

2.14

Holding the Bureaucracy Accountable

Explain how Congress uses its oversight power in its relationship with the executive branch.

Explain how the president ensures that executive branch agencies and departments carry out their responsibilities in concert with the goals of the administration.

Writing laws is but one important function of Congress. Another important duty of Congress is to ensure that executive agencies implement legislation as intended. This oversight fulfills Congress' vital check on the other branches of government. This "vigilant oversight of administration," as Woodrow Wilson wrote, has been deemed the "watchdog on the Hill." The oversight function of Congress is played out through its power of the purse and through investigative committee hearings.

The most pronounced and distinct constitutional authority given to the U.S. Congress is the power of the purse. Often maligned and disparaged, Congress nevertheless is granted the power to raise revenue and spend it on public projects that advance democratic interests. The power of the purse should be seen for what it is worth. Congressional appropriations limit government as much as they empower it.

In dividing the federal government into three parts, the Constitution gives each branch tools 'to resist encroachments of the others.' One of Congress's most potent strengths, particularly with respect to the executive branch, lies in its control over the money of the federal government. Article I, Section 8 begins its enumeration of the powers delegated to Congress with the 'Power To lay and collect Taxes, Duties, Imposts and excises'; it follows immediately with the power 'To borrow money on the credit of the United States.' Article I, Section 9 commands that 'No money shall be drawn from the Treasury, but in Consequence of Appropriations made by law.' Article I, Section 7 prescribes the exclusive process for making a law, which commences with positive action by both Houses of Congress. Thus, unless Congress passes laws to impose taxes, authorizes borrowing or appropriates funds, the executive branch can neither take money from the citizenry nor spend money on behalf of the government.

This fiscal discretion given to Congress has wavered throughout history. As we have seen, it is difficult for Congress to act in one accord. During national crises like economic depressions and wars Congress has deferred to strong executive authority. They have had to reign in executive authority through specific pieces of legislation.

For example, in 1974 Congress enacted the Budget and Impoundment Control Act. Its primary purpose was to restore Congress' proper place in the federal budgetary process. Numerous protocols and committees were formed to shore up Congressional authority over presidential actions. The Congressional Budget Office (CBO) was also created to provide independent financial estimates and long-term outcomes for prospective public policies. More recently the public has demanded from Congress an attempt to reign in fiscal irresponsibility. Congress, therefore, has implemented a number of Pay-as-you-go provisions along with complicated sequester agreements in order to control the expansion of government. The power of the purse gives Congress tremendous authority. It should be seen, when used right, as a fundamental means of checking, balancing and limiting the national government.

Democratic accountability depends upon a robust system of oversight. James Madison called the separation of powers with its implied oversight duty "the sacred maxim of free government." Congress has fulfilled its oversight duty with varied success. For some this oversight duty has served as a proper check on the natural tendency toward abuse of power in the executive branch. Others, however, claim that Congress has failed in its attempts to adequately hold the president accountable.

Political science agrees that skillful oversight requires both proper expertise and clear budgetary power. Today's Congress is accused of lacking both. A case in point is the oversight of executive branch intelligence agencies following 9/11. Testifying before the Senate Select Committee on Intelligence, Lee Hamilton in 2007 stated:

To me, the strong point simply is that the Senate of the United States and the House of the United States is [sic] not doing its job. And because you're not doing the job, the country is not as safe as it ought to be... You're dealing here with the national security of the United States, and the Senate and the House ought to have the deep feeling that we've got to get this thing right.

Congressional oversight may in fact be crucial not only to the very success of government but of our way of life as well.

Congressional oversight is not easy. There are many different access points to measure. There are multiple players to consider and assess. It is not always easy to know when oversight is effective. At its core oversight requires Congress to evaluate to what extent the executive branch follows the law of the land. And there lies the problem. All too often legislation is written in vague terms. Executive agencies are given broad discretionary powers. As we saw in our post 9/11 worlds, partisanship played a predominant role in Congress' check of presidential power and authority. Whereas Republicans turned a blind eye to Bush policy initiatives, Democrats voiced strong opposition regardless of the logic. Committee hearings were poisoned from the start.

A recent political scientist has claimed that Congress' policing of executive activity looks more like fire-fighting. Legislators, it is argued, "jump into action" only when enough alarm is raised by outside groups. It appears then, that if we want an attentive Congress "we the people" will need to be more attentive. Greater expertise must be demanded from our Congress. Properly using its power of the purse also authorizes Congress to interrupt the undaunted courage of unilateral executive action. Congress is more than just a lawmaker. Congress represents us by not only passing good public policy but also by holding the rest of government accountable. As Madison wrote in Federalist 51, "If men were angels, no government would be necessary." We may not have any angels looking over us, but we certainly need somebody looking over us.

Sitting in plain view atop President Harry S Truman's Oval Office desk sat a simple sign, "The buck stops here." Truman was not the type of president to skirt responsibility. Decisions made by the executive branch through its agencies and departments were ultimately acting as agents of the president. Truman saw himself as responsible. Yet when leaving the office of President Truman said to Eisenhower, "[You will] sit there all day saying do this, do that, and nothing will happen." Executive branch agencies and departments often act beyond the direct control of the president. Nevertheless, many political scientists have labeled the president both a central "overseer and decider" of executive branch activity. Much of the time this means carrying out the partisan goals of the sitting president.

The framers established a unitary executive. This provided for certain inherent powers. Article II, Section 1, Clause I of the U.S. Constitution states: "The executive power shall be vested in a President of the United States of America." Whether unwittingly or not, the Vesting Clause allocated to the president powers over policy making by all executive agencies and departments. Priorities of the president can quickly become the priorities of our government. This inherent power, as some have argued, allows the president "to act in the absence of statutory authorization."

The President is sworn in by taking the following oath of office: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States." There is plenty of evidence to suggest that our founders intended to empower that oath with certain affirmation of power. The influential writings of John Locke described a need for a strong and energetic president:

It is not necessary – no, nor so much as convenient – that the legislative should be always in being; but absolutely necessary that the executive power should, because there is not always need of new laws to be made, but always need of execution of the laws that are made...[The power to act] according to discretion for the public good, without the prescription of the law and sometimes even against it, is that which is called prerogative.

The English King held certain prerogative powers “for the sake of unanimity, strength, and dispatch.” John Marshall referred to the President as “the sole organ of the nation.” More recently it has been argued that the Constitution

...Gives presidents the power to control their subordinates by vesting all of the executive power in one, and only one person: the president of the United States.

A unitary president is one of the most agreed upon legacies of the Constitutional convention in Philadelphia in 1787. In real terms this means that the heads of executive agencies and departments are the political actors of the president. The buck does not just stop on the desk of the President it begins there as well.

Further evidence of a president’s political power over the executive branch agencies and departments is the unilateral authority given for removal of certain personnel. Throughout our history Congress has attempted to usurp certain aspects of this executive power. The Court, however, has invalidated attempts to weaken the president’s removal authority in the case *Myers v. United States* (1926). Both law and tradition have firmly placed our unitary chief executive at the top of the policy-making food chain.

As “overseer and decider”-in-chief a president’s power over the vast federal bureaucracy was enhanced with the creation of the Office of Information and Regulatory Affairs. Created by an act of Congress in 1980, this agency within the president’s Office of Management and Budget (OMB) plays a crucial role in assisting our unitary executive. It has been called “an information aggregator.” If knowledge is power this agency coordinates a wide spectrum of issues faced by our federal bureaucracy each and every day and applies consistent advice. Working closely with the Executive Office, the Office of Information and Regulatory Affairs (OIRA) serves as a surrogate for the president. Agencies such as these serve as a guardian of the political wishes of any and all sitting presidents.

Recent presidents have taken even more action to assure greater power and authority over executive branch agencies and departments. President Clinton in 1993 issued Executive Order 12,866. This had the sole purpose of improving the coordination and oversight of Federal regulation.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements

and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered...

This language may sound like common sense today, but it also sounds a whole lot like certain campaign promises made during the 1992 campaign. One of the pillars of the Clinton political agenda was a “reinvention of government.” This Executive Order was an attempt by the president to put his stamp on the actions and procedures of the executive branch at large.

Though it might sound like presidents are given a tremendous voice over executive branch activity, be reminded that the federal bureaucracy is made up of millions of workers. Billions of dollars are spent each and every day. The buck may stop on the presidents’ desk but there are still plenty more bucks to go around. This tension between our unitary executive and their attempts to control the federal bureaucracy will forever be a salient issue when studying American government.

Maybe Truman was right . . . on both accounts.