

Theory on Bureaucratic Control (or “Bypass”)

The concept of bureaucratic bypass in the United States can be seen as conflicting with the principles of limited government and popular sovereignty outlined in the Constitution. However, some may argue that federal oversight is necessary to ensure accountability and promote access to a higher quality of life. This matter has been extensively explored in various publications, including "Who Governs the American Administrative State? A Bureaucratic-Centered Image of Governance" by Larry B. Hill and "The U.S. Constitution: A Reader" by Hillsdale College Politics Faculty. The extent of this problem has been explored through my book "I Know a Deadbeat Judge When I See One," the document "Players Scorecard Child Protective Services" by Steven R. Isham, and the journal "Risk Management in Child Protective Services" by Michael J. Camasso and Radha Jagannathan. We will be focusing on two different perspectives through which this issue has been examined: functional theory and conflict theory.

According to Giddens, Duneier, Appelbaum, and Carr (2018), the functional theory, or the functionalist perspective, asserts that society is made up of interconnected parts that work together to maintain social order and stability (pp. 17-20). Bureaucrats are viewed as critical actors responsible for carrying out government functions to ensure that society runs efficiently with specialized knowledge and expertise. This theory argues that bureaucracy serves a necessary function in society by implementing policies and regulations efficiently and effectively. Bureaucrats are considered experts in their fields and have the necessary knowledge and expertise to perform their duties. Hence, bypassing the U.S. Constitution by bureaucrats can be seen as necessary to achieve the greater good of society, even if it means going against the legal and constitutional framework of the United States.

On the other hand, according to Giddens, Duneier, Appelbaum, and Carr (2018), conflict theory proposes that bureaucracy is a mechanism utilized by the ruling class to preserve power and domination over society (pp. 21-24). According to this theory, bureaucrats use their power to evade the U.S. Constitution and promote the interests of the ruling class rather than the welfare of the general public. Conflict theory asserts that society consists of competing interests and groups striving for power and resources. Bureaucrats are perceived as gatekeepers who obstruct substantial societal changes from taking place. By circumventing the Constitution, bureaucrats can maintain the status quo and safeguard the interests of the ruling class, even if it is detrimental to the greater good. Bureaucrats are considered as part of the power structure, and their actions are influenced by their self-interests and the interests of the groups they represent.

Larry B. Hill's study of bureaucratization illuminates the issue of bureaucratic bypass, examining it from both functional and conflict perspectives. Additionally, Hill has highlighted the writings of Weber, who asserted that the bureaucratization of modern states arose due to the adoption of a rational-legal basis for structuring official authority relations instead of traditional or charismatic bases (Hill). Hill's research reveals that bureaucrats often engage in bureaucratic bypass, which

refers to ways in which bureaucrats circumvent the formal procedures and regulations governing their actions.

From a functionalist perspective, bureaucratic bypass is seen as a necessary function of government, especially in times of crisis or emergency when certain procedures may hinder quick and efficient action. However, from a conflict perspective, bureaucratic bypass is seen as a way for bureaucrats to consolidate power and protect their interests at the expense of the public and the Constitution.

Historical examples of bureaucratic bypass in the United States include the Watergate scandal, where President Richard Nixon (Hill) and his administration employed government agencies such as the CIA and FBI to spy on political opponents and cover up illegal activities (Hill). This is a clear example of bureaucrats bypassing the Constitution to protect their interests. Another example is the use of executive orders by presidents to implement policies without congressional approval, bypassing the legislative process.

Hill argues that bureaucrats in the United States have become so powerful that they can bypass the Constitution and act as a separate, self-governing entity, creating and enforcing regulations without input from the legislative or judicial branches of government. This highlights the need to strike a balance between functional and conflict perspectives on bureaucratic bypass, ensuring that bureaucrats do not overstep their authority and that the Constitution remains the guiding principle for governance in the United States and elsewhere.

In addition to historical examples of bureaucratic bypass, there are also legal frameworks in place that allow bureaucrats to exercise significant power and influence. One such framework is the Chevron deference, which has been subject to much debate and controversy. This legal concept was established in the landmark *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* case in 1984, allowing courts to defer to an agency's interpretation of its own regulations if it is deemed reasonable (Hillsdale College Politics Faculty). While this doctrine assists bureaucrats in navigating complex legal matters and developing policies for the benefit of society, critics argue that it can lead to abuses of power by allowing agencies to make decisions without significant oversight or accountability. It's worth noting that this Chevron deference has enabled bureaucrats to create regulations that significantly affect citizens' lives without much input from elected officials.

In the context of state actors, my critiques of the judiciary system highlight the potential for abuses of power when it comes to decisions regarding the custody and removal of children from their families (Isham). State actors, such as child protective services or other government agencies responsible for child welfare, may have significant authority in determining the outcome of such cases, which can have serious and lasting impacts on the lives of the children and their families (Isham). While the Chevron deference is one example of the legal frameworks that enable bureaucrats to wield significant power, it's important to examine how this power can be exercised by state actors in sensitive areas such as child welfare. This highlights the need

for accountability and oversight in the decision-making processes of government agencies responsible for protecting vulnerable populations.

Without appropriate oversight and accountability measures in place, state actors may make decisions that are influenced by personal biases, interests, or the complexity of the legal system, resulting in injustices and unequal treatment of families. In such cases, the need for reform is particularly urgent to ensure that the best interests of the children are prioritized, and that the rights of parents and families are respected.

The document "Players Scorecard: Child Protective Services" and journal "Risk Management in Child Protective Services" appear to solidify my specific case involving the removal of children from their parents and underscores the importance of these issues (Francois). They highlight the need for transparency and accountability in the decision-making process, as well as the need for adequate legal representation for all parties involved. Without such safeguards in place, the potential for injustices and abuses of power remains a significant concern.

The Federal Register has been proposed as a solution to enhance transparency and accountability in administrative agencies by providing a centralized publication platform for agency decisions. However, functionalist and conflict theory perspectives suggest that laws were historically kept at bay in simpler ways, such as through the use of Statutes at Large (Hillsdale College Politics Faculty).

From a functionalist perspective, the use of Statutes at Large allowed for the preservation of the social order by creating a clear and stable legal framework. This framework was essential for maintaining social cohesion and ensuring that society functioned smoothly. The Statutes at Large served as a reference point for citizens and lawmakers alike, allowing for consistency and predictability in legal decision-making.

In contrast, conflict theory would argue that the use of Statutes at Large served the interests of the ruling class rather than the general population. By controlling the legal framework, those in power were able to maintain their status and influence in society. This control could be used to suppress dissent and maintain social inequality.

Connecting functional theory and conflict theory, it is essential to examine the role of legal publication in promoting transparency and accountability in administrative agencies. While the Federal Register is commonly used for this purpose, it is crucial to acknowledge the historical context and alternative methods of legal publication, such as Statutes at Large. These perspectives shed light on the potential biases and power dynamics inherent in legal decision-making, which can either serve to maintain the status quo or challenge existing power structures. Therefore, it is crucial to continually evaluate and improve systems of governance to ensure that they promote fairness, equity, and justice for all members of society.

Regardless of the perspective, functional or conflict theory, it's essential to respect and uphold the Constitution's principles, particularly the separation of powers. Bureaucrats must be held

accountable for their actions and act in the public's best interest, rather than serving the interests of the ruling class. However, administrative government concepts that bypass the democratic process of elected officials enacting laws can undermine the people's sovereignty, limited government, and separation of powers, as stated in the Declaration of Independence. The government's just powers are derived from the consent of the governed, which must always be respected.

In what way did we fail to notice these significant changes? Let's explore the ideology of Progressivism, which is a philosophical movement aimed at improving society through social, economic, and political reforms by surpassing the principles and practices of the Enlightenment. Progressivism is characterized by a commitment to the idea of progress, which means that human societies should continuously evolve and improve over time. Progressives rejected the Enlightenment's emphasis on reason, individualism, and self-interest, which they saw as inadequate in addressing the social and economic issues of their time. Instead, they advocated for a more collectivist approach that highlighted the role of government in promoting social justice, equality, and welfare. Progressives saw the judicial branch as a model for the administrative state and did not believe that Congress was the only entity capable of making laws and regulations. Progressives believed that society's problems could be solved through scientific management, social planning, and the use of state power to regulate the economy, ensure public health and education, and protect workers' rights. Some of the key principles and practices of Progressivism include the advancement of social welfare programs, regulation of monopolies and trusts, establishment of labor protections and unions, expansion of democratic participation, and development of social and economic reforms that address the needs of marginalized groups.

In the late 1800s, Progressives utilized societal circumstances like industrialization, immigration, and economic obstacles to contend that the founding principles of America were no longer pertinent or effective. They were of the view that governments guided by scientific principles could enrich human nature. President Woodrow Wilson and some Progressives suggested that the Constitution did not establish any superior branch of government and put forth the idea of finding a central point of leadership to bring about changes within the existing framework. In his 1887 essay "Socialism and Democracy," published in "The U.S. Constitution: A Reader" on pages 650-651, Wilson argues that there is no meaningful distinction between socialism and democracy. Wilson disregarded the principle of separation of powers in the Constitution and urged the elevation of the president to a position of leadership above all branches of government to create a coherent and coordinating force.

The factors contributing to bureaucratic power have played a significant role in the expansion of administrative agencies during times of significant social and economic objectives, as demonstrated during the New Deal era under Franklin D. Roosevelt (Hillsdale College Politics Faculty). While some argue that this growth was necessary for efficient goal attainment, others contend that it eroded the Constitution and sustained existing power structures. Despite the similarities in beliefs between FDR and Woodrow Wilson regarding the government's role in progressing towards social justice, the transformation of Progressivism into modern liberalism

resulted in a shift away from traditional Progressive values, with a focus on ideas such as multiculturalism, sexual expressionism, and environmentalism.

In conclusion, while both perspectives have their merits, the Constitution must always be respected, and bureaucrats must be held accountable for their actions. To sum up, the issue of bureaucrats bypassing the U.S. Constitution is a complex matter that can be analyzed from the perspectives of both functional and conflict theories. Some argue that bureaucratic bypass is a necessary aspect of government, while others perceive it as a means for bureaucrats to consolidate power and protect their own interests, which can undermine the public and the Constitution. Overcoming bureaucratic avoidance of the U.S. Constitution is now imperative to provide the U.S. republic with a mission that is worthy of its founding principles and the challenges of our time. As citizens, we must remain vigilant and hold our government accountable for its actions to ensure that our democratic institutions are not subverted by those who seek to bypass them. It is also the responsibility of the government to ensure that bureaucracy is utilized in a way that upholds the Constitution and serves the greater good. Moving forward, it is crucial to consider both perspectives and ensure that bureaucracy operates within the bounds of the Constitution and in the best interests of society. It is essential that bureaucrats act in the best interests of the public and uphold the Constitution.