7.3c- Checks on the Bureaucracy

Legislative and Executive Constraints

While the federal bureaucracy has considerable influence on the United States government, it is subject to constraints that limit its power and independence. Some of those constraints are procedural. For example, government agencies cannot hire or fire employees, or buy or sell goods, without following procedures established by law.

There are five major legislative constraints on bureaucratic authority. The first legislative constraint is the **Administrative Procedure Act** of 1946, which requires government agencies to take certain steps before adopting a new rule or policy. The agency must give notice to parties that may be affected by the change and solicit comments from those parties, before approving the new rule or policy.

Another legislative constraint is the **Freedom of Information Act**, which has been used frequently by journalists to gain access to government documents. Passed in 1966, the Freedom of Information Act gives citizens the right to inspect all government records, except those that contain information about military or intelligence activities, trade secrets, or private personnel records.

Before an agency can initiate any action that affects the environment, the **National Environmental Policy Act** (1969) requires the agency to issue an environmental impact statement. The statement must detail the ways in which the action may affect the environment, wildlife, and natural habitats.

Another legislative constraint is the **Privacy Act of 1974**. This Act mandates that agencies keep government files about private citizens confidential. It includes information such as Social Security files and tax records.

A final legislative constraint is the **Open Meeting Law** (1976), which states that all government agency meetings must be open to the public unless issues such as military information or trade secrets are being discussed. The law applies to all parts of the meeting.

Along with these legislative constraints, agencies also face checks on their authority that are imposed by the executive branch. However, presidential oversight of the bureaucracy, which consists of budget proposals and direct inquiry, has not always been effective.

The president can appeal for bureaucratic cooperation, and if an agency does not comply, he may pursue several options. The president can call for the resignation of the head of the department or agency, but this action is only effective if the top department appointee is the sole impediment to the White House proposals. At times, department heads are not
able to convince their employees to support the White House plans, in which case, the selection of a new secretary would not help to advance the president’s proposal.

The president can use the threat of future funding cuts or investigation to encourage agency cooperation. A threatened cut in funding might be seen as counterproductive because the White House must rely on the department or agency to implement its policy. The threat of investigation can be effective, but usually requires congressional cooperation.

The president can also use his power of personal persuasion and presidential authority to promote agency action on his programs. This strategy may be successful if the president is perceived as a forceful advocate for his agenda.

In addition to legislative and executive constraints, agencies face other impediments. The overlapping functions of agencies can serve as a constraint on the independence of any single agency. For example, the Customs Service, Drug Enforcement Administration, and the FBI are all involved in controlling the trafficking of drugs, making the activities of the agencies interdependent. States may also modify or add restrictions to agency authority. For example, many states have strengthened privacy laws in recent years.

The constraints on agency independence can affect bureaucratic behavior in several ways. It takes longer to get things done when constraints must be satisfied. Agency actions may be inconsistent when efforts to satisfy one constraint conflict with another constraint. The agencies can be hesitant to take action because they must be receptive to public comment. Lower-level bureaucrats can hesitate to act for fear of making a mistake, leaving their bosses to make the decisions. Ultimately, all of these behaviors will contribute to public complaints about bureaucratic red tape.

**Congressional and Judicial Constraints**

Congress can use powerful constraints on the bureaucracy by exercising its budgetary oversight functions. Congressional constraints are much more effective than executive constraints on agency authority.

Congress has three important powers over the bureaucracy. The first power stems from the fact that no agency may exist without congressional approval. Congress has the ability to eliminate uncooperative agencies that do not function according to its rules. The second power is the power of the purse strings. An agency cannot spend money without congressional authorization. Congress can authorize spending that can be done on a yearly or permanent basis, for a fixed period or by program. Without authorization, an agency goes out of business.

The third congressional power over the bureaucracy is also related to funding. No money can be spent unless Congress approves an appropriation. This is part of the annual budget
process in which each agency submits its proposed budget to the Office of Management and Budget and the spending plans are eventually incorporated into the president’s budget. The president then submits his proposed budget to Congress for action.

Congress is also charged with monitoring the spending of bureaucratic agencies. A congressional committee or subcommittee oversees the spending of the agency or agencies to which it corresponds. For example, the House Agriculture Committee and its subcommittees monitor the spending of the Department of Agriculture and other agencies that deal with agricultural issues.

Congressional oversight can take the form of budgetary review, controls on personnel, as well as investigations and public hearings. While oversight is a powerful constraint, it can create a conflict of interest for members of Congress because they rely on the agencies to create and enforce the laws that they mandate. As a result, oversight may become less important than creating legislation and working with the agencies to implement policy.

The judicial branch can also impose constraints on the bureaucracy. This occurs when the federal court system becomes involved in a lawsuit that is filed against an agency. Such cases often end up in legislative courts such as the Tax Court, Court of Claims, or other specialized courts.

While the judicial branch can impose constraints on the bureaucracy, it can also eliminate existing constraints. The Supreme Court intervened in a notable case that involved a dispute between the Immigration and Naturalization Service (INS) and Congress. In its 1983 ruling in INS v Chadha, the court struck down the legislative veto, which eliminated the power of Congress to overrule decisions made by bureaucratic agencies.

The Supreme Court also supported a ruling by the Federal Communications Commission (FCC) in a 1969 case. In Red Lion Broadcasting v. FCC, the court upheld the constitutionality of the commission’s "fairness doctrine," which required broadcasters to present "fair and balanced" coverage of controversial issues.

The legislative, congressional, executive, and judicial constraints all serve as checks on the bureaucracy, but agencies can still establish powerful alliances. Iron triangles or subgovernments are coalitions created by the unification of an agency, the congressional committee or subcommittees that govern it, and the interest groups affected by the agency. An iron triangle develops when committee members show favor to the interest groups in hopes of getting votes and campaign contributions. When this occurs, the interest group is said to have "captured" the agency. The agency does the committee’s bidding to gain support and budget appropriations, and committee members may be reluctant to closely monitor the agency’s activities because they rely on the agency to implement policies favored by their constituents.
Although they are an example of client politics, iron triangles can produce positive results. The alliances can help to ensure that the laws Congress passes are effective and practicable and that interest groups have a say in the creation of legislation that affects their members. In addition, Congress can rely on outside experts to ensure that it writes legislation in a manner suitable to get the necessary tasks accomplished.

Political scientists believe that iron triangles are less common today than they were in the past due to an increased number of interest groups, which often represent competing interests, and the decentralization of Congress. The courts have also made it easier for individuals and other parties to intervene in agency issues.

Political scientist Hugh Helco believes that most agencies today are part of issue networks, which are comprised of people in Washington-based interest groups, congressional staffers, advocates from university think tanks, and members of the media. These groups, which are split along political, economic, and ideological lines, debate policy on certain issues to promote their respective political philosophies.