

# Comprehensive Public Sector Reform

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One of the most important reform issues that American democracy will face in the coming years concerns the rebuilding of its public sector, particularly the federal bureaucracy. The United States has not seriously attempted such a reform since the Civil Service Reform Act of 1978 and the “reinventing government” effort in the first term of the Bill Clinton administration, but recent events have shown why having a capable, professional civil service is of critical importance to the future of American democratic government.

Public sector reform has been at the bottom of the reform agenda for both Republicans and Democrats for the past two decades. There is a deeply ingrained hostility toward the state—particularly the federal bureaucracy—in American political culture, and politicians of both parties love nothing better than to inveigh against it.

The Covid-19 pandemic has demonstrated even more vividly the importance of a professional career civil service. At the time of this writing, the pandemic continues to pose enormous risks to Americans' health and security and requires a response drawing on the knowledge of public health experts, of whom there are many in the US government. Although he received warnings of a potential crisis in early 2020, President Donald Trump nonetheless insisted on downplaying the pandemic's danger. This crisis set up a particularly intense struggle between professional expertise and political self-interest within the executive branch. Some of the president's defenders tried to shift the blame to the Centers for Disease Control and Prevention (CDC), which did indeed fail to produce a timely Covid-19 test in February 2020. But the CDC's capacity had been weakened by budget cuts, the appointment of poor leaders, and the elimination of an entire office within the Trump administration devoted to pandemic preparedness.

One of the administration's central themes has been its relentless promises to destroy the “deep state” and to replace it with actors aligned with the president's own political views. In this narrative, the deep state is simply code for the permanent civil service. As will be seen below, there are reasons to be unhappy with the performance of that civil service in many areas, but it is hard to find a precedent for the kind of full-throated populist attack on the idea of bureaucracy itself that the Trump administration has waged in the last two hundred years—since the Andrew Jackson administration in the 1820s.

## **Bureaucracy and Populism**

There has been a prolonged struggle between the need for a modern, professional civil service and the populist forces generated by American democracy. The country's early government,

pioneered by proponents of a strong federal executive, such as Alexander Hamilton, was both small and relatively elite, recruited from the merchant-planter classes that provided the United States with many of its Founding Fathers.<sup>1</sup>

This all began to change in the 1820s as many American states extended voting rights to all white males, not just those who owned property. The electorate added millions of new voters, and politicians faced the new problem of how to mobilize them on election day. As in many developing countries today, political entrepreneurs quickly discovered that the simplest way was to bribe voters with a bottle of bourbon or a job in the Postal Service. Andrew Jackson, the poorly educated hero of the Battle of New Orleans, was one of the first national figures to exploit this populist wave, defeating the Boston Brahmin, John Quincy Adams, in the 1828 election. On reaching the presidency, Jackson said, in effect, that as the people's choice he had the right to determine who worked for the US government and that any ordinary American was qualified to enter public service. Thus began what historians label the patronage or spoils system.

The system began to change in the 1880s as the American economy modernized under the influence of revolutionary technologies, such as railroads, that knit the country together in a vast single market. The kind of corrupt and politicized government that existed at that time did not provide a level playing field for new businesses nor deliver the kinds of impersonal services demanded by the new generations of better-educated citizens beginning to emerge—a coalition of business interests, civil society groups, and trade associations that demanded an end to patronage and corruption and the creation of a merit-based civil service.<sup>2</sup> The assassination of newly elected President James A. Garfield by a frustrated office-seeker paved the way for the passage of the Pendleton Act in 1883, which established the first US Civil Service Commission and provided for a merit-based classification system. It was not until the time of the First World War, however, that a majority of American civil servants were recruited under the merit system; patronage politicians continued to fight a rearguard action to preserve their control over the bureaucracy. In many cities, such as New York, Boston, and Chicago, these patronage systems survived into the middle of the twentieth century.

The high point of the US modern civil service probably came shortly after the middle of the twentieth century, following two World Wars and the Great Depression. Since that time, however, a number of public administration experts have noted evidence of declining performance and morale in federal agencies.<sup>3</sup> At no point did the American bureaucracy really resemble those of high-performing countries in Europe or Asia with much longer state traditions. In a typical European parliamentary democracy, a change of political parties usually leads to replacements of ministers, a few vice-ministers, and a small personal staff. In the United States, by way of contrast, a change in administrations—even when the same party retains power—typically leads to the turnover of some 4,000 high-ranking officials, of whom 1,700 require Senate confirmation.<sup>4</sup>

While the loss of state capacity has become particularly acute under the Trump presidency, the decline of the civil service long predates his arrival in office. Any reform that takes place in the

future should focus not simply on recent abuses, such as the firing of inspectors general or the corruption of the Justice Department, but also on the accumulated dysfunctions that have grown up over the past three generations.

## **Problems of the Bureaucracy**

The problems of the federal bureaucracy have been extensively analyzed over the past three decades. The late Paul Volcker, former chair of the Federal Reserve, led two Volcker Commissions, in 1989 and 2003, producing reports that outlined many of the public sector's problems. By and large, very few of the recommendations of his commissions were put into practice, so the same problems remain today. These problems can be grouped into several categories: recruitment and retention, excessive outsourcing, limited bureaucratic autonomy, and, finally, leadership and organization.

### ***Recruitment and Retention***

The federal government has had growing problems attracting capable young people to the career civil service, with the consequence that the average age of public officials has been steadily rising over recent decades. The government has also had great difficulty retaining its most capable officials while, at the same time, it has provided excessive job security to less qualified workers.

The pipeline between higher education and the federal workplace has been broken for many years. The brightest and most ambitious graduates of US universities tend not to go into government. If they are oriented toward public service, they will often choose a nongovernmental organization, an international organization, or even the private sector as a way of fulfilling their ambitions.

There are several reasons for this broken pipeline. First, federal pay scales and promotion possibilities are not attractive compared to those in the private sector. The current system of GS classifications was last revised more than fifty years ago and was designed, in the words of one critic, for a "government of clerks." These classifications do not take into account the changes that have taken place in the civilian labor market nor the explosion of high-end skills required of people in government service today. This makes it hard to recruit highly qualified new entrants and makes retention of high-performing executives much more difficult.

New recruits are also deterred by the highly burdensome process of complying with required disclosures. This issue was noted in the 1989 Volcker Commission report, and yet compliance requirements regarding former employment, travel, conflicts of interest, and financial disclosure

have only increased since then. That report also noted that there is not a single place one can go to find listings of job opportunities, which would require a simple fix but has not been implemented to date.

As the Volcker Commission reports also note, the federal government makes both hiring and firing workers very difficult, so it is also hard to discipline poorly performing workers and to weed out redundant ones. Many public employees, particularly at the state level, have formal tenure in their jobs, so removal becomes a costly and time-consuming judicial process.

Finally, retention of the best government executives has become much harder because so many senior positions are occupied by political appointees. As noted earlier, each incoming administration gets to make about 4,000 appointments, and in many agencies virtually all the senior positions from deputy assistant secretaries on up are claimed by political appointees—so-called Schedule C officials. Given the number of opportunities for doing virtually identical work for a private government contractor, the temptation to leave one's government position early is very high. A young person seeking high government office would do much better working on a successful presidential campaign and then entering the bureaucracy laterally than by working his or her way up the promotion ladder from an entry-level job.

### ***Excessing Outsourcing***

Many people are convinced that the size of the federal government has been growing relentlessly and would be surprised to learn that it employs about the same number of full-time workers as it did in the mid-1960s, approximately 1.8 million.<sup>5</sup> What has been growing are the revenues and expenditures that this workforce has been expected to oversee, which have approximately quintupled over this period. John J. Dilulio Jr. and others have argued that, as a result, the government is seriously understaffed. The Centers for Medicare and Medicaid Services within the Department of Health and Human Services, for example, oversee a budget of about \$300 billion with a staff of only 2,200 employees.<sup>6</sup> These employees are expected to enforce complex rules of compliance and root out fraud while distributing money to tens of millions of Americans.

What happened to make this possible does not necessarily reflect greater efficiency on the part of government; rather, it was political sleight of hand whereby a huge amount of government work was outsourced to an enormous range of private and nonprofit organizations. The outsourcing craze took off in the 1980s and 1990s when private-sector, free-market approaches were touted as solutions to the problems of government. There was, in fact, a certain logic to this: workers at the Department of the Treasury or Department of State, for example, were not experts in food service; better to have a food service company such as Sodexo run their cafeterias.

Public-private partnerships have been used very effectively to control costs and delivery schedules in many other countries. Some of the outsourcing impulse, however, was based on

free-market ideology, a belief that the private sector could always outperform the public sector even though this had not been empirically demonstrated in many sectors. Another reason for contracting out was to get around the compensation limitations imposed on the federal civil service. Oftentimes, a government worker can earn a multiple of his or her salary for doing the same job with a contractor. Lastly, there was a push on the part of people on the political left who believed that many government agencies had been captured by business interests and felt more comfortable having services delivered by the nonprofit sector.

As a result, a huge number of government operations, from running prisons to delivering social services to regulating the financial sector, were contracted out to private organizations. A number of agencies, such as the Department of Energy and the US Agency for International Development, spend the great majority of their budgets on contractors; their full-time employees are usually specialists in contract management rather than in the substantive work of their departments.

While outsourcing has certainly produced numerous efficiencies, there are a number of downsides to this practice. The first has to do with lack of transparency and accountability. An administration's partisan opponents would love nothing more than to expose an instance of wrongdoing by a federal official; the same is not necessarily the case for a contractor or subcontractor. A second problem concerns incentives. Civil service employees work for the US government. A contractor has dual principals: the government agency letting the contract and the contractor's employer. When those interests conflict, it is usually the private firm's owners who win out.

Finally, extensive outsourcing raises constitutional and legal issues regarding delegation.<sup>7</sup> Article II of the Constitution provides that the president "take care" to see that the laws are faithfully executed and to demand the "opinion, in writing, of the principal officer of each of the executive departments." The Presidential Subdelegation Act of 1950, passed by Congress in the wake of the Hoover Commission's findings, gives the president explicit authority to delegate powers within the executive branch without the express consent of Congress. Since this act enables subdelegation only to officers of the United States, it can trigger congressional concern when such powers are passed to private contractors. The conservative turn that began in the Ronald Reagan administration saw privatization of many government functions as desirable, and this impulse was codified by OMB Circular A-76, which was amended in the early 2000s by the administration of George W. Bush to further encourage outsourcing. The A-76 process requires all federal agencies to publicly distinguish between "inherently governmental" and "competitive" activities under their purview and to open the latter for bidding by private parties. While this ruling seeks to define "inherently governmental" acts, it is not linked to any body of theory, legal or otherwise, about what constitutes an "intrinsic" government function.

The limits of contracting appeared most vividly during the Iraq War, when operatives of Blackwater, a State Department contractor, were prosecuted for murdering Iraqi civilians. Many people believed that life-and-death decisions should not be delegated to a for-profit company.

## ***Rules and Autonomy***

Philip K. Howard has written extensively over the years about how American bureaucracy is made slow and inefficient by the inexorable accumulation of detailed rules.<sup>8</sup> Approval for a large infrastructure project, for example, needs authorization from more than a dozen federal agencies, which review the project sequentially rather than simultaneously, after which it is handed over to the state authorities, who replicate many of the same reviews. The project is open to litigation at federal and state levels; in California, the California Environmental Quality Act gives standing to every resident of California to sue the project, with no statute of limitations.<sup>9</sup> This leads to what I have elsewhere labeled “vetocracy,” in which authority and veto powers are distributed so widely within the US government that it is often impossible to reach agreement on doing anything.<sup>10</sup>

I have argued that to achieve bureaucratic efficiency, one must avoid two extremes: highly detailed rules that seek to micromanage the behavior of the official, and the unlimited delegation of authority that allows officials to substitute their preferences for those of the political principal. I have also argued that the degree of delegation will depend on the capacity of the employee: one can safely delegate more authority to highly skilled officials who need to make complex, context-dependent decisions, but would want to place more constraints on less experienced employees.<sup>11</sup> For any kind of delegation to work, ultimate accountability is needed to ensure the official is actually serving the public interest.

This trade-off between rules and authority was at the core of many of the New Public Management reforms undertaken in a number of Commonwealth democracies during the 1990s and 2000s. Senior officials were given contracts in which performance criteria and benchmarks were explicitly set; rather than being restricted by ex ante rules, they were given substantial leeway to implement policies in whatever way they saw fit as long as the desired outcomes were achieved.

This is not, by and large, the way the United States has chosen to manage its public officials. Americans begin with an ingrained distrust of bureaucrats; blaming officials for mistakes has become a weapon in partisan political combat, which has been exacerbated in recent years by heightened polarization. The reasons the Federal Acquisitions Regulations or the guidelines for hiring government personnel stretch to thousands of pages lie in scandals, mistakes, or corrupt acts that occurred long ago, which induced Congress to mandate the writing of detailed rules to prevent these incidents from repeating. If one wanted to “try common sense,” as Howard suggests, one needs to permit public officials to exercise more judgment, holding them accountable for long-term outcomes but not micromanaging their performance in the short run.

Autonomy can be eroded not just by detailed rule making, but by politicization as well. Not content with simply setting broad mandates, politicians interfere in lower-level implementation of those mandates. The partisan warfare that has characterized American politics in recent years has spread to many parts of the government heretofore regarded as politically neutral. The Federal Reserve, the Justice Department, the professional military, the Centers for Disease

Control, and even the National Oceanographic and Atmospheric Administration have seen their autonomy challenged under the Trump administration.

### ***Leadership and Organization***

The final issue that must be addressed in any consideration of the US public sector reform concerns the overall organization of the government and the way in which it manages personnel across agencies. This has been a perennial topic of the various commissions and reports that have looked at the failings of the US government. Many issues have been raised in this regard, including:

- Far too many programs and agencies overlap responsibilities in the executive branch.
- Most government agencies do not have consistent ways of training their officials either as public administration generalists or as specialists in their specific sector. In particular, very few agencies train their workers to be managers and leaders.
- While the US government is constrained in its ability to use pay as a means of distinguishing good performers from bad, it has been unsuccessful in using other kinds of status rewards as a means of motivating its workers.
- The Office of Management and Budget and the Office of Personnel Management are supposed to play the role of human resource managers for the whole executive branch, but their authority has been weakened over the years by politicization.

The first and most important change in a comprehensive reform agenda lies less in the realm of policy than in the realm of culture. The United States has never trusted its public servants, but, since the 1980s, the denigration of bureaucrats, the Washington milieu, and government in general has intensified. While this denigration is loudest on the right, the left has participated as well, raising deep suspicions about the motives of the military, the police, the CIA, and other disfavored agencies. There is a general feeling that the government is incompetent and cannot be trusted to manage anything.

What is lost in this culture is the older view that public service is an honorable calling and that citizens do not simply have rights, but also responsibilities—a view perhaps most eloquently expressed by President John F. Kennedy in his 1961 inaugural address: “Ask not what your country can do for you; ask what you can do for your country.”

We will never entirely recover from the cynicism that has crept into our consciousness in the decades since the Second World War. But just as Ronald Reagan and Margaret Thatcher

were able to shift cultural attitudes away from public service, so too could future leaders move the needle back.

A second reform would increase the flexibility of the government's ability to hire and fire personnel. A balance must be struck between the unfettered right of political principals to hire and fire workers and unlimited job tenure. This could involve, for example, at-will hiring of officials under fixed-term contracts that exceed the length of election cycles. Stronger educational and skill requirements or mandatory training could also be set for all new hires, including political appointees.

A third reform has been suggested at many points, namely, a sharp reduction in the number of political appointees. This will require bipartisan agreement to gradually phase out such appointments and streamline the Senate confirmation process, for example, by changing rules that allow a single senator to put an anonymous hold on an appointee.

A fourth reform would be to hire more full-time government workers and to scale back the number of contractors currently fulfilling inherently governmental functions. Dilulio has argued that we need to hire about a million new bureaucrats, a number that is, politically speaking, wildly implausible.<sup>12</sup> Nonetheless, rebuilding capacity should become a central issue for every government manager and every agency head.

A fifth reform would restore the pipeline between higher education and government service. The government needs to recruit young people with a wide and ever-expanding set of skills: computer programmers, public health experts, financial specialists, and the like. Compliance rules need to be streamlined and limited to those empirically demonstrated to have an effect on later job performance. Strict time limits should be placed on making hiring decisions.

Sixth, the US government should consider adopting some of the New Public Management techniques in recruiting high-value talent into senior executive positions. This would mean sidelining much of the current classification system and sharply increasing the flexibility of government pay scales to pay competitive wages for high-skilled workers.

Finally, we need a systematic overhaul of the structure of the executive branch to consolidate programs into mission-related departments that would eliminate much of the duplicative and overlapping responsibilities of existing agencies. Congressional committees, which often have equally overlapping and confused responsibilities, ought also to be reorganized to match this new structure.

## Conclusion

We are at an interesting crossroads with regard to public sector reform in the United States. The issue has been dormant for the past two decades, but the failures of the Trump administration, particularly in dealing with the Covid-19 crisis, have put restoration of the civil service front and center in terms of policy priorities. Many more people would be receptive to the need for greater government capacity in health care and other realms now than at any time in the recent past.

Philanthropy can play a major role in preparing the ground for such a reform. As I have noted, the most important change is not in policy but in culture: young people need to be inspired to want to work for the US government again. In recent months we have seen a huge number of young people mobilizing around causes such as racial justice. Many are driven by inchoate feelings of anger that are not being channeled into productive pathways to real policy and social reform. The idea of national service has been around for a long time but remains a rather fringe issue. Philanthropy could help by preparing the way through education and programs that would channel young people into public service careers. Working for the government needs to be seen as something to which an ambitious young person can aspire. The media on both the right and left are happy to portray government failures that breed cynicism and distrust, but never talk about how individual government officials have helped to save millions of lives and billions of taxpayer dollars through their quiet work.

The Partnership for Public Service, the premiere advocacy organization for public sector workers, holds an annual event in Washington around the Samuel J. Heyman Service to America Medals (popularly known as the Sammies). The stories behind the individuals being honored are always inspiring, but the event has very little reach and limited effect on public perceptions of their own government. Private philanthropy could do a lot to expand public knowledge of the positive impact of the individuals whose work in the government has a direct impact on Americans' lives.

A national service program, in which American young people would spend a year or so serving in either the military or a civilian capacity, would build a sense of citizenship. Private philanthropy could play an important role in lobbying for such a program and in educating young people about duties that need to balance rights in a functioning democracy.

If we are to move to a comprehensive reform of the public sector in a new administration, the overall shape of the proposed legislation needs to be prepared largely outside of the government. Although a great deal of the knowledge of how the government works (or fails to work) is held by insiders, they also have vested interests that make them less than ideal reform agents. Private philanthropy could work to support organizations such as the Partnership for Public Service and the Volcker Alliance and academics who study these issues to create a nonpartisan plan for improving government performance and to build a coalition in favor of such reform.

US government service has always been a critical route for upward social mobility for racial

and ethnic minorities, women, and other marginalized groups. The US military remains one of the few large organizations in which racial groups have the experience of working with one another—indeed, in which white recruits often serve under African American NCOs and officers. The US Postal Service is another, though it is currently under substantial stress. The policy challenge here will be to provide ample job opportunities for underprivileged groups without undermining the principle of meritocracy around which public sector reform needs to be built. Thinking through these problems in advance is something that private philanthropy needs to support.

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## Notes

1. For a longer history of the rise and fall of the American bureaucracy, see Francis Fukuyama, *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy* (New York: Farrar, Straus and Giroux, 2014).
2. See Didi Kuo, *Clientelism, Capitalism, and Democracy: The Rise of Programmatic Politics in the United States and Britain* (Cambridge: Cambridge University Press, 2018).
3. See Paul Charles Light, *A Government Ill Executed: The Decline of the Federal Service and How to Reverse It* (Cambridge, MA: Harvard University Press, 2008); and Patricia W. Ingraham and David H. Rosenbloom, "Political Foundations of the American Federal Service: Rebuilding a Crumbling Base," *Public Administration Review* 50, no. 2 (March–April 1990): 210–19.
4. Joe Davidson, "Who Are All the Political Appointees in Donald Trump's Administration?," *Washington Post*, April 1, 2019, <https://www.washingtonpost.com/politics/2019/04/01/who-are-all-political-appointees-donald-trumps-administration/>.
5. See John J. Dilulio Jr., *Bring Back the Bureaucrats: Why More Federal Workers Will Lead to Better (and Smaller!) Government* (Conshohocken, PA: Templeton Press, 2014).
6. See Donald F. Kettl, *The Transformation of Governance: Public Administration for Twenty-First Century America* (Baltimore: Johns Hopkins University Press, 2002); and Donald F. Kettl, *Escaping Jurassic Government: How to Recover America's Lost Commitment to Competence* (Washington, DC: Brookings Institution Press, 2016).
7. For an overview of the legal ramifications of delegation, see Paul R. Verkuil, *Outsourcing Sovereignty: Why Privatization of Government Functions Threatens Democracy and What We Can Do about It* (New York: Cambridge University Press, 2007); and Paul R. Verkuil, *Valuing Bureaucracy: The Case for Professional Government* (New York: Cambridge University Press, 2017).
8. Philip K. Howard, *The Death of Common Sense* (New York: Warner Books, 1996); and Philip K. Howard, *Try Common Sense: Replacing Failed Ideologies of Left and Right* (New York: W. W. Norton, 2019).
9. Francis Fukuyama, "Too Much Law and Too Little Infrastructure," *American Interest*, November 8, 2016.
10. Fukuyama, *Political Order and Political Decay*.
11. Francis Fukuyama, "What Is Governance?," *Governance* 26, no. 3 (2013): 347–68. We can illustrate this point by looking at the way the United States and Israel have handled airport security. Following the September 11 terrorist attacks, the United States established the Transportation Security Agency (TSA) within the Department of Homeland Security. Congress explicitly decided that TSA agents would remain low-skilled workers who were not permitted to use substantial discretion in deciding who should be considered a potential terrorist. As a

result, passenger screening operates under a long series of detailed steps, including taking off one's shoes, going through a scanner, limiting liquids, and the like. This contrasts sharply with the way Israel has handled this problem. There, security agents at airports are given substantial training and spend time individually interviewing passengers entering and leaving the country. They are allowed to use their judgment in deciding who poses a danger and, in some cases, have been able to detect a person of interest who would have been missed by a rules-based method.

12. Dilulio, *Bring Back the Bureaucrats*.