

Minnowbrook 50th Anniversary Conference

Rethinking the Administrative State

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There are two streams of thinking that inform this concept paper. In May, I delivered a keynote for a university in Ghana on the politicization of the public service. For the Ghanaian scholars, who set the topic, politicization of the bureaucracy is seen as threatening their young and fragile democracy. I entered with the same fears that the American administrative state is seeing the weakening of some of its traditional pillars of neutrality. Note the Supreme Court's June 2018 decision in the *Lucia vs Securities and Exchange Commission* case that redefined Administrative Law Judges as officers and therefore no longer hired under the merit system. The U. S. Budget Director announced seeking to freeze salaries of civil servants while appointees in several agencies are receiving increases ranging from 20 to 72%. The Veterans Accountability Act, weakening the rules protecting employees from dismissal for poor performance. The new Director of the Environmental Protection Agency taking advice, not from his own scientists or those funded to do work by the agency, but from regulated industry executives and hand-picked experts who represent a particular point of view. The Janus decision that could have a devastating effect on unions. At the state level, this is old news. Seven states including Georgia and Florida have abandoned merit protection for government employees, replacing it with at will employment status. More states will probably follow (Battaglio and Condrey, 2007). There is no doubt that this is increasing politicization, but is it problematic? What is the line between political responsiveness and corruption? Do we need to redefine the role and benefits of neutrality?

Politicization is often seen as “the substitution of political criteria for merit-based criteria in the selection, retention, promotion, rewards, and disciplining members of the public service” (B.G. Peters and Pierre, 2004, p. 2). This definition is often coupled with the neutrality argument, claiming that a well-functioning government needs qualified staff who are “non-political.” However, most reject pure neutrality as possible or even desirable. Political leaders also require responsiveness or responsive relationships with public servants. Mulgan (2008, p. 345) discusses a very different view - “the readiness of public servants to do what (political actors) want.” Others say that neutral advice alone may not be all that useful and therefore fulfill the definition of responsiveness. Public servants should understand the policy- making process and integrate such knowledge into tactical advice. This means public servants should be knowledgeable about political processes and willing to provide ideas that take political realities into account (Hustedt and Salomonsen, 2014). But can responsiveness cross a line? How might too much responsiveness destroy the reputation of the public service, the quality of policies and implementation, and thus the very electability of political leaders?

These questions led me first to consider the institutional side of the administrative state that promote responsiveness but discourage corruption. The American government is highly politicized by design and intentionally weakens the power of bureaucrats with its appointed agency leaders, legislating Congress, and judiciary who are selected for life. Francis Fukuyama, in *Political Order, Political Decay*, claims that the Pendleton Act, in adopting a weak power model for its bureaucracy and merit-based protections, shifted corruption away from more expert bureaucrats to interest groups and legislators- to the detriment of democracy. But, if we rethink some of the tenets of the administrative state, we should note the success of some of its features in preventing corruption. A recent comparative study of 52 countries, including the United States, looks at bureaucratic characteristics and the impact on corruption. It concludes that skill-based selection is an important factor in deterring corruption (Dahlstrom, Lapuente, Teoreli, 2011). The same can be said for Whistleblower Laws. Also, strong unions contribute to higher wages and benefits for workers, which contribute to maintaining talent. Yet only 13 states have public unions and federal unions are weaker than ever. There is continuing pressure to lessen the number of federal employees selected under the merit system Several areas for exploration come to mind. Which laws, systems, and structures do we need? Which should we shed because they inhibit responsive government?

The second influence on this paper was the lack of rigorous research on public sector leadership, especially in relation to a more politicized environment with less employee protection. An important publication by Heather Getha-Taylor and other scholars at the 2008 Minnowbrook III conference proposed an agenda for more in-depth study of public sector leadership (Getha-Taylor et al, 2011). This again should be considered during this conference with other dimensions to the discussion, given the changing environment. First, if there are fewer employee protections and more demands for responsiveness, the leadership role may broaden in relation to staff, with more need for transformational and values-based approaches. Have we adequately studied the interplay of leadership and structures (laws, policies, etc.) on employee behavior? Can effective leadership at all levels of the bureaucracy maintain public values and deter corruption if we redefine neutrality and its “pillars”? Second, what are the leadership competencies that make career leaders successful with their bosses in an increasingly politicized environment? Rosemary O’Leary and I wrote a chapter for a book called, *Conflict and Collaboration: Better or Worse Relations*, reiterating the need for public leaders to develop both a mindset and skillset to be effective collaborators (Gerard and O’Leary, 2018). An aspect of the mindset is the recognition that collaboration creates conflict, which may in fact strengthen relationship if managed constructively. In discussing public sector leaders in a less neutral world, the language and concepts in collaborative public management research might be useful, reinforcing that elected officials and careerists engage in conflict and collaboration, taking advantage of the knowledge, skills, and perspectives each has to achieve the common overarching goals- and hopefully strengthening their relationships. This is not a new idea. Robert Maranto (2005) explores the theme in his book, *Beyond a Government of Strangers: How Career Executives and Political Appointees Can Turn Conflict to Cooperation*. However, this aspect of

public sector leadership could be studied in a more integrated way, as part of the complex roles and behaviors of the career public leader, rather than in isolation.

In conclusion, this concept paper raises many themes. Rethinking the administrative state involves rethinking and reframing neutrality and political responsiveness. Reshaping the institutional foundations of neutrality has been going on for a while without a clear sense of what is safe to dismantle and what is not. Less examined is public leadership in this context, particularly the role and competencies of career leader in relation to staff and boss in an environment with fewer protections and more demands for political responsiveness.

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