

The Bureaucracy



THE CONSTITUTION AND BUREAUCRACY

The Constitution made little mention of a bureaucracy:

- “All other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law” (Article II, Section 3)
- No provisions mentioned departments or bureaus, but Congress created the first bureaucracy during George Washington’s presidency



FROM SPOILS TO MERIT

“To the victor belong the spoils” (1828)

- The **spoils system or patronage**, started by **Andrew Jackson**, was used for filling federal jobs
- President rewarding political supporters/friends with jobs based on service, not on merit

Creation of the Pendleton Act (1883) or Civil Service Reform Act:

- Eliminated the spoils system (patronage); created merit system
- An exam-based merit system would be used to fill government jobs
- Civil Service Commission was created to administer these exams

Hatch Act (1939)

- Prohibited federal employees from participating in political campaigns

Civil Service Reform Act (1978)

- Abolished the U.S. Civil Service Commission
- Created the OPM (Office of Personnel Management) to provide merit guidance to agencies of the executive branch looking to hire

THE MODERN BUREAUCRACY

A **bureaucracy** is a large, complex organization of appointed, not elected, officials.

- **LARGE**: Three million civilian federal employees
 - **Department of Defense** is the largest department = about 50% (even without active military which is about 1.4 million)
 - Post Office has about 28%
- <10% of top-level jobs are appointed (political appointees) by the president = PATRONAGE
- >90% of federal employees are civil service workers >> **MERIT SYSTEM**
 - Tenure protection, difficult to fire (unless appointed by president)
- Specialized units with expertise in a field

POWER OF THE BUREAUCRACY

1. Implementation and Discretionary authority

- Carry out laws of Congress, executive orders of the president
- Agencies have power to set specific guidelines when receiving a general mandate from Congress
 - Congress gives them the bones, bureaucracy adds the meat

2. Regulation

- Issue rules and regulations that impact the public and that the private sector must follow (EPA sets clean air standards); Labels on food, emissions of cars, etc.

3. Administrative Law

- Rules and regulations created by an agency that have the effect of law

4. Helping Congress draft legislation

5. Providing advice to the White House

6. Settling disputes

FEDERAL AND STATE EMPLOYEES

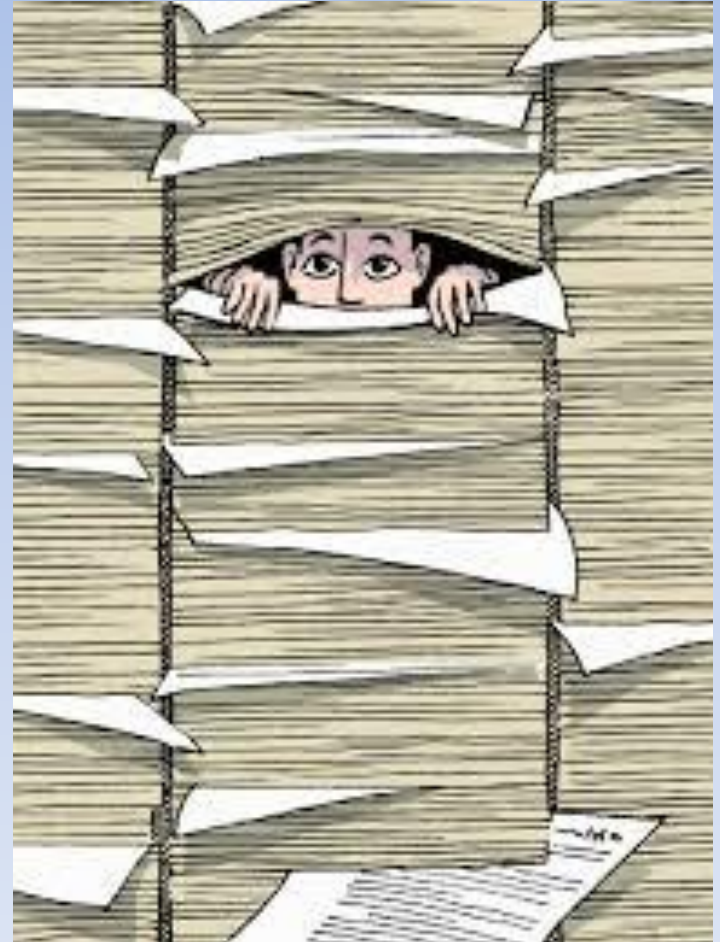
- Federal government employees currently account for 3 percent of all civilian jobs
- The number of federal government employees has remained constant since 1950
- The number of state and local government employees has steadily increased since 1950
- Block grants have contributed to the widening gap between the number of federal and state employees by shifting resources from the federal government to states and local governments
- Federal mandates have also shifted more responsibility to states, causing an increase in the number of their public employees



THE ORGANIZATION OF THE BUREAUCRACY

Agencies of the executive branch may be organized into four basic types:

- 1) Cabinet departments
- 2) Independent regulatory agencies or commissions
- 3) Government corporations
- 4) Independent executive agencies



THE GOVERNMENT OF THE UNITED STATES

THE CONSTITUTION

LEGISLATIVE BRANCH

THE CONGRESS

SENATE HOUSE

Architect of the Capitol
 United States Botanic Garden
 Government Accountability Office
 Government Printing Office
 Library of Congress
 Congressional Budget Office

EXECUTIVE BRANCH

THE PRESIDENT THE VICE PRESIDENT

Executive Office of the President

White House Office
 Office of the Vice President
 Council of Economic Advisers
 Council on Environmental Quality
 National Security Council and
 Homeland Security Council
 Office of Administration
 Office of Management and Budget
 Office of National Drug Control Policy
 Office of Science and Technology Policy
 Office of the U.S. Trade Representative

JUDICIAL BRANCH

THE SUPREME COURT OF THE UNITED STATES

United States Courts of Appeals
 United States District Courts
 Territorial Courts
 United States Court of International Trade
 United States Court of Federal Claims
 United States Court of Appeals for the Armed Forces
 United States Tax Court
 United States Court of Appeals for Veterans Claims
 Administrative Office of the United States Courts
 Federal Judicial Center
 United States Sentencing Commission

DEPARTMENT OF AGRICULTURE

DEPARTMENT OF COMMERCE

DEPARTMENT OF DEFENSE

DEPARTMENT OF EDUCATION

DEPARTMENT OF ENERGY

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF HOMELAND SECURITY

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DEPARTMENT OF THE INTERIOR

DEPARTMENT OF JUSTICE

DEPARTMENT OF LABOR

DEPARTMENT OF STATE

DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF THE TREASURY

DEPARTMENT OF VETERANS AFFAIRS

INDEPENDENT ESTABLISHMENTS AND GOVERNMENT CORPORATIONS

African Development Foundation
 Broadcasting Board of Governors
 Central Intelligence Agency
 Commodity Futures Trading Commission
 Consumer Product Safety Commission
 Corporation for National and Community Service
 Defense Nuclear Facilities Safety Board
 Environmental Protection Agency
 Equal Employment Opportunity Commission
 Export-Import Bank of the U.S.
 Farm Credit Administration
 Federal Communications Commission
 Federal Deposit Insurance Corporation
 Federal Election Commission
 Federal Housing Finance Agency

Federal Labor Relations Authority
 Federal Maritime Commission
 Federal Mediation and Conciliation Service
 Federal Mine Safety and Health Review Commission
 Federal Reserve System
 Federal Retirement Thrift Investment Board
 Federal Trade Commission
 General Services Administration
 Inter-American Foundation
 Merit Systems Protection Board
 National Aeronautics and Space Administration
 National Archives and Records Administration
 National Capital Planning Commission
 National Credit Union Administration
 National Foundation on the Arts and the Humanities

National Labor Relations Board
 National Mediation Board
 National Railroad Passenger Corporation (AMTRAK)
 National Railroad Retirement Board
 National Science Foundation
 National Transportation Safety Board
 Nuclear Regulatory Commission
 Occupational Safety and Health Review Commission
 Office of the Director of National Intelligence
 Office of Government Ethics
 Office of Personnel Management
 Office of Special Counsel
 Overseas Private Investment Corporation
 Panama Canal Commission
 Peace Corps
 Pension Benefit Guaranty Corporation

Postal Regulatory Commission
 Securities and Exchange Commission
 Selective Service System
 Small Business Administration
 Social Security Administration
 Tennessee Valley Authority
 Trade and Development Agency
 U.S. Agency for International Development
 U.S. Commission on Civil Rights
 U.S. International Trade Commission
 U.S. Postal Service

THE CABINET DEPARTMENTS

Article 2, Section 2, Clause 1:

- ***The President . . . may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices***
 - Each of the fifteen cabinet departments is headed by a secretary, except for the Department of Justice, which is headed by the Attorney General
 - All of the heads are *chosen by the President and confirmed by the Senate*
 - Manage a specific policy area with responsibility further divided among various agencies
 - Secretaries often develop a strong loyalty to their departments. They become closer to the department than to the President.

THE CABINET DEPARTMENTS

The fifteen cabinet departments, in order of creation, are:

- 1) State (1789)** - advises the president on foreign policy, negotiates treaties, represents the United States in international organizations
- 2) Treasury (1789)** - collects federal revenues, pays federal bills, mints coins and prints paper money, enforces alcohol, tobacco and firearm laws
- 3) Defense (1789)** - manages the armed forces, operates military bases
- 4) Interior (1849)** - manages federal lands, refuges, and parks, operates hydroelectric facilities, manages Native American affairs
- 5) Justice (1870)** - provides legal advice to the president, enforces federal laws, represents the United States in court, operates federal prisons

THE CABINET DEPARTMENTS

The fifteen cabinet departments, in order of creation, are:

- 6) Agriculture (1889)** - provides agricultural assistance to farmers and ranchers, inspects food, manages national forests
- 7) Commerce (1903)** - grants patents and trademarks, conducts the national census, promotes international trade
- 8) Labor (1913)** - enforces federal labor laws (child labor, minimum wage, safe working conditions), administers unemployment and job training programs
- 9) Health and Human Services (1953)** - administers Social Security and Medicare/Medicaid Programs, promotes health care research, enforces pure food and drug laws
- 10) Housing and Urban Development (1965)** - provides home financing and public housing programs, enforces fair housing laws

THE CABINET DEPARTMENTS

The fifteen cabinet departments, in order of creation, are:

- 11) Transportation (1967)** - promotes mass transit programs and programs for highways, railroads, and air traffic, enforces maritime law
- 12) Energy (1977)** - advances the energy security of the U.S. and takes care of the nation's nuclear security
- 13) Education (1979)** - administers federal aid programs to schools, engages in educational research
- 14) Veterans Affairs (1989)** - promotes the welfare of veterans of the armed forces
- 15) Homeland Security (2002)** - prevents terrorist attacks within the United States, reduces America's susceptibility to terrorism, minimizes damage and helps recovery from attacks that do occur

THE INDEPENDENT REGULATORY AGENCIES

- **Agencies (also known as independent regulatory commissions) are created by Congress**
 - Regulate important parts of the economy
 - Make rules for large industries and businesses that affect the interests of the public
 - Since regulatory agencies are watchdogs that by their very nature need to operate independently, they are not part of a department
- **Small commissions govern the regulatory agencies**
 - Five to ten members *appointed by the president and confirmed by the Senate*
 - Commissioners are somewhat more "independent" than are the cabinet secretaries because they cannot be removed by the president during their terms of office
 - Commissioners serve rather long terms (5-14 years)
 - Terms of the commissioners are staggered
- **These factors help to insulate regulatory commissions from political pressure**
 - Commissions have quasi-legislative powers because they have the authority to make rules and regulations that have the force of law
 - Commissions also have quasi-judicial powers because they can settle disputes in their fields (such as the FCC fining Howard Stern for objectionable material that was broadcast on his radio program)

THE INDEPENDENT REGULATORY AGENCIES

Examples:

- **Federal Communications Commission (FCC)**
 - Regulates all communications by telegraph, cable, telephone, radio, and television.
- **The Federal Trade Commission (FTC)**
 - Prevents businesses from engaging in unfair trade practices; stops the formation of monopolies in the business sector; protects consumer rights.
- **Federal Election Commission (FEC)**
 - Administers and enforces the Federal Election Campaign Act (FECA); discloses campaign finance information and oversees the public funding of presidential elections.
- **The Securities and Exchange Commission (SEC)**
 - Regulates the nation's stock exchanges; requires full disclosure of the financial profiles of companies that wish to sell stocks to the public.
- **The Federal Reserve Board (The Fed)**
 - Establishes monetary policy >> refers to the money supply and interest rates.
 - Monetary policy = controlling the money supply. Fiscal policy = taxing and spending.
 - Sets bank interest rates; controls inflation; regulates the money supply; adjusts banks reserve requirements.

THE GOVERNMENT CORPORATIONS

- **Blend of private corporations and government agency.**
- **Created to allow more freedom and flexibility than exists in regular government agencies.**
- **Have more control over their budgets, and often have the right to decide how to use their own earnings.**
- **Since the government still ultimately controls them, they do not operate like true private corporations.**

Examples:

- **The U.S. Postal Service** - The post office is a corporation that competes with private services.
- **National Railroad Passenger Corporation (AMTRAK)** - Congress created Amtrak to provide railroad passenger service that is heavily subsidized by the federal government. Part of the motivation for its creation was the lack of private companies providing the service, and Amtrak has suffered some huge financial losses. Recently, in an attempt to make the corporation more profitably, Congress has allowed Amtrak to drop some of its less popular routes.
- **The Corporation for Public Broadcasting** - This controversial government corporation still operates public radio and television stations. Although largely funded by private donations, the government still provides policies and money to support their programs.

INDEPENDENT EXECUTIVE AGENCIES

- Agencies that do not fall into the first three categories.
- Closely resemble Cabinet departments, but they are smaller and less complex
- Generally, they have narrower areas of responsibility than do cabinet departments.
- Most are subject to presidential control and are independent only in the sense that they are not part of a department.
- Their main function is not to regulate, but to fulfill a myriad of other administrative responsibilities.

Examples:

- **Central Intelligence Agency** - The CIA is responsible for providing national security intelligence to senior US policymakers.
- **Environmental Protection Agency** - The EPA was established to consolidate in one agency a variety of federal research, monitoring, standard-setting and enforcement activities to ensure environmental protection.
- **The National Aeronautics and Space Administration** - NASA administers the United States space program, financing ventures into space since 1958.

FREE RESPONSE QUESTION

The United States Congress and the President together have the power to enact federal law. Federal bureaucratic agencies have the responsibility to execute federal law. However, in the carrying out of these laws, federal agencies have policy-making discretion.

- a) Explain two reasons why Congress gives federal agencies policy-making discretion in executing federal law.

- b) Choose one of the bureaucratic agencies listed below. Identify the policy area over which it exercises policy-making discretion AND give one specific example of how it exercises that discretion.
 - Environmental Protection Agency (EPA)
 - Federal Communications Commission (FCC)
 - Federal Reserve Board

- c) Describe two ways in which Congress ensures that federal agencies follow legislative intent.

FREE RESPONSE RUBRIC

PART (A): 2 POINTS

One point is earned for explaining each of two reasons why Congress gives federal agencies policy-making discretion in executing federal laws.

- Congress lacks expertise/agencies have expertise.
- Congress does not want to be blamed for bad policy.
- Time-consuming.
- Easier to come to agreement.
- More efficient.

PART (B): 2 POINTS

One point is earned for correctly identifying the policy area identified with the agency. One point is earned for providing an example. The response must include a correct, specific example of how the agency exercises policy-making discretion in order to earn the point.

AGENCY

The Environmental Protection Agency (EPA)

POLICY AREA

Clean air and water

AGENCY

Federal Communications Commission (FCC)

POLICY AREA

TV, radio, satellite, telephone, etc.

AGENCY

Federal Reserve Board

POLICY AREA

Monetary policy

PART (C): 2 POINTS

One point is earned for each of two descriptions of ways Congress ensures that agencies follow legislative intent.

Acceptable descriptions may include:

- Oversight.
- Budget/appropriations.
- Hearings.
- Investigations.
- Government Accountability Office (GAO).
- Change law.
- Legislative veto.
- Casework.
- Sunset laws/reauthorization/dissolve agencies/create new agencies.

Note: If one of the above is only mentioned as an example of oversight, the response gets only 1 point.

FREE RESPONSE QUESTION

Is Congress effective in exercising legislative oversight of the federal bureaucracy? Support your answer by doing ONE of the following:

- Explain two specific methods Congress uses to exercise effective oversight of the federal bureaucracy.

OR

- Give two specific explanations for the failure of Congress to exercise effective oversight of the federal bureaucracy.

FREE RESPONSE RUBRIC

1 point for taking explicit position: “Yes, Congress is effective,” or “No, Congress is not effective,” in providing oversight of the bureaucracy.

If the writer takes the affirmative (Congress exercises effective oversight):

2 points (maximum) for a complete explanation of first specific method Congress uses to exercise effective oversight.

- Award 1 point for a statement showing general understanding of method of oversight.
- Award 2 points for a specific explanation showing HOW/WHY the method is effective.
- Methods of effective oversight *may* include
 - Budget control
 - Reauthorization/Jurisdiction of agencies
 - Setting guidelines for new agencies
 - Hearings, committee investigations
 - Power to organize/reorganize agency
 - “Sunset” legislation
 - Congressional support agencies - GAO, CBO
 - Iron triangles as a source of information
 - Casework as a source of information
 - Influence over selection of leadership
 - Program evaluation

2 points (maximum) for a complete explanation of a second specific method Congress uses to exercise effective oversight. Use the guidelines above for the first method in awarding one or two points for the explanation of the method.

If the writer takes the negative (Congress fails to exercise effective oversight):

2 points (maximum) for a complete explanation of the first reason for this failure.

- Award 1 point for a statement showing general understanding of why failure occurs.
- Award 2 points for a specific explanation of how/why the oversight method is not effective.
- Reasons for the failure may include:
 - No electoral payoff/Political ramifications
 - Oversight is labor intensive/hard work
 - Lack of technical expertise
 - Logrolling
 - Lack of budget control
 - Enabling legislation is vague
 - Interest groups/PACs encourage members to overlook effective administration
 - Failure to “use” available powers or ineffective use of them
 - Iron triangles/cozy relationship with agencies
 - Bureaucratic pathologies (for example, Congress creates opportunities for casework through red tape; firing administrators is difficult)

2 points (maximum) for complete explanation of the second reason congressional oversight fails. Use the guidelines above for the first reason in awarding one or two points for the explanation of the reason.

Notes:

A general discussion of checks and balances is not acceptable and does not receive credit.

If the thesis contradicts the discussion or reasons or explanation, score for the answer that gives the student the most points.

FREE RESPONSE QUESTION

The federal bureaucracy as part of the executive branch exercises substantial independence in implementing governmental policies and programs. Most workers in the federal bureaucracy are civil-service employees who are organized under a merit system.

- a) Describe one key characteristic of the merit system.
- b) For each of the following, describe one factor that contributes to bureaucratic independence.
 - The structure of the federal bureaucracy
 - The complexity of public policy problems
- c) For each of the following, explain one Constitutional provision that it can use to check the bureaucracy.
 - Congress
 - The courts
 - Interest groups

FREE RESPONSE RUBRIC

PART (A): 1 POINT

One point is earned for a description of a characteristic of the merit system. Answers may include:

- Hiring or promotion based on merit/experience/qualifications
- Hiring based on testing

PART (B): 2 POINTS

One point is earned for each of two descriptions of factors contributing to bureaucratic independence. Answers may include:

- Structure of the bureaucracy
 - Large
 - Specialized units/expertise
 - Tenure protections/hard to fire
 - Based on merit
 - Independent agencies/independent regulatory commissions
- Complexity of public policy problems
 - Specialized units/expertise
 - Delegated authority — because Congress and the president cannot handle everything, they delegate authority to the bureaucracy
 - Discretionary authority — because legislation lacks details, the bureaucracy can fill in the gaps

PART (C): 3 POINTS

One point is earned for each of three explanations of a constitutional provision that can check the bureaucracy.

Answers may include:

- Congress
 - Appropriations — can reward or punish agency
 - Legislation — can pass legislation affecting the bureaucracy
 - Rejection of presidential appointments to the bureaucracy
 - Impeachment of executive officials
- Courts
 - Court rulings that limit bureaucratic practices
 - Judicial review — can declare bureaucratic actions unconstitutional
 - Injunctions against federal agencies
- Interest groups
 - Use of the First Amendment
 - Lobbying
 - Protests
 - Media usage
 - Speech
 - Litigation

CONTROLLING THE BUREAUCRACY

CONTROLLING THE BUREAUCRACY

CONGRESSIONAL INFLUENCE

Congress has a great amount of power over the bureaucracy because Congress can exercise LEGISLATIVE OVERSIGHT.

What are the numerous ways in which Congress can exercise “oversight” of the bureaucracy?

- ***Creation of agencies***
 - Constitutional power to create and abolish executive departments and independent agencies, or to transfer their functions
- ***Advice and consent***
 - Congress can influence the appointment of agency heads
 - The Senate has the power to confirm presidential appointments
- ***Appropriations of agency budgets***
 - Congress determines how much money each agency gets
- ***Annual authorization legislation***
 - No agency may spend money unless it has first been authorized by Congress
 - Authorization legislation originates in a congressional committee and states the maximum amount of money that an agency may spend on a given program
 - Even if funds have been authorized, Congress must also appropriate the money
- ***Rewriting legislation***
 - If they wish to restrict the power of an agency, Congress may rewrite legislation or make it more detailed
 - The more detailed the instructions, the better able Congress is to restrict the agency's power

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What are the numerous ways in which Congress can exercise “oversight” of the bureaucracy?

- ***Duplication***
 - Giving any one job to more than one agency, keeping any single agency from becoming all powerful
 - For example, drug trafficking is the task of the Customs Services, the FBI, the DEA, the Border Patrol, and the Department of Defense
 - Keeps any one agency from becoming all-powerful
- ***Holding hearings and conducting investigations***
 - Congress can call bureaucrats to testify before committees and subcommittees to determine whether the agency is complying with congressional intent
 - Congress can investigate agencies
- ***Reorganization***
 - By realigning or restructuring departments, agencies and their responsibilities, Congress can contain costs, reduce bureaucratic overlap and improve accountability.
- ***Sunset laws***
 - Provides for the law to cease to have effect after a specific date, unless further legislative action is taken to extend the law
 - Sunset laws create a finite lifespan for a bureaucratic agency
 - In order to be reauthorized, these bureaucracies must prove their effectiveness and merit

CONTROLLING THE BUREAUCRACY CONGRESSIONAL INFLUENCE?

What are the limits on congressional influence?

Congress may not really want to clamp down on the bureaucracy:

- **Members profit politically from the existence of federal programs within their states or districts (e.g., military base closure)**
- **Easier for Congress to simply pass broadly worded laws and have experts within the bureaucracy fill in the holes**
- **No electoral payoff; Political ramifications**
- **Oversight is labor intensive/hard work; Lack of technical expertise**
- **Congress creates opportunities for casework through red tape**
- **Congress lacks expertise/agencies have expertise**
- **Congress does not want to be blamed for bad policy**
- **Time-consuming**

CONTROLLING THE BUREAUCRACY

PRESIDENTIAL INFLUENCE

Appointments

- Appointment of top-level bureaucrats (including Cabinet secretaries)
- Fire top-level bureaucrats (including Cabinet secretaries)

Executive Orders

- An executive order is a directive, order, or regulation issued by the president
- An executive order of the President must find support in the Constitution, either in a clause granting the President specific power, or by a delegation of power by Congress to the President

Economic Powers

- Proposes agency budgets (either an increase or a decrease in \$)

Other Powers

- Propose the reorganization of the executive branch
- Presidential power of influence over different agencies direction

What are the limits on presidential influence?

- Senate confirmation needed for top personnel
- President cannot fire vast majority of bureaucrats
- Reorganization must go through Congress
- Agency budgets must go through Congress

CONTROLLING THE BUREAUCRACY

COURT AND INTEREST GROUP INFLUENCE

COURTS AND THE BUREAUCRACY

Powers

- **Court rulings that limit bureaucratic practices**
- **Judicial review - can declare bureaucratic actions unconstitutional**
- **Injunctions (a judicial order that restrains a person/group from beginning or continuing an action threatening or invading the legal right of another) against federal agencies**

INTEREST GROUPS AND THE BUREAUCRACY

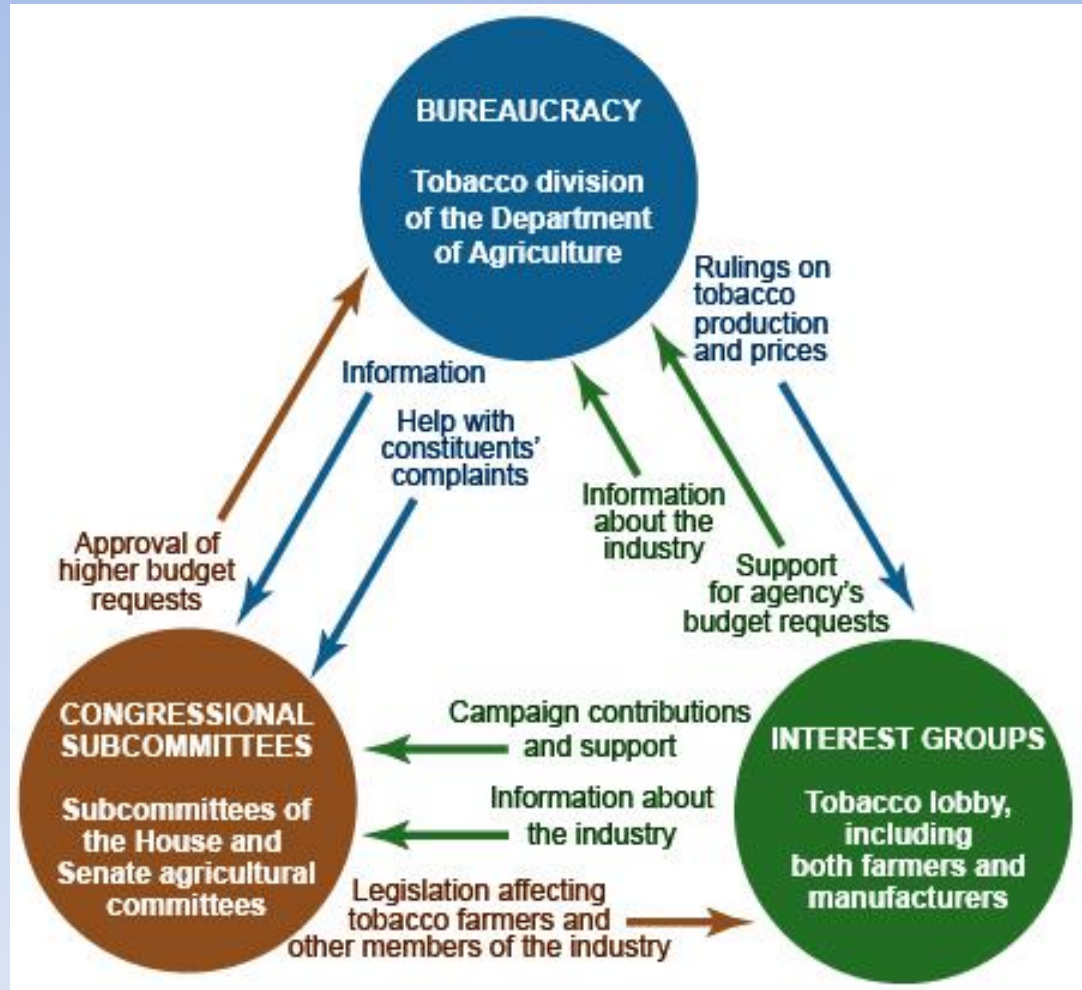
Powers

- **Lobbying**
- **“Revolving door” - Agencies are staffed by people who move back and forth between the public/private sector**
- **Client groups**
 - **Some agency-interest group relations are so close that the interest group is said to be a client of the agency (e.g., dairy groups and Agriculture Dept)**
- **Iron triangles: congressional committee, relevant agency, related interest groups**
- **Issue networks: informal groups of people within both the public/private sectors who have common interests**
- **Agency employees are recruited from the regulated industry (vice versa)**
- **Agencies rely on support from regulated industries in making budget requests**
- **Litigation: Take a bureaucratic agency to court**

IRON TRIANGLES vs. ISSUE NETWORKS

IRON TRIANGLES

- **Definition:** Alliances among bureaucrats, interest groups, and congressional subcommittee members and staff sometimes form to promote their common causes. Also known as subgovernments.

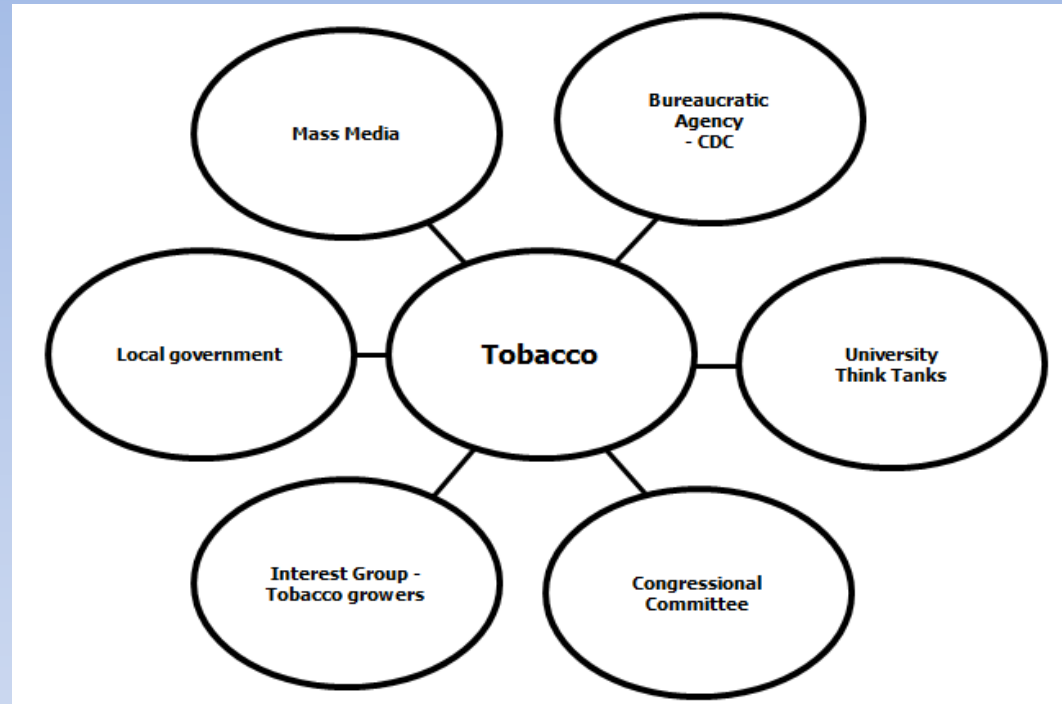


IRON TRIANGLES vs. ISSUE NETWORKS

ISSUE NETWORKS

- **Definition:** Network that consists of people in interest groups, on congressional staffs, in bureaucratic agencies, in universities, and in the mass media who regularly debate an issue.

<https://www.youtube.com/watch?v=RTR8Y5v1ADg>



One of the main differences between iron triangles and issue networks is that issue networks are generally free-forming groups of people in the public sector who form a coalition together, not through a congressional committee, or a Federal Agency but are bound together to accomplish a task at hand.