The Bureaucracy...

... is so gosh-darned important b/c it implements the policies set by Congress and the president. The Bureaucracy —

• Writes regulations

• Issues fines

• Testifies before Congress

• Is part of “iron triangles” and “issue networks”
Bureaucracy includes

- **Cabinet** departments (quasi-legislative (Q-L) and quasi-judicial (Q-J))
  - Broad mission — defense, education, etc.; political focus

- **Independent regulatory commissions** (Q-L and Q-J)
  - Usually protect part of economy (ex: the Fed, SEC)

- **Executive agencies** (neither Q-L nor Q-J)
  - Narrow focus, not political (ex: NASA)

- **Gov’t corporations** (neither Q-L nor Q-J;
  - Privately owned, performing public function; not political (ex: Fannie Mae)
The Bureaucracy is designed to be…

… professional, neutral, specialists. The following are intended to help achieve that:

- Pendleton Act
- Office of Personnel Management
- Merit Systems Protection Board

Political patronage still exists at highest levels and can compromise effectiveness.
Relations with Congress

Congress delegates much power to bureaucracy. Why?

- Congress lacks time
- Congress lacks expertise
- Congress wants plausible deniability

Congress can check bureaucracy by —

- Power of the purse
- Oversight hearings
- Changing agency’s jx or reversing its actions
- Abolish agency altogether
Relations with the President

President can —

- Appoint agency heads (subject to A&C)
- Reorganize an agency
- Issue executive orders
- Influence the budget of an agency
- Through OMB, review regs (cost-benefit analysis)

The president has lots of control over agencies but perhaps less than one might expect. Why?

- Agency heads might become agency advocates
- Expertise is in career employees. They outlast presidents.
- Other actors (namely, Congress) try to influence agencies, too.
Bureaucrats’ checks

- Congress and president need agencies’ expertise for effective implementation of statutes.

- Bureaucrats can affect how a statute gets implemented through —
  
  - regulations
  
  - interpretations ("street-level bureaucrat")
  
  - enforcement actions
Relations with the public

The public checks through —

• FOIA requests

• Open Meeting Law/Sunshine Act

• Administrative Procedures Act (allows people to comment on proposed regs)

• Lawsuits

• Complaining to Congress or White House.
The Judiciary
First, the structure

• Dual court system — Federal and state gov’ts have separate courts

• Federal system

  • Article III courts (a/k/a “constitutional courts”):
    • District Courts (94; original jx; not required by Constitution)
    • Appeals Courts (13; appellate jx only; not required)
    • USSC (1; almost all appellate jx; required by Constitution)
  • Article I courts, a/k/a “legislative courts”)
    • Courts — like bankruptcy, tax, maritime — to help Congress.

• Our courts are based on “adversarial system”
Powers

• Ultimately, the power of persuasion (see, e.g., Federalist #78). Courts need to protect their legitimacy lest orders be ignored. That said…

• …courts have final say on what is legal, binding, and constitutional…

• … thanks to Marbury v. Madison. USSC has power of “judicial review,” which is the power to declare something unconstitutional.

• Opinions can be a source of “unfunded mandates” (think Brown v. Board of Education).
Judicial philosophy

- How a judge rules depends in part on judicial philosophy. All judges look at literal language. Difference arises when language is ambiguous.

  - **Judicial restraint** (a/k/a strict constructionist): what did drafters understand the words to mean

  - **Judicial activism** (a/k/a loose constructionist): what was the intent of the drafters

- Other influences on a judge:
  - Stare decisis
  - Precedents of superior court
Getting a case into federal court

- Need —
  - “diversity” (parties from different states + $75k in dispute) or
  - federal Q (about Constitution, treaty, or fed’l statute or reg)
- Need “justiciability” (courts must be able to provide adequate remedy). So no case, for instance, that —
  - is moot (i.e., the dispute has been settled)
  - is hypothetical
  - involves wrong party
  - involves political question
How cases get before USSC

• Petition for **writ of certiorari**
  • Rule of 4

• Reasons for granting cert
  • Split in the circuits the #1 reason

• Types of decisions: majority (a/k/a “opinion of the court”), concurrence, dissent, plurality
Appointment process

• Named by President
  • Will often use informal “litmus tests” — this is where judicial philosophy enters
  • Note role of “senatorial courtesy” and “blue slips”

• Subject to A&C of Senate (and ONLY the Senate!)

• Theoretically insulated from politics by
  • lifetime appointments during “good behavior” (can be impeached, but very, very rare)
  • salaries that cannot be reduced
  • control over docket (at the Supreme Court level) — note that only about 1% of cert petitions are granted.
  • no lobbying (other than through briefs, oral argument, other formal steps)

• But note that judges go through very political nomination process
Checks

On the court by the other branches:

- President —
  - nominates (requires A&C of Senate);
  - grants pardons, thus effectively undoing what court did.
  - can ignore court order (not legally)
- Congress can —
  - change court’s jx
  - change # of inferior courts
  - impeach and remove judges
  - amend Constitution
  - pass laws overturning non-constitutional decision.

On the other branches by the court:

- Declare laws/actions unconstitutional
- Force executive to turn over documents
- CJ presides over impeachment trial of president

On the court by the court:

- Stare decisis
- precedent
Review games

http://jeopardylabs.com/play/presidential-jeopardy31

https://create.kahoot.it/create#/edit/151f8e5e-0ecb-426d-a3fa-e117ee841796/overview

Or perhaps a little...