

# Did the Founding Fathers Fail to Consider the Process of Policy Implementation?

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### Were the Founding Fathers Too Concerned with Policy Formulation Thereby Neglecting Policy Implementation?

The US constitution immediately begins by laying out the legislative body of government, in effect concerning itself with policy formulation. However, the bureaucracy, or what we recognise to be the apparatus for policy implementation, is not mentioned once; as Barilleaux (1996: pp280) contends, "bureaucracy is one of the great 'blanks' in the Constitution". A Pew Research report has found that, in 2010, trust towards the bureaucracy was at an all-time low with an 80% level of distrust in federal departments (McKay, D. 2013: pp257). On these grounds then is it fair to accuse the Founding Fathers of neglecting the process of policy implementation? Firstly I will explore the current state and perceptions of the federal bureaucracy and assess the claims made by those who oppose it. Such claims include that of, firstly, delivering unacceptable performance, secondly, mobilising dangerous political power and, finally, oppressing the individual. One by one I will assess and ultimately disclaim the arguments on the basis that constant negative press of bureaucracy "leads us to a grossly misleading picture of our public employees and government agencies" (Goodsell, C. 1994: pp3). Overall then the bureaucracy does a fairly good job. Finally I will attempt to link the bureaucracy with the Constitution by laying down how the Constitution acts to regulate and in some instances limit the bureaucracy; Amendments Four and Five will be used to demonstrate this. To conclude, there are legitimate calls for concern regarding policy implementation thus suggesting the Founding Fathers neglected such a process. However, this view is balanced by the fact bureaucracy is a functioning and inevitable apparatus of government whose power, under the overarching and flexible constitution, is to such an extent limited.

By examining the criticisms and reservations of bureaucracy it is easy to understand why the Founding Fathers may be accused of neglecting policy implementation. Firstly, the bureaucracy is often criticised for its size. Goodsell (1994: pp134) notes how some 20 million people work for government in the US, that's more than a sixth of the work force and makes the American bureaucracy the fourth largest in the world. It's no wonder then that people wish it to be smaller and more limited; in fact every US president since Nixon has pledged to reduce the size and power of the bureaucracy (Barilleaux, R. 1996: pp292). One explanation as to how the bureaucracy has been able to swell to such a size is provided by Dennis Riley. Bureaucracy, according to Riley, is the politics of promise making. Every time a President makes a promise to the public they have to create one more organisation or agency to fulfil that promise, as Riley (1987: pp3-4) remarks, "pile two-hundred years of promises one on top of the other, and you have bureaucracy". I believe this to be an appropriate way of understanding the bureaucracy, in such a way that its increasing size can be viewed as an inevitable consequence, and given that presidential promises must reflect some will of the people, a large bureaucracy must be to some extent a desired consequence. On these grounds, the large bureaucracy is not a result of neglect from the Founding Fathers, rather a necessary consequence of presidential promises.

Bureaucracy's size and power have created other problems in which people are quick to criticise. Charles Goodsell (1994: pp134) places these criticisms into three main camps; "delivering unacceptable performance, mobilising dangerous political power, and oppressing the individual". However, it is important to note that Goodsell (1994: pp3) is in favour of bureaucracy, and believes it to do an overall good job; it is constant bad press and scapegoating which

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leads to a “grossly misleading picture”. Each criticism, therefore, will be examined with this in mind. Firstly, the criticism that bureaucracy delivers unacceptable performances. Like most things bureaucracy is relatively forgotten about. As public institutions perform everyday innocuous tasks people tend not to pay much attention; that is until it goes wrong. One great example is the ‘Fast and Furious’ initiative. This initiative saw the Bureau of Alcohol, Tobacco, Firearms and Explosives purposely put weapons into illegal circulation in order to track them, hopefully, to the source of illegal gun trafficking. However, as the LA Times reported “they lost track of more than 2,000 weapons, and the Mexican government says some of them have turned up at about 170 crime scenes there” (Oct 3, 2011). Not only does this example highlight gross incompetence but it also represents a failure in communication between the legislative and the implementation process; a loss in translation between Congress and the Bureaucracy. Again it must be stressed that, on the whole, bureaucracy functions fairly well.

Another criticism common of the bureaucracy is that, with its mass of unelected public servants, it can wield dangerous political power. One of the best and most covered examples of such an instance is the case of J. Edgar Hoover. A man whose purpose was to serve the people of America, provide security, and deliver appropriate checks and balances to the system; J Edgar Hoover was in fact allowed to head the FBI for 48 years, using his power and access to records to cement his position (Summer, A. 2012). Harry S. Truman summed up the power wielded by the FBI when stating, “We want no Gestapo or secret police. FBI is tending in that direction. They are dabbling in sex-life scandals and plain blackmail... Edgar Hoover would give his right eye to take over, and all congressmen and senators are afraid of him” (1947). This criticism combined with that of its size and its inefficiency leads us to the fourth major criticism, that the bureaucracy oppresses the individual.

The concept of ‘big government’ is constantly feared in American political culture. Its constitution is designed precisely to limit the extent to which that can happen. Because of its size and mass of unelected public officials, the government’s bureaucracy is viewed as a major threat to individual liberty. Bureaucratic oppression is defined as “action by administrative agents that impose unnecessary and harmful burdens on private parties” (Rubin, E. 2012. pp300). This criticism is not necessarily reserved to the likes of the National Security Agency, who, there’s no doubt, wielded copious amounts of power and oppressive force. This criticism applies to the everyday nature of bureaucracy. Dennis Riley (1987: pp165) cites how “agencies and their supporters have a very narrow – and self-interested – concept of the public interest and they will pursue it with single-minded dedication”; it is the role of critics, presidents and judges to force them off this path. One source of restraint upon the bureaucracy of which Riley doesn’t mention is the Constitution. The role the Constitution plays will be discussed shortly when assessing the Founding Fathers supposed neglect towards policy implementation.

Now that the criticisms of the bureaucracy have been briefly examined, it is easy to suppose that the Founding Fathers neglected the process and apparatus of policy implementation. However, I shall now attempt to discard this belief by firstly, reiterating my previous point of bureaucratic functionality, and secondly, by linking bureaucratic power to the restraints of the Constitution. Charles Goodsell makes the most substantive case for the functionality of bureaucracy. Goodsell (1994: pp3) maintains that “Americans are taught throughout their lives... that their government is a sea of waste, a swamp of incompetence, a mountain of unchecked power, an endless pain of mediocrity” and that this leads to a grossly “misleading picture of the public employees and government agencies”. It is always important to remember two things. Firstly that the government agencies rarely go wrong; for instance, the US Postal Service delivers billions of letters each week, most of which are delivered successfully, however, occasionally some are not; it is “that one late letter, not the thousands of on-time deliveries we have received, which shapes our image of the whole” (Goodsell, G. 1994: pp4). The second thing to remember is that government agencies are designed to fulfil a promise made by the government to the people. A point already made by Riley (1987: pp4) who points out how these promises were only made because “some of us wanted to hear them”. A third thing is that the US government, despite various claims, is comparatively weak; it is “fragmented, indecisive and infused with social influence” (McKay, D. 2013: pp267). Therefore, its ability to wield total and oppressive control is somewhat limited. Now that the good name of bureaucracy has, to some extent I hope, been restored, I now move on to link it with the Constitution to further reinstate my belief that the policy implementation process was not neglected.

One of the very first things mentioned in this essay is the absence of the term ‘bureaucracy’ in the US Constitution, thus fuelling claims that the Founding Fathers neglected policy implementation. However, many scholars have

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attempted to link the Constitution to the bureaucracy; their claims will now be discussed, starting with Ryan Barilleaux. Barilleaux's argument is structured upon a historical claim. In practice the Founding Fathers could not agree upon how much control the president should have over the heads of departments. The administrative structure was thus left to Congress to decide. As a result, contends Barrilleaux (1996: pp280), "the federal government's bureaucracy has developed since the founding as an enterprise based on constitutional and statutory law, precedent, and the internal logic of administrative organisations". A clear defence of the Founding Fathers then, in the context of this debate, is that the Constitution lays down the basic principles and laws by which the bureaucracy has been built upon. Such basic principles as the political authority exercised over bureaucracy being divided between the president and congress, as well as national government organisations operating within a federal system (Barilleaux, R. 1996: pp280-81). Now that the role the Constitution plays on the policy implementation process has been established, I will now dig a little deeper into the restraints the Constitution provides, even arguing that it can sometimes over restrain the bureaucracy – in contrast to popular belief.

We've seen before that the bureaucracy is often labelled this mass of uncontrolled and unaccountable power. However, Dennis Riley delivers a case for the extent to which the Constitution provides checks to administrative power, and even hindering the extent to which an agency can implement policy. Riley (2006: pp287) insists that "every official at each agency knows that he or she must live within the boundaries established by that constitution". However, for almost all administrations, it becomes problematic when considering the Fourth and Fifth Amendments. In particular, the Fourth Amendment states that "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be infringed" (1789). This particular Amendment becomes problematic for most government agencies because, by performing the will of the government, these agencies need information and this information is often found in the hands of private individuals and enterprise. For instance, the ratification of amendment 64 in Colorado means that the 'Implementation Task Force' needs special access warrants into retail marijuana establishments in order to regulate the establishment's control of the substance (Hickenlooper, J. 2013). In this sense the Constitution provides a restraint upon the extent to which a bureaucratic agency can access information, in some respects it almost hinders the ability to which it can implement policy. Although the Founding Fathers may not have directly mentioned any implementation apparatus they certainly provided the premise by which it could be restrained.

The federal bureaucracy has been subject of much criticism from American political culture. Its size, its incompetence and inefficiency, its unaccountable power and the extent to which it oppresses the individual are all criticisms discussed in this essay. The Founding Fathers could then be accused of having neglected the apparatus for policy implementation given that the bureaucracy is such a "swamp of incompetence" (Goodsell, C. 1994: pp3). However, with each criticism comes a point of redemption. Firstly that the bureaucracy, as a whole, doesn't perform nearly as badly as is perceived, secondly bureaucracy's size only reflects promises made and fulfilled by the government; promises which reflect the will of the people, and finally, that the US government, thanks to the federal structure and Constitution, isn't all that strong. In regard to this generally positive account of bureaucracy provided by Goodsell, Riley and McKay, the Founding Fathers can be forgiven for failing to mention the bureaucracy in the Constitution; despite that, it generally works quite well. With all this in mind it is easy to forget the role the Constitution has had on the bureaucracy. All government institutions must act within the framework of the constitution, and the bureaucracy is certainly not exempt from this. Overall, the failure of the Founding Fathers to mention policy implementation has raised calls of their neglect toward the process. However, the Constitution and its flexible nature have allowed for any such implementation apparatus to be confined to its framework, and as a whole function effectively. The Founding Fathers thus did not neglect policy implementation.

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