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A Return to Spoils? Revisiting Radical Civil Service Reform in the United States

Stephen E. Condrey and R. Paul Battaglio, Jr.

The sense that merit systems are infested with red tape and represent the triumph of techniques over purpose has a long history (Sayre 1948). But a concerted effort to publicize the issue and galvanize deregulation did not take hold until the early 1990s. In their popular book, *Reinventing Government*, David Osborne and Ted Gaebler underscored the "destructive" qualities of government personnel systems and how they had become a "straightjacket in an era of knowledge workers" (1992, 124-125). A year later, the report of the National Commission on the State and Local Public Service (which I served as executive director and which is more commonly known as the Winter Commission) affirmed the need to "end civil service paralysis"

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by eliminating rules that tied the hands of managers. It concluded that many governments had "created such rule bound and complicated systems that merit is often the last value served" (1993, 24-25). At the federal level, the Clinton administration's National Performance Review voiced similar themes.

While advanced with rhetorical flourish, the recommendations emanating from the reinvention movement were not invariably radical. The Winter Commission, for instance, called for incremental measures such as decentralizing human resource functions to line departments, increasing the number of certified job applicants from which a manager could pick (abandoning the "rule of three"), and reducing some of the procedural barriers

to terminating employees. Others, however, endorsed more sweeping measures. Noting with approval that Texas had managed to survive without a civil service system, Osborne and Gaebler observed: "The task is less to reform civil service than to define the appropriate personnel system for a modern government and create it" (1992, 129).

While most states adopted incremental strategies for deregulating personnel management, Condrey and Battaglio deftly document the degree to which three states followed a more radical path. In doing so, they raise important issues not only about the nature and pervasiveness of radical civil service deregulation, but about its implications for administrative accountability and performance. This commentary briefly addresses certain of these issues and suggests that radical deregulation may well distract us from more promising reform.

The Nature and Pervasiveness of Radical Civil Service Deregulation

Condrey and Battaglio recount how Florida, Texas, and, above all, Georgia have adopted radical at-will employment systems. Insightful as the article is, two caveats deserve note. First, the Texas case is not about reform. In essence, the state fell so far behind in responding to one management reform cycle (the creation of a centralized merit system) that it wound up at the head of the pack in the next (reinvention and deregulation). Future research should consider whether the absence of a major reform episode in Texas causes its at-will system to have a different impact on personnel processes and employee attitudes compared to states that have experienced such episodes.

Second, a fully developed concept of letting managers manage in the human resource arena would not only include at-will employment, but other dimensions as well.

Other pertinent aspects of deregulation include the degree to which managers can (a) determine the pay of individual employees based on market and performance considerations, (b) freely reassign employees from one set of duties to another, and (c) modify working conditions without consulting union representatives. Ideally, we should measure each dimension and develop a summative deregulation score. This would facilitate the systematic comparison of states and expedite efforts to explain variation among them.

In pursuing this goal, it would be especially useful to have a periodic census of the percentage of state employees subject to at-will employment. Even among the three cases of radical deregulation presented in the article, this proportion varies appreciably, with Georgia and Texas approaching 100 percent compared to 13 percent in Florida (using employment figures presented in the article). The authors aptly cite recent research by Hays and Sowa (2006) indicating that 28 states have increased the number of at-will positions. But the exact magnitude of the movement toward at-will status as a percentage of state government employees remains unclear.

The Implications of Radical Deregulation

In addition to monitoring and explaining trends in human resource deregulation, its implications for administrative accountability and performance should be illuminated. Condrey and Battaglio deserve great credit for their efforts to probe this issue through employee survey data. In their article, they focus primarily on explaining variations in the perceptions of human resource professionals about the fairness and efficacy of the Georgia system. Among other things, the authors uncover some tendency for older, more experienced workers to view radical deregulation less positively. It would be interesting to know whether this finding reflects a gen-

erational or maturational effect. In the case of the former, it would mean that younger professionals bring a different mindset to employment that will essentially remain with them throughout their careers. It may be, however, that maturational processes are at play. Older, higher-salaried employees may feel that they have fewer career options if they suffer adverse outcomes under at-will systems. In this case, younger, less-experienced officials will trend toward more negative views of the at-will system as they age.

Going beyond issues of variation, data from the article support the proposition that at-will employment systems buttress hierarchical accountability. The authors report that 47 percent of respondents felt the reform in Georgia "heightened responsiveness to the goals and priorities of agency administrators." While the authors portray this as a limited effect, I find the result quite striking. Most administrative reforms would have a difficult time rallying close to 50 percent endorsement for impact of this kind. The article does not report how many human resource professionals believed that the reform weakened responsiveness (as distinct from having made no difference). But unless this number is much greater than I suspect, the data suggest that at-will systems heighten employee deference to agency executives.

This finding raises the issue of whether at-will systems open the door to enhanced gubernatorial control of personnel processes. The article reports that chief executives in Georgia and Texas do not appear to have used radical deregulation as a vehicle for partisan patronage. It notes that in the current era politicians have limited incentive to do so. One can add that the legal environment has become increasingly inhospitable to patronage. In 1990, the Supreme Court ruled that the use of partisan criteria in personnel decisions related to non-policy work-

ers violated their rights to free speech under the Constitution (*Rutan v. The Republican Party of Illinois*, 497 U.S. 62 [1990]).

While the authors are probably right to downplay concerns about patronage, two considerations deserve mention. First, one should be careful not to make too much of the Texas experience. Governors in that state are institutionally weak compared to their counterparts elsewhere. Buffered, appointed commissions run many state departments. This elevates transaction costs for a governor who wants to reward the party faithful with state jobs.

Second, even in the absence of well-organized patronage operations, radical deregulation will increase the vulnerability of agencies to interventions from governors and other political principals on matters of hiring and firing. Nearly all gubernatorial administrations face pressures to find jobs for campaign supporters who have marginal credentials for public employment. Governors may well resist these pressures most of the time. Merit systems can help them deflect these pressures. ("I'd like to help but my hands are tied.") If at-will employment systems spread, there will be fewer barriers to outbreaks of "hackocracy" where politically connected people with limited qualifications fill many positions.

Of course, governors vary in the attention they pay to public administration in general and human resource management in particular. Hays and Sowa (2006) conclude that Georgia has not had an activist governor who places a priority on using administrative agencies to achieve policy or partisan purposes. Florida's Jeb Bush presents a sharp contrast (Greenblatt 2006). In his aggressive orientation toward deregulation, performance management, and contracting, he emerges as a gubernatorial paragon of the

New Public Management. Governor Bush's management agenda suggests the importance of viewing radical deregulation less as a platform for patronage and more as an avenue for governors to shape the outputs and outcomes of programs via the administrative process. Bush's success in subjecting the management echelons in Florida to at-will conditions will make it easier for his successors to pursue an "administrative governorship" where chief executives orchestrate substantial policy shifts without going through the legislative process.

While radical human resource deregulation opens the door to greater administrative responsiveness to governors and their agency heads, it can erode accountability rooted in a respect for law. At-will employees will be in a weaker position to resist importuning by their superiors to stretch statutory and constitutional interpretations to the limits. Sharp tradeoffs at times surface between responding to the preferences of political principals and honoring the letter and spirit of the laws governing agencies.

Even more important, radical deregulation may impair the efficiency and effectiveness of state agencies. This could occur in multiple ways that go beyond the potential problem of "hackocracy" mentioned above. Some threats to performance have to do with day-to-day interactions between leaders and subordinates. To the degree that at-will systems foster a sense of job insecurity among seasoned civil servants, they may become more reluctant to share their candid assessments with their superiors. Hecló (1977) noted years ago that top officials typically had far less to fear from bureaucratic sabotage than subordinates who too readily say "yes, boss." Excessive deference to superiors can lead top executives to lose a valuable channel of information and erode their ability to traverse administrative minefields.

Other threats to performance revolve around the implications of radical deregulation for attracting and sustaining a high-quality workforce. Condrey and Battaglio report no cause for immediate alarm. But we need additional studies over time to monitor this. Surveys should not only continue to target employees, they should also probe the image of the state government as an employer among the general public. Other research should focus on the quality of human capital (e.g., education, experience), turnover, vacancy rates, and the like. To the extent that state officials fail to compensate for less job security with other incentives that make government work attractive (e.g., pay, benefits, mission), radical deregulation may well fuel a deterioration in workforce quality.

In sum, radical deregulation of human resource management will probably strengthen hierarchical controls and deference to superiors, in some cases governors. But it may well do little to enhance efficiency and effectiveness and could in some contexts impair performance. We need a steady stream of research using various methodologies to illuminate further the implications of these systems for administrative accountability and performance.

Radical Reform as Distraction

One of the major risks of the New Public Management in general and radical civil service deregulation in particular is its propensity to crowd out thinking about another serious problem in public administration—the substantial gap between policy promises and the resources provided to administrative agents to deliver on these promises. With their emphasis (at least in benign form) on the theme of good people trapped in bad systems, reformers at times reinforce the kind of wishful thinking that all too frequently pervades American politics—that one can have better governance on the cheap and

dodge hard questions about the investments required to achieve higher levels of performance and accountability. In this regard, the exhortation to let managers manage via radical deregulation rarely addresses the importance of *enabling* managers to manage through adequate investments in managerial training and education. Some 15 years ago, the Winter Commission recommended that state and local governments set aside 3 percent of personnel costs for training. I believe that this remains a useful benchmark, one especially pertinent in states that have radically deregulated their personnel systems.

It will also be unfortunate if radical civil service reform and the excessive rhetoric that often accompanies it distract us from more promising reforms in the human resource arena. Many merit systems continue to place too many constraints on managers. Targeted incremental deregulation with respect to hiring, removal, and other personnel processes makes considerable sense in many contexts. Reforming personnel systems on the margins is a lot less exciting than throwing out current systems and fashioning new ones. It can be quotidian and even tedious. But I believe that incremental change of this kind will ultimately serve government better than the radical reforms described by Con-drey and Battaglio. Public administration scholars and practitioners should partner in this effort.

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