

9. Bureaucracy & Mid-term 2 Review

Breakout Sessions

POLS 1101

12:40pm-1:30pm Park Hall 145

& 1:50pm-2:40pm Leconte Hall 135

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Bureaucracy in a Democracy

- **Bureaucracy** is an organization that administers or carries a set of activities. The authority of government bureaucracies comes from **the rule of law**.
- **Bureaucrats** are experts in their particular domains and have specific job responsibilities that fall within the bureaucracy's hierarchy of authority.
- Unavoidable Tensions between **demands of democracy** and the **imperatives of bureaucracy** – **role conflict**
 - Aspirations of the people vs. things bureaucrats desire or require for their work
 - Most of the bureaucrats are not directly selected by voters.
 - Professionalism -> Prefer Evidence-based decision making, See the value of operating in secret away from public view
 - Demands of democracy -> **high responsiveness** -> **act (too) swiftly, decisively**, which may be against professionalism as well as imperatives of bureaucracy
 - A way to eliminate such tensions: **red tape (rules and other constraints that democracies demand that restrict bureaucrats' behavior)**

Red Tape

- **Remember:** Red tape refers to the unnecessary, redundant, even rigid rules that the bureaucrats face – so it depicts the inside dynamics of bureaucracies
- **Examples**
 - Federal-level: lengthy budget approval processes. The proposed budget must often pass through multiple layers—division, agency, department, and finally the Office of Management and Budget (OMB). This process can take months or even a year.
 - State-level: distributing federal education grants. The state government can require school districts to submit numerous forms and performance reports. Different departments often demand overlapping data. Superintendents in Texas and New York have publicly complained that the burdensome grant processes “turn principals into full-time clerks.”
- But... **Are there any advantages of red tape?**
 - Don’t forget why red tape is produced!
 - So, how can it “eliminate tensions between **demands of democracy** and the **imperatives of bureaucracy**”?

Bureaucracies at Work

- **Bureaucratic Roles**

- Bureaucrats in the civil service system are mostly hired on their **merit**, not **political affiliation**. -> Ensure the **stability and professionalism** of the executive branch
 - The Pendleton Act (1883), the Hatch Act (1939)
 - The “Submerged State”
- Hierarchies: Operators -> Managers -> Executives (sometimes overlapping!)

- **Bureaucratic Organization & Network**

- Departments: head (secretaries) -> members of the president's cabinet
- Independent agencies (directly under presidential control; **regulatory commissions**)
- Government corporations (“state-owned enterprises”, SOE)
- A bureaucratic network can involve the above institutions, as well as private profit-seeking and private nonprofit organizations
 - Comparisons between **pure bureaucracy** and **bureaucratic network**
 - **Chains of command**
 - Leadership (**critical tasks, organizational culture, sense of mission**)
 - **Efficiency, Accountability, Transparency**
 - **Resources and expertise**

Bureaucratic Decision Making

- **Criteria**
 - **Satisficing** based on bounded rationality (H. Simon)
- **Patterns**
 - Less innovative – fear of failure, blame avoidance
 - So, **incrementalism** – policies and programs change bit-by-bit, step-by-step
- **Factors bearing on bureaucratic decision making**
 - External forces
 - Specific conditions in the environment: complexity? predictability? stability? ...
 - Expectations of peers: on-the-job learning (peer effect)
 - Specific processes, routines, and technology that bureaucrats work with in their agencies
 - Internal forces (to bureaucrats themselves)
 - Prior experiences – framing effect (how do they structure the new information they get?)
 - Group identity / membership – Do I belong to a larger professional community?
 - Personal political ideology
 - Decision making is a complicated process -> tensions between **discretion & control**

Representative Bureaucracy

- **Definition**
 - Government bureaucracies with bureaucrats who share personal characteristics with the communities they serve are more likely to represent the interests of them.
- **Passive / Active representation: descriptive / substantive**
 - **When bureaucracies passively represent the community, they are more likely to effectively provide active representation to all its members (but not necessary!).**
 - One condition: **bureaucratic discretion**, the ability of bureaucrats to use their professional judgment when deciding how to carry out a policy.
 - **Mechanisms relating passive representation to active representation**
 - Creating opportunities to ensure that people who share personal characteristics with individual bureaucrats are well served by their government agency.
 - Peer effects
 - **Coproduction** – communities and bureaucrats work together to serve the public
 - Formal mechanism to engage community members – e.g. **agency advisory committee**

Administrative Discretion & Controlling the Bureaucracy

- Enduring rivalry between **Congress** and **President** for control of the bureaucracy
- Why?
 - **The Constitution itself**
 - **Congress**: lawmaking branch -> bureaucracies follow the laws they make.
Besides, Congress's enumerated powers are highly related to bureaucratic control.
 - **President**: the president's job to "take Care that the Laws be faithfully executed"; "Commander in Chief of the Army and Navy"; power to nominate officials
 - **The institutional and political perspectives**
 - **Congress**: rely on the bureaucracies to serve the constituents and thus get their votes
 - **President**: need bureaucracies to achieve his cross-agency policy goals influencing the whole country
- What / Where?
 - **Appointment**: Nomination by President, some of which need consent from the Senate
 - **Rule making: Regulations** of the bureaucracy, where presidents can exert influence, and Congress can judge whether they are at odds with legislative intent
 - **Congress oversight**: Presidents dislike it since it takes extra time for bureaucrats to advance the president's priorities; it can even ignite political scandals and embarrass presidents.
 - Police patrol oversight (proactive and direct); fire alarm oversight (reactive and indirect)

Administrative Discretion & Controlling the Bureaucracy

- **Courts and the bureaucracy – Supreme Court strikes down *Chevron*, curtailing power of federal agencies**
 - **Background:** *Chevron v. Natural Resources Defense Council* (1984)
 - Should courts defer to a federal agency's interpretation of a statute when the statute is ambiguous or unclear?
 - The Court ruled unanimously (6–0) that when statutory language is ambiguous, courts must apply the **Chevron Two-Step Test**:
 - 1) If Congress's intent is clear, courts must follow that intent.
 - 2) If Congress's intent is unclear, and the agency's interpretation is “reasonable”, courts should defer to the agency's interpretation.
 - The case established the principle of **Chevron Deference**, one of the cornerstones of U.S. administrative law.
 - It significantly expanded **the authority of federal agencies in statutory interpretation**, since courts generally defer to agencies as long as their interpretations are reasonable.

Administrative Discretion & Controlling the Bureaucracy

- Supreme Court strikes down *Chevron*, curtailing power of federal agencies
 - Majority opinion
 - *Chevron* deference is inconsistent with the Administrative Procedure Act, a federal law. The APA directs **courts** to “decide legal questions by applying their own judgment” and therefore “makes clear that agency interpretations of statutes — like agency interpretations of the Constitution — are *not* entitled to deference.
 - Even when those ambiguities involve technical or scientific questions that fall within an agency’s area of expertise, “**Congress expects courts to handle technical statutory questions**”.
 - Even if courts should not defer to an agency’s interpretation of an ambiguous statute that it administers, it **can** consider that interpretation when it falls within the agency’s purview.
 - Dissent
 - Congress often enacts regulatory laws that contain ambiguities and gaps, which agencies **must then interpret. Agencies are more likely to have the expertise to make such decisions.**
 - **Chevron has been applied in thousands of judicial decisions. It has become part of the warp and woof of modern government**, supporting regulatory efforts of all kinds.
 - It is a **judicial power grab**. By overruling *Chevron*, the court had **given “itself exclusive power over every open issue** — no matter how expertise-driven or policy-laden — involving the meaning of regulatory law.

Midterm 2

- **Location:** Normal Lecture Hall
- **Time: Wednesday** 1:50-2:40 (50 minutes, class time)
 - If anyone needs A&T (DRC) accommodations, please contact them to make arrangements
 - If they need approval from instructors, please contact Dr. Nicholson, since he is responsible for this class.
- **Layout:** Multiple choices (25-30) [Scantron 882-E] & Short-answer questions (choose 4-5) [Bluebook] – remember to buy bluebooks, scantrons, #2 pencils at the bookstore
- **Remember:** This is a CLOSED BOOK exam! Pay attention to integrity requirements!
- **What:** Civil Rights – Courts, all we learned between two exams (See Review Sheet on eLC)
- **Suggestions**
 - Remember **my name** and **time for your breakout session (not time for lecture! But 12:40-1:30 F, or 1:50-2:40 F)**, since you will need to place them in a pile for me to grade.
 - **Key ideas** (theory, concept, professional items, SC cases) + **explanation** (when, where, who, what, why, how – not all of them; **put down what you think necessary**)
 - **If you are not sure, much is better. If you really have no idea, only telling stories is also encouraged.**
- I'll be **less strict in grading**, but **still keep my “best judgment”** and **make it fair for everyone**.

Midterm 2 Review

- **Review Sheet on eLC**
 - Combine it with **lecture slides**, as well as breakout session slides (if you find it helpful to understand basic concepts & theories)
- **Thanks to our Lead TA, Mckinley Frees!**
 - **Key items review:** <https://quizlet.com/954378427/pols-1101-midterm-2-key-terms-review-flash-cards/?funnelUUID=00accdac-af35-4659-851e-fdf4954236fc>
 - **Study guide:** <https://quizlet.com/study-guides/pols-1101-midterm-2-key-terms-review-fe50d865-3d53-437b-9b77-70df3462d078?funnelUUID=72497043-5a96-483f-a405-5e9de2876c20>

Next week...

- We will NOT check attendance (if permitted - hope that you enjoy the weekend after midterm 2!)
- However, we'll still meet in regular time & location, since it's my teaching responsibility – focusing on **Courts** (Not by reviewing key ideas – since you've had your exam by that time, but by watching a **documentary**)
- Feel free to email me if you have any questions!
- ENJOY YOUR WEEKEND!
- Don't forget to prepare for Wednesday's exam! & **Good luck in your Mid-term 2!**