

INTERNAL CHECKS - What are They?

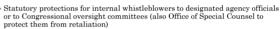
- · Civil Service employees (with experience and protection)
- · Dissent Mechanisms
- Government lawyers (with professional norms)
- Internal Watchdogs (Inspector Generals & Offices of Goodness)
 - Two other items have "watchdog"- like status: independent agency structure & APA
- · Overlapping admin agency jurisdictions & conflict

INTERNAL CHECK - Civil Service

- · Civil service is the employee workforce within all of the administrative agencies.
- Key is the protection from removal offered via "civil service acts"
- Executive Branch civil service of 3 types:
- (1) "competitive service" positions filled via competitive, meritbased testing
- (2) "excepted service" positions in national security & intelligence mainly, but also attorneys
- (3) Senior Executive Service (SES) positions in top level management & professional positons (mix of career employees & appointees).

INTERNAL CHECK - Dissent Mechanisms to 'Out" Concerns

- · Admin agency civil servants may have connections to and relationships with:
- · Congress members/Committee oversight members
- Society or industry groups
- · Regulated businesses
- · State & local officials



- · Authorized "Dissent Channels" (well-known one at Department of State)
- · Leaks to the press are frequent despite criminalization & Presidential approbation (and some are even tolerated . . .)

INTERNAL CHECK - Government Lawyers

- The government employs MANY lawyers many are in the Executive Branch.
 Thousands of lawyers in General Counsel Offices in each admin agency
 Thousands of lawyers in Dept. of Justice & in the White House
- Lawyers bring "professional norms" (legal, ethical, moral) to both "check" & motivate behavior inside admin agencies
- Office of Legal Counsel (OLC) in Dept. of Justice (traditionally) treated as
- providing authoritative & binding legal advice inside Executive Branch

 OLC to provide legal advice based on "best understanding of what the law requires" · Not advocate's promotion of position proposed by admin agency or Presidential
- On issues of first impression unlikely to be addressed by court, OLC can be "final word"

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A Public Service Message:

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Legal Jobs? Yes!

Something to consider

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INTERNAL CHECK - Internal Watchdogs



Offices of Goodness

- · Offices within admin agencies that help the agency function
- These offices have their own missions: to
- promote values
 Civil rights & civil liberties
- · Consumer welfare
- · Ethics & lawful behavior
- Good fiscal practices
- · Advisory; operate by persuasion & coercion
- Good & promote good example to public

Inspector Generals

- Created by Inspector General Act of 1978 to prevent/detect fraud inside admin agencies
- · Enjoy statutory protections & possess investigatory powers so they can do their job without interference
- · Dual reporting role: to their admin agency & to Congress
- · Conduct audits, access documents across agencies

INTERNAL CHECK - Internal Watchdogs



- •Two other items with "watchdog like" status:
- APA (with its procedural constraints)
- "Independent" agency structures built by Congress
 - · Lots of these: CIA, FCC, FERC, NRC, etc.

INTERNAL CHECK - Overlapping Admin. Jurisdiction & Conflict

- · Admin. agencies are often given overlapping jurisdiction & seemingly conflicting missions
- · Overlap traditionally seen as creating problems and inefficiencies when admin agencies clash & impede each other.
- Can be seen as method of fostering conflict that leads to discussion & exchange of ideas that ultimately foster better decision-making.
- May be even more useful at times when Congress & President at logger-heads.

INTERNAL CHECK (or Problem?)

- · Agency structure (in terms of how work gets done thru a hierarchy) impacts prioritization of work and certain perspectives.
- Agency structure often fosters sub-delegation of decision-making, especially through "signature authority.
- Authority to affix signature/sign-off on admin agency decision without actual supervisory oversight.
- · Perhaps problematic because impacts direct line of accountability.
- Everyone inside an agency is human (own preferences & bias) may facilitate rather than buffer political agenda.

INTERNAL CHECKS - Do They Work?

Check Power?

- · Admin actors operate in the "thick political surround" influencing Congress & courts to look hard at Presidential activity
- "Second Best" in the sense that even if Congress & Judiciary weakening, this is still *some* layer of "check."
- Cacophony of activity inside admin agencies at least airs issues and spurs discussion.

Enhance Power?

- Presidents can manipulate overlapping admin agency jurisdictions by selecting one to use to perform directed tasks
- "[G]rowing reliance on a more policy and politics-infused legal apparatus."

 "President today looks to executive branch legal review to forge pathways to policy and political compromise in highly-contested consequential and increasingly legalistic terrain."

GOVERNMENT LEGAL REPRESENTATION AND THE NATURE OF A CLIENT?



