Significant gains occurred in the size of the federal bureaucracy as the government geared up to conduct a war. As employment opportunities within the federal government increased, concurrent reforms in the civil service system assured that more and more jobs were filled according to merit and not by patronage. By the late 1800s, reform efforts led to further increases in the size of the bureaucracy, as independent regulatory commissions were created. In the wake of the Depression, many new agencies were created to get the national economy back on course as part of President Franklin D. Roosevelt's New Deal.

2. The Modern Bureaucracy

The modern bureaucracy is composed of nearly two million civilian workers from all walks of life. In general, bureaucratic agencies fall into four general types: departments, government corporations, independent agencies, and independent regulatory commissions.

3. How the Bureaucracy Works

The bureaucracy gets much of its power from the Congress delegating its powers. A variety of formal and informal mechanisms have been created to help the bureaucracy work more efficiently. These mechanisms help the bureaucracy and bureaucrats make policy.

4. Making Agencies Accountable

Agencies enjoy considerable discretion, but they are also subjected to many formal controls. The president, Congress, and the judiciary all exercise various degrees of control over the bureaucracy

KEY TERMS

administrative adjudication, p. 334
 administrative discretion, p. 332
 bureaucracy, p. 314
 civil service system, p. 317
 departments, p. 327
 executive orders, p. 335
 Federal Employees Political Activities Act, p. 320
 government corporation, p. 329
 Hatch Act, p. 320
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 iron triangles, p. 330
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 merit system, p. 317
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Pendleton Act, p. 317
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WEB EXPLORATIONS

- For more about the Women's Bureau in the Department of Labor, see www.dol.gov/wb/
- To examine the federal workforce by gender, race, and ethnicity, go to www.opm.gov/feddata/factbook/
- To see federal agency rules and regulations contained in the *Federal Register*, go to www.gpoaccess.gov/fr/index.html
- For more about the IRS and its modernization efforts, see www.irs.gov