

The Administrative State – Moving toward a Private Enterprise?

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Is Public Administration in a time of revolution? Perhaps so, regardless of whether we – scholars, policy makers, citizens – fully recognize it. To better understand one relevant element of this “revolution,” we need to ask some serious questions:

1. *Who* is the Administrative State?
 - a. Deep-state bureaucrats hostile to current executive policy?
 - b. Neutrally competent bureaucrats loyal to the Constitution?
 - c. Private firms extracting rents from government?
 - d. Other

What are the primary interests of those making fundamental decisions about how government operates, how it serves its citizens, and how it prioritizes those citizens and services?

The answer is not a simple one; indeed, there are multiple answers that must be carefully considered as we work to protect our democratic institutions.

- A. Deep-state bureaucrats hostile to current executive policy: are *they* the Administrative State?

Every presidential administration inherits career employees who transition from one leader to another, often from the executive or legislative control of one party to another, or one ideology to another. The current view of the federal civil service as a “deep state” in and of itself comprises a revolution of sorts; this view is certainly a disruption of the merit-based system of government service that has endured for decades as a predominant perception of bureaucracy.

Other administrations have, of course, tried to weaken resistance to bureaucracy. President Reagan famously “thickened” the top ranks of agencies to more deeply influence them. But the current Trump Administration assault – yes, assault – on the career civil service feels far more threatening, mostly because it is difficult to accept that the president’s objectives are focused on the public, as opposed to private interests. Assaults focus on the media, the justice system (populated by bureaucrats, some of whom are certainly hostile to the executive and his policies), and other democratic institutions seem unprecedented in the modern Administrative State. Attempts to neutralize the deep state, as reflected in administrative appointments, executive orders, and other executive rhetoric and action, may dislodge essential components of bureaucracy, but it is hard to imagine that hostility to executive action will be suppressed. And many believe that is a very good thing.

So the answer is: ***probably not.***

B. Neutrally competent bureaucrats loyal to the Constitution: are *they* the Administrative State?

Whether or not a bureaucrat can be “neutrally competent,” one can certainly serve as a public servant dedicated primarily to democracy, citizens and their representatives, and the Constitution’s imperatives. Individuals dedicated to better, more effective government, to specific policy arenas such as the environment, education, infrastructure, taxation, and others, are most definitely still an essential part of the Administrative State.

Just as it is unlikely that current executive action will suppress bureaucratic hostility to its policies, current assaults on the bureaucracy are unlikely to succeed in undermining the cadres of individual civil servants who seek to serve as effectively as possible in their respective roles.

So the answer is: **yes**, and they are likely to continue as an essential element of the Administrative State.

C. Private firms extracting rents from government: are *they* the Administrative State?

There is no doubt that the Administrative State has been deeply penetrated by private interests. The role of private interests is our course, not new. But its scale and scope are, and the implications for the Administrative State are profound.

The implication is that those making fundamental decisions about how government operates, how it serves its citizens, and how it prioritizes those citizens and services, are motivated by objectives often at odds with the public interest and indeed, the Constitution.

So the answer is: **yes**, and they are so deeply entrenched that they may be more threatening to democracy and the constitution than current executive action.

Capitalism is essential to our system of government and our society rests on its foundations. Capitalism is *not* a bad thing. But private enterprise - focused on values often in direct conflict with democracy and the constitution – should not and must not dominate public policy, the well-being of the citizens it serves, or the Administrative State critical to its success. The first Minnowbrook Conference generated many lessons for the Administrative State. One of the most important is that our democratic values must include the notion of essential fairness – beyond the definition dominant in the legal system - which often requires corrections to capitalism. *Equity* necessarily entails a reign on capitalism, but most of us probably agree that [that Robin Hood](#) certainly had heroic qualities despite his methods. The profit imperative does not consider equity much, if at all. And many think it should not. Regardless, the role of profit in a democratic public sector can threaten critical institutional safeguards, including the bureaucracy.

Some particularly egregious examples:

- Privately operated or owned prisons with motives inherently antithetical to constitutional protections. This dynamic is particularly dominant in the state and local corrections sector, though certainly also present in federal prisons. The cheapest prison management – offering the highest profit – may not offer fealty to constitutional protections, [regardless of contractual obligations](#). Furthermore, the notion of [profiting from the volume of captives](#) is a pure threat. Short-term gains from low-wage guards and staff may serve the private industry, which cares minimally about recidivism and is in fact expanding into half-way house, parole, and probation segments of the justice system.
 - o A subset of the prison industry – a growing subset – focuses on the detention of undocumented immigrants who have the weakest of constitutional protections. These detainees often include women and children. All detainees may be held in facilities that [house violent convicts, and many are treated like prisoners instead of civil detainees](#).
- The Department of Defense’s increasing reliance on private actors for all elements of its responsibilities, including combat and combat support. Consequences include the eruption of violence in a [turning point of the Iraq War in Fallujah due to contractor activity](#), and the [Abu Ghraib private contractor torture scandal](#).
- The private child welfare system, funded by the federal government and states through contracts. A state that led this trend – Kansas – transferred, *wholesale*, case management duties to nongovernmental organizations – nonprofits – that quickly became dependent on state contracts, abandoned their advocacy work, and moved to enhance revenues through subsidiaries designed to create profit. Many states, enamored of the idea of nongovernmental “efficiency” and “effectiveness,” adopted this approach. In Kansas, the impetus was a state legislature that refused to fund public solutions to its broken (AKA underfunded??) child welfare system. The result was a system that tripled in observable costs, not to mention the difficult-to-document [private costs to children, adoptive families, and the various institutions that serve them](#). A simpler solution could have included modifications to employee compensation in the original public child welfare system; superior “results” might have emerged.

The “bottom line” is that our society needs the profit motive. But it should not drive our Administrative State or the publicly-focused institutions that it serves. Public institutions are hardly perfect. But they offer something that private actors don’t – direct accountability to citizens’ representatives and our democratic system.

Private-sector ideas can often be invaluable to government. But as the Administrative State moves toward a private enterprise, those of us who study and are committed to democracy, the constitution, and good government and governance, must be responsible for asking serious questions about potential consequences for our citizens.