POLITICAL AND JUDICIAL CONTROL OVER AGENCY ACTION pdf

1: Chpt. 15 The Bureaucracy - ProProfs Quiz

Control is exercised by the agency's awareness that congress can withdraw legal or monetary support, delay funds or nomination approvals, or initial potentially embarrassing investigations of agency activities still strong.

Administrative agencies of various kinds e. Some do substantially the same kind of work as is done by courts and in substantially the same manner; others,â€¦ Defining principles One of the principal objects of administrative law is to ensure efficient, economical, and just administration. A system of administrative law that impedes or frustrates administration would clearly be bad, and so, too, would be a system that results in injustice to the individual. But to judge whether administrative law helps or hinders effective administration or works in such a way as to deny justice to the individual involves an examination of the ends that public administration is supposed to serve, as well as the means that it employs. In this connection only the broadest generalities can be attempted. It can be asserted that all states, irrespective of their economic and political system or of their stage of development, are seeking to achieve a high rate of economic growth and a higher average income per person. They are all pursuing the goals of modernization, urbanization, and industrialization. They are all trying to provide the major social services, especially education and public health, at as high a standard as possible. The level of popular expectation is much higher than in former ages. The government is expected not only to maintain order but also to achieve progress. There is a widespread belief that wise and well-directed government action can abolish poverty, prevent severe unemployment, raise the standard of living of the nation, and bring about rapid social development. People in all countries are far more aware than their forefathers were of the impact of government on their daily lives and of its potential for good and evil. The growth in the functions of the state is to be found in the more-developed and in the less-developed countries; in both old and new states; in democratic, authoritarian , and totalitarian regimes; and in the mixed economies of the West. The movement is far from having reached its zenith. With each addition to the functions of the state, additional powers have been acquired by the administrative organs concerned, which may be central ministries, local, provincial, or regional governments, or special agencies created for a particular purpose. Distinctions between public administration and private action Activities such as traffic control , fire-protection services, policing, smoke abatement, the construction or repair of highways, the provision of currency, town and country planning, and the collection of customs and excise duties are usually carried out by governments, whose executive organs are assumed to represent the collective will of the community and to be acting for the common good. It is for this reason that they are given powers not normally conferred on private persons. To take another example, the postal laws of many countries favour the post office at the expense of the customer in a way unknown where common carriers are concerned. Again, a public authority involved in slum clearance or housing construction tends to be in a much stronger legal position than a private developer. The result of the distinction between public administration and private action is that administrative law is quite different from private law regulating the actions, interests, and obligations of private persons. Civil servants do not generally serve under a contract of employment but have a special status. Taxes are not debts, nor are they governed by the law relating to the recovery of debts by private persons. In addition, relations between one executive organ and another, and between an executive organ and the public, are usually regulated by compulsory or permissive powers conferred upon the executive organs by the legislature. The law regulating the internal aspects of administration e. In practice, internal and external aspects are often linked, and legal provisions of both kinds exist side by side in the same statute. Thus, a law dealing with education may modify the administrative organization of the education service and also regulate the relations between parents and the school authorities. Another distinction exists between a command addressed by legislation to the citizen, requiring him to act or to refrain from acting in a certain way, and a direction addressed to the administrative authorities. When an administrative act takes the form of an unconditional command addressed to the citizen, a fine or penalty is usually attached for failure to comply. In some countries the enforcement is entrusted to the criminal courts, which can review the administrative act; in others the administrative act itself must be challenged in an administrative court. The need for legal safeguards

over public administration Statutory directions addressed to the executive authorities may impose absolute duties, or they may confer discretionary powers authorizing a specified action in certain circumstances. Such legislation may give general directions for such activities as factory inspection, slum clearance, or town planning. The statute lays down the conditions under which it is lawful for the administration to act and confers on the authorities the appropriate powers, many of which involve a large element of discretion. Here the executive is not confined merely to carrying out the directions of the legislature; often it also shares in the lawmaking process by being empowered to issue regulations or ordinances dealing with matters not regulated by the statute. This may be regarded either as part of the ordinary process by which the legislature delegates its powers or as an inevitable feature of modern government, given that many matters are too technical, detailed, or subject to frequent change to be included in the main body of legislationâ€”legislation being less easy to change than regulations. For instance, the regulation must not exceed the delegated powers; its provisions must conform with the aims of the parent statute; prior consultation with interests likely to be affected should take place whenever practicable; and the regulations must not contravene relevant constitutional rules and legal standards. In some countries regulations are scrutinized by a type of watchdog known as the council of state before they come into force; in others, by the parliamentary assembly; and in yet others, by the ordinary courts. In most countries the executive arm of government possesses certain powers not derived from legislation, customary law, or a written constitution. In the United Kingdom there are prerogative powers of the crown, nearly all of which are now exercised by ministers and which concern such matters as making treaties, declaring war and peace, pardoning criminals, issuing passports, and conferring honours. In Italy, France, Belgium, and other continental European countries, certain acts concerning the higher interests of the state are recognized as actes de gouvernement and are thereby immune from control by any court or administrative tribunal. In the German Empire â€” the principle that an administrative act carried its own legal validity was accepted at the end of the 19th century by leading jurists. This led to the doctrine that administration was only loosely bound to the law. The doctrine was rejected in the Federal Republic of Germany â€”90 , however, and efforts were made to reduce the area in which the executive was free to act outside administrative law. Bureaucracy and the role of administrative law An inevitable consequence of the expansion of governmental functions has been the rise of bureaucracy. The number of officials of all kinds has greatly increased, and so too have the material resources allocated to their activities, while their powers have been enlarged in scope and depth. The rise of bureaucracy has occurred in countries ruled by all types of government, including communist countries, dictatorships and fascist regimes, and political democracies. It is as conspicuous in the former colonial states of Africa and Asia as among the highly developed countries of western Europe or North America. A large, strong, and well-trained civil service is essential in a modern state, irrespective of the political character of its regime or the nature of its economy. Fear of the maladies that tend to afflict bureaucracy has produced a considerable volume of protest in some countries; and, even in those where opposition to the government or the party in power is not permitted, criticism and exposure of bureaucratic maladministration are generally encouraged. Bureaucratic maladies are of different kinds. They include an overdevotion of officials to precedent , remoteness from the rest of the community, inaccessibility, arrogance in dealing with the general public, ineffective organization, waste of labour, procrastination, an excessive sense of self-importance, indifference to the feelings or convenience of citizens, an obsession with the binding authority of departmental decisions, inflexibility, abuse of power, and reluctance to admit error. Many of these defects can be prevented or cured by the application of good management techniques and by the careful training of personnel. A whole range of techniques is available for this purpose, including effective public relations , work-study programs, organization and management, operational research , and social surveys. Administrative law is valuable in controlling the bureaucracy. Under liberal-democratic systems of government, political and judicial control of administration are regarded as complementary, but distinct. The former is concerned with questions of policy and the responsibility of the executive for administration and expenditure. The latter is concerned with inquiring into particular cases of complaint. Administrative law does not include the control of policy by ministers or the head of state. Judicial review of administration Judicial review of administration is, in a sense, the heart of administrative law. It is certainly the most appropriate

method of inquiring into the legal competence of a public authority. An administrative act or decision can be invalidated on any of these grounds if the reviewing court or tribunal has a sufficiently wide jurisdiction. There is also the question of responsibility for damage caused by the public authority in the performance of its functions. Judicial review is less effective as a method of inquiring into the wisdom, expediency, or reasonableness of administrative acts, and courts and tribunals are unwilling to substitute their own decisions for that of the responsible authority. Judicial review of administration varies internationally. Sweden and France, for instance, have gone as far as subjecting the exercise of all discretionary powers, other than those relating to foreign affairs and defense, to judicial review and potential limitation. Elsewhere, a preoccupation with procedure results in judicial review deciding only whether the correct procedure was observed rather than examining the substance of the decision. It is of course impractical to subject every administrative act or decision to investigation, for this would entail unacceptable delay. The complainant must, therefore, always make out a prima facie case that maladministration has occurred. Judicial review cannot compel the state to act in a particular way because the courts concerned cannot impose sanctions on the government, which itself controls the use of force. Such remedies as an injunction, an order for specific performance, or an order for mandamus will not lie against the central government. These inhibitions, however, are of less practical importance than might be supposed. Nevertheless, nearly all governments even revolutionary ones are eager to proclaim the lawfulness of the regime and seldom disregard the decisions of an authorized court or tribunal. There are, broadly, three major systems: The King harangued the judges more than once on their duty to respect the royal prerogative and power. In the constitutional conflict that took place a generation later, the judges and the lawyers made common cause with Parliament against Charles I, and eventually the independence of the judges was established. Henceforth there was to be one system of law to which all would owe obedience. As a result, the executive possessed no inherent powers other than those subject to the rule of law inasmuch as legislation now had to emanate from the crown in Parliament. In addition, the judges were expected to protect the subject against the executive. The earlier conflict between crown and judges survived to become an antagonism between the legal profession and the executive, particularly the civil service. These developments established the principle that the executive should never interfere with the judiciary in the exercise of its functions. This was, indeed, almost the only strict application in England of the doctrine of the separation of powers. On the other hand, it was regarded as right and proper that the judiciary should interfere with the executive whenever a minister or a department was shown to have acted illegally. In this way the concept of the rule of law came gradually to be identified with the idea that the judges, in ordinary legal proceedings in the ordinary courts, could pronounce upon the lawfulness of the activities of the executive. The principle that all public authorities are liable to have the lawfulness of their acts and decisions tested in the ordinary courts was applied everywhere the common law prevailed, including the United States , despite the much stricter interpretation given by the Founding Fathers there to the doctrine of the separation of powersâ€”a doctrine embodied in the federal and state constitutions. A complete separation of powers was not considered feasible by the framers of the Constitution, and they therefore introduced checks and balances , whereby each of the three branches of government would be prevented from growing too powerful by the countervailing power of the others. This actually strengthened the power of the courts to review the actions of the executive. Elsewhere in the common-law world, the extended role of the courts in reviewing administration was adopted without any public debate concerning the separation of powers or the need to protect liberty by a system of checks and balances. This absence of an explicitly defined role for courts led, in the early post-World War II years in Britain, to real fears that the courts would be unable or unwilling to question the expanded powers of governmental bodies. Modification of the common-law system The common-law system was extensively modified in the course of the 20th century. Since a permanent Council on Tribunals appointed by the lord chancellor has exercised a general supervision over about 40 tribunal systems, but they remain an unsystematic and uncoordinated movement. However, they provide a method of administrative adjudication far cheaper, more informal, and more rapid than that offered by the courts; the members are persons possessing special knowledge and experience of the subject dealt with; they do not have to follow the strict and complex rules of evidence that prevail in the courts; and it is possible to introduce new

social standards and moral considerations to guide their decisions. These tribunals have won general approval for the quality and impartiality of their work. An appeal on a question of law lies in most instances from the decision of an administrative tribunal to the High Court of Justice. There is still no comprehensive administrative jurisdiction in Britain permitting judicial review over the whole field of executive action and decision. In Australia a similar movement took place with the growth of a large number of administrative tribunals that regulate many different spheres of public administration, such as industrial conditions; the award of pensions, allowances, and other state grants; town planning; censorship of films; fair rents; the licensing of occupations calling for special skills or public responsibility; trade, transport, and marketing; the assessment of national taxes, local taxes, or duties; the protection of industrial design , patents, and copyrights; and compensation for interference with private-property rights in the public interest. From these tribunals were managed by the Administrative Appeals Tribunal. In the United States the courts review administration much more comprehensively than in Britain. Nevertheless, much adjudication is now performed by public authorities other than the courts of law. The movement toward administrative tribunals began with the Interstate Commerce Act , establishing the Interstate Commerce Commission to regulate railways and other carriers. This law introduced a new type of federal agency , outside the framework of the executive departments and largely independent of the president.

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In this Note, I argue that the degree of judicial influence over agency action permitted by the Ninth Circuit's decision allows the judiciary to unduly interfere with the executive's ability to control the administrative state.

PDF Abstract Recent efforts to revise the national ambient air quality standards for ozone have revived the longstanding tension between the EPA Administrator and the President with respect to rulemaking under the Clean Air Act. The Article concludes with an analysis of how presidential interference with EPA rulemaking may make agency decisions more vulnerable to judicial review. Introduction During the past forty years of federal administrative law, there has been an increase in presidential authority due to the expansion of the regulatory state. Two recent conflicts illustrate this tension. Part III reviews how Congress, the President, and the Supreme Court have differing views regarding the relationship between the President and federal agencies. Part IV evaluates the special case of the EPA in the universe of federal agencies, arising out its unique creation in and its powerful role as protector of the environment. Part V concludes that contemporary presidential predominance over the EPA merely reflects a historical pattern of acquiescence by a Congress that has not vigorously resisted presidential influence. Because of this predominance, challenges to EPA action based on alleged interference by the President are unlikely to be successful, either legally or politically. However, presidential interference generally causes EPA rulemakings to become less about science and more about politics, making such decisions more vulnerable to challenge under applicable standards of review. Effective the last day of the year , it created a comprehensive regulatory scheme for protecting public health and welfare from air emissions from industrial facilities stationary sources and cars and trucks mobile sources. Rather, such decisions are left to the discretion of the states. As in the case of ozone, EPA often promulgates a primary standard for public health, and then sets a secondary standard for public welfare at the same level. But those references typically relate to duties and powers of a presidential nature, such as the determination of national security waivers of statutory requirements. While the Administrator is mentioned 2, times in the Clean Air Act, the President is mentioned only seventy times. The difference in relative treatment can be explained by the different purposes of the statutes. The Clean Air Act, the Clean Water Act, and the Solid Waste Disposal Act were primarily intended to regulate pollution of three types of environmental media air, water, and land occurring in the future. The enactment of the Clean Air Act in the same year created the substantive law over which that struggle has been waged. In , the National Air Pollution Control Administration, a predecessor agency to the EPA, published criteria relating to photochemical oxidants, which are precursors to ozone formation. The amendments of the Clean Air Act required the completion of a review of the NAAQS by an independent scientific review committee every five years, starting no later than December 31, In December , it proposed that the averaging time for the ozone NAAQS be changed from an hourly average to an eight-hour average, based on findings of health effects from exposure to ozone for up to eight hours. Because the final rule was promulgated in , the five-year deadline for a review of the ozone NAAQS extended into the Bush presidency. As a result, the legitimacy of White House influence turned on the merits of the two decisions reached by the EPA Administrator. It does not provide a justification for revising or not revising an ozone standard after performing a five-year review. American Trucking Associations, Inc. First, the Administrator stated that the implementation of the proposed seasonal standard would not have led to the creation of any additional nonattainment areas. Second, with respect to the relative risks created by the two different standards, the uncertainties caused by the general lack of rural monitoring data created the possibility that the seasonal standard would either be insufficiently protective or overly protective of public welfare, either of which would violate the holding of American Trucking. This balance is embodied in the doctrine of separation of powers. Its actions implicate all three kinds of governmental powerâ€”legislative, executive, and judicial. When it commences an enforcement action against an industrial facility, it exercises an executive power. When it adjudicates a dispute in an enforcement proceeding, it exercises a judicial power. As a result, it is not surprising for EPAâ€”or any other administrative agencyâ€”to find itself at the center of a separation of powers dispute, either politically or legally. Congress passed the first Reorganization Act in , as a means to

reduce government expenditures in response to national deficits during the Great Depression. He identified two legislative purposes in the Reorganization Act of The fact that this proposed amendment was limited to these forms of regulatory agencies may have simply reflected the historical preference for creating agencies in the form of commissions and boards during the earlier years of the modern regulatory state. The recommendation of the minority congressmen was rejected by the House and never enacted. Still, this did not necessarily mean the President had primacy over such agencies, because Congress retained legislative power under the Reorganization Acts. Congress had ultimate power to decide whether a reorganization plan would be enacted, as a matter of law. Congress could exercise that power by either approving or disapproving a reorganization plan submitted by the President. On July 9, , President Nixon transmitted to Congress a reorganization plan creating the EPA, which became law within sixty days when Congress did not oppose the plan through a concurrent resolution. Although the statute is silent on the power of removal, the power to remove is implicit in the power to appoint. In the language of the Reorganization Acts, and in the historical context of the creation of EPA and the Postal Service, there are two kinds of federal agenciesâ€”executive departments and independent establishments. The former were intended to be subject to the influence of the President. The latter were not. In the view of the executive branch, the presence or absence of independence turns on whether the President has the authority to remove the head of the administrative agency. Supreme Court, Elena Kagan also presented this view in a law review article in Executive Order significantly affects federal agency rulemaking in general, and EPA rulemaking under the Clean Air Act, in particular. Substantively, it requires that a federal agency prepare a cost-benefit analysis for every federal regulatory action, and finalize an action only if the benefits exceed the costs. If there is a conflict, the congressional law will preempt the executive order. It reiterates the fundamental principle that regulatory actions may be justified only upon a weighing of costs and benefits. But they assert considerable presidential authority over federal agencies like EPA, by requiring a cost-benefit analysis as a part of a regulatory action. Quite naturally, this creates a tension which has led to litigation in the federal courts. The Judicial View Because disputes over presidential authority over EPA rulemaking naturally implicate the separation of powers between the executive and legislative branches of government, it is not surprising that there is not extensive case law on the subject. Under a doctrine of constitutional law, courts will not hear cases involving solely political questions. Nevertheless, there are a number of judicial decisions that provide guidance as to how the courts might resolve such disputes, should they result in litigation. The unitary theory of the presidency holds that federal executive power resides exclusively with the President and is not shared among multiple administrative agency heads. Costle, the United States Court of Appeals for the District of Columbia applied a unitary theory of the presidency to a dispute over the docketing of intraexecutive branch meetings and communications between the EPA and the White House. The Environmental Defense Fund alleged that EPA had violated section of the Clean Air Act by failing to record such meetings and communications on the docket of a rulemaking proceeding for proposed new source performance standards for coal-fired power plants under section of the Clean Air Act. But this is not necessarily the case, as the overwhelming majority of federal agencies, whether they are considered independent or not, are considered part of the executive branch. If the location of an agency within the executive branch were sufficient to deprive an agency of independence, no agency in the executive branch could ever be independent. But according to Congress, the United States Postal Service is independent, even though it was placed in the executive branch. As a result, it dismissed the petition for lack of ripeness and justiciability, without reaching the merits of whether or not the Yucca Mountain project should proceed. In rejecting the theory that agencies that make expert scientific decisions should be independent, he notes that such agencies must make a number of nonscientific legal and policy judgments, in addition to expert scientific decisions. The final section of this article addresses why the different standards of review may be used by parties challenging EPA decision making resulting from interference of the President. Public Company Accountability Oversight Board. Rather, the decision is limited to the facts of the case. In his dissenting opinion, Justice Breyer argued for a functional and contextual approach to construing restrictions on Presidential authority. In Federal Communications Commission v. Fox Television Stations , Inc. In that case, the Court rejected a challenge to the authority of the Chief Judge of the

Tax Court to appoint special trial judges to hear certain cases. Environmental Protection Agency [] starts a line of cases illustrating the growing tension between the OMB and the EPA, under federal environmental statutes. That case involved a dispute over an executive order requiring federal agencies to consider costs when promulgating regulations and rules. In Natural Resources Defense Council v. In Environmental Defense Fund v. Thomas, [] an environmental organization challenged a delay by EPA in promulgating hazardous waste regulations for underground storage tanks USTs pursuant to section w of the Solid Waste Disposal Act. Although the Court held that injunctive relief against OMB was not appropriate on the facts of the case, it generally stated that OMB could be enjoined for failing to execute laws enacted by Congress. To the extent a deadline has not passed, OMB may only review regulations until further OMB review will result in the missing of a deadline. That presented a subtler question: Where there is no violation of a statutory deadline, it is more difficult to determine the extent of OMB influence and whether it has improperly infringed upon agency rulemaking, in violation of a congressional law. The American Lung Association and other organizations filed a petition challenging the withdrawal of the rule in the Court of Appeals for the District of Columbia. Browner [] granted summary judgment against EPA where EPA failed to meet Clean Air Act deadlines for review of the particulate matter standard, and held that the prospective schedule for promulgation should not include time for OMB review. Therefore, the ozone rule withdrawal presents a different situation than those deadline cases. The environment includes the air, the water, and the land, which affect everyone.

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3: Presidential Authority Over EPA Rule Making Under the Clean Air ACt

Texas Law Review Volume 59, Number 7, October Political and Judicial Review of Agency Action Richard J. Pierce Sidney A. Shapiro" "The problems that vex democracy seem to be unmanageable by.*

Constitution divides the government into three branches: The executive branch enforces the laws through the president and various executive offices. The judicial branch, made up of the Supreme Court and lower federal courts, decides cases that arise under the laws. This division of government is called the separation of powers. The separation of powers is supposed to prevent tyranny. Tyranny is arbitrary random or unfair government action that can result when one person has all the power to make, enforce, and interpret the laws. In addition to the broad separation of powers into three branches, the Constitution keeps the executive and judicial branches separate with two specific provisions. Instead, only Congress can remove judges through impeachment and conviction for treason, bribery, and other high crimes and misdemeanors under Article II, section 4. The Constitution defines treason as levying war against America or giving aid and comfort to its enemies. Bribery is an illegal payment to influence official action. Likewise, the president can be removed from office only through impeachment and conviction by Congress. The Supreme Court and lower federal courts do not hear impeachment cases. This ensures that only Congress, which is accountable for its actions at election time, can remove a president from office. Supreme Court justices and lower court judges, who are appointed by the president and so are free from popular control, cannot remove a president. They considered absolute power, even over just a portion of the government, to be dangerous. To prevent the power of any one branch from being absolute, the Founding Fathers wrote the Constitution to contain a system of checks and balances. These are powers that each branch has for limiting the power of the other branches. Some scholars say the system of checks and balances actually creates a government of shared powers instead of one with separated powers. Judicial review is the power to review executive action to determine if it violates the Constitution. Judicial interpretation is the power to determine the validity and meaning of executive agency regulations. A writ of habeas corpus is a procedure that prisoners can use to get released if they are being held in violation of the law. The writ requires a jailer to bring the prisoner before a court, where a judge can set the prisoner free if he or she is being held in violation of constitutional rights. A writ of mandamus is a court order that forces government officials to do their jobs. A writ of prohibition is a court order preventing a government official from doing something prohibited by law. Judicial review Judicial review is the power to review government action for compliance with the Constitution. The Constitution does not specifically give the federal judiciary this power. Instead, the Supreme Court assumed the power in its decision in Marbury v. The case began in , in the waning days of the administration of President John Adams â€"; served â€" One of the last things Adams did as president was sign commissions, or orders, appointing people to serve as justices of the peace in the District of Columbia. Marshall failed to deliver all of them before Adams left office. When William Marbury and other appointees asked the new secretary of state, James Madison â€" , to give them their commissions, Madison refused under orders from Jefferson. Marbury sued Madison in the Supreme Court. The Judiciary Act of gave the Supreme Court the power to hear cases for writs of mandamus. Marbury wanted the Supreme Court to force Madison to give him his commission. The Supreme Court did not get to decide the case until Historians generally agree that if a situation similar to this case came up today, Marshall would disqualify himself due to a clear conflict of interest. The Supreme Court, however, could not issue a writ of mandamus to force Madison to do his job. Marshall said the Judiciary Act of violated the Constitution because the Constitution does not allow people to sue in the Supreme Court for writs of mandamus. Such cases must begin in a lower federal court and be appealed to the Supreme Court if necessary. Madison, the Supreme Court has used judicial review to scrutinize acts of Congress and actions of the executive branch in cases before it. The main limitations on executive power in such cases are the limitations on searches and seizures under the Fourth Amendment and the rights of criminal defendants under the Fifth and Sixth Amendments. The Fourth Amendment says: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable

cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. The Fourth Amendment is supposed to restrict the law enforcement activities of the executive branch. Law enforcement agents who investigate crimes often have to search houses, seize possible evidence, and arrest people. The Fourth Amendment says law enforcement must do these things reasonably. Law enforcement agents often need to get a warrant to conduct a search, seize evidence, or arrest a person. A warrant is a court order authorizing such action. The Fourth Amendment says courts should not issue warrants without testimony or the sworn statement of a witness demonstrating probable cause. Probable cause is a reasonable belief that the search or seizure could produce evidence of a crime. Courts check the power of law enforcement by denying warrant applications when the government does not have enough evidence to support a search, seizure, or arrest. After law enforcement conducts an investigation, federal prosecutors decide whether to file criminal charges against a suspect. The trial process is another chance for the federal judiciary to check the law enforcement power of the executive branch. Sometimes law enforcement agents collect evidence of a crime by violating the Fourth Amendment. For example, they might search a house or seize evidence without a warrant, or in a manner that violates the terms of the warrant they have. When law enforcement agents gather evidence by violating the Fourth Amendment, criminal defendants ask the court to enforce the exclusionary rule. The exclusionary rule is a rule created by the U. In general, it prevents the federal government from using evidence at a criminal trial that it got by violating the Fourth Amendment. Enforcement of the exclusionary rule can result in dismissal of criminal charges, even against guilty defendants. In this way, the exclusionary rule encourages law enforcement authorities to obey the Fourth Amendment. Rights of criminal defendants: The Fifth Amendment says: No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. The federal judiciary checks the law enforcement power of the executive branch by enforcing this amendment in cases against criminal defendants. Under the Grand Jury Clause, the executive branch must use grand juries to charge criminal defendants with capital or infamous crimes. Capital crimes are crimes that may be punishable by death, meaning the death penalty. For example, first degree murder, which means premeditated or preplanned murder, is a capital crime. Infamous crimes are crimes that, under the common law , made a person incapable of testifying in court because of untrustworthiness. Under the common law judge-made law in English and early-American courts , infamous crimes included treason, felonies, and crimes involving dishonesty, such as The Steel Seizure Case In , the communist government of North Korea invaded South Korea in Asia. Truman â€”; served â€”53 sent American troops to help South Korea. Although Congress has the sole power to declare war, Congress did not give Truman prior approval for his decision. In , the steel industry was having a dispute with its workers. When talks failed to settle the dispute, the USWA decided to support a nationwide labor strike beginning April 9, A strike is when laborers stop working to protest working terms or conditions. Truman feared a steel strike would hurt the war effort in South Korea by reducing the production of aircraft, guns, and ammunition. Truman said the Constitution and laws of the United States gave him the power to seize and operate the steel mills. He relied especially on the portion of the Constitution making him commander in chief of the armed forces. Truman reasoned that in that role, he could seize private steel mills to help the war effort. Indeed, presidents before Truman had seized industries during wartime to avoid labor strikes, sometimes because war legislation from Congress gave them that power. The Youngstown Sheet and Tube Co. It argued that President Truman and Secretary Sawyer violated the Constitution by seizing private property without congressional authority. Indeed, when passing the Taft-Hartley Act in , a federal law concerning labor strikes, Congress specifically decided not to give presidents the power to seize industries to stop strikes. The government conceded that there was no specific congressional law giving Truman the power to seize the steel mills. It argued, however, that Truman implicitly had that power as head of the executive department and commander in chief of the military forces. The case made it to the U. Supreme Court, which announced a decision on June 2, By a vote of 6â€”3, the Court said

Truman lacked the power to seize the steel mills unless Congress gave him such power. The Court relied heavily on the fact that Congress had declined to give presidents such power in the Taft-Hartley Act. Writing the opinion for the Court, Justice Hugo L. Black â€" said Truman had to ask Congress for that power if he thought it was necessary. Douglas â€" wrote, "The emergency did not create power; it merely marked an occasion when power should be exercised. And the fact that it was necessary that measures be taken to keep steel in production does not mean that the president, rather than the Congress, had the constitutional authority to act. Vinson wrote, "The broad executive power granted by Article II to an officer on duty days a year cannot, it is said, be invoked to avert disaster. Instead, the president must confine himself to sending a message to Congress recommending action. Presidents have been in the past, and any man worthy of the office should be in the future, free to take at least interim [temporary] action necessary to execute legislative programs essential to survival of the Nation. Truman blamed the strike for ammunition shortages that summer and fall. Treason means an act of war against the United States. Felonies refer to the most serious kinds of crime, usually punishable by either death or imprisonment for more than one year. Perjury is lying under oath.

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Political Controls Over Agency Actionâ€"Legislative and Executive Oversight Government institutions that set and enforce public policy must be politically accountable to the electorate.

In internal control mechanisms follows methods are used: Prime minister directs the ministers; who are in-charge of their respective department and are responsible for the efficient working to the cabinet and prime minister. The whole working of the departments are reviewed by the Prime Minister and his Cabinet. The executives are linked with superior- subordinate-relationship with clear authority and responsibility. They are accountable to their respective superiors for their actions and dealings. Thus hierarchy itself a powerful instrument for monitoring subordinates behavior and for enforcing accountability. The work of whole year of each public servant is assessed. The Ministry of Finance prepares budget, and operations of the budgetary sanctions and appropriations. Leadership motivates, and inspires the employees for efficiency. Thus the morale and motivation of employees depends upon the leadership. The effective leader set examples of high standards of integrity and performance for his followers. He inspires them for work and instills in them a pride in work. B Following mechanism is in place as external methods 1. The major instrument of public accountability is the authority of the legislature to empower, limit, investigate and censure the executive branch. The legislature enacts Laws, authorizes administrators to engage in quasi-legislative and quasi-judicial activities, appropriates funds for all administrative programmes, and determines the general outlines of administrative organization and procedure. This time is allotted for asking and answering questions. Every legislators, after giving due notice, are entitled to put questions and supplementary questions to the ministers about the state of public administration. The ministers are bound to answer these questions. The purpose of questions is to elicit information on the working of administrative departments. The former leads to dismissal of the government or ministry. The later is recommendatory, hence it may or may not be accepted by the government. Members of parliament are entitled to pass resolutions on matter of general public interest. Houses perpetually go on debating one thing or other. Discussions, take place over every point of a bill or budget. Every motion comes under discussion in the house. The inaugural address of the President, the budget speech, introduction of bill for amendment, introduction of new law, or introduction of motion or resolution provide opportunity for debates and discussions.

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cials, they also increase their political control over that agency (Blair ,). Governors also currently utilize tools such as economic analysis procedures, execu- tive orders, and rule review power to increase their political control and influence over.

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