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Civil Service Reform Under George W. Bush: Ideology, Politics, and Public Personnel Administration

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Abstract

This article focuses on the George W. Bush administration's failed effort to impose radical personnel reforms on the Department of Homeland Security and the Department of Defense in the wake of the September 11, 2001, terrorist attacks. We use an analytical framework suggesting three overlapping primary reasons for reform: (a) technical concerns, (b) ideological beliefs, and (c) a desire by the executive to enhance political control. The results of our analysis show that, whereas motivations for the Bush reforms were mixed, changes advocated by the administration were largely politically and ideologically motivated. As a result, they met stiff resistance from stakeholders, particularly federal employee unions and their supporters in Congress, and the reforms were ultimately scuttled. One lesson from this experience is that reformers should avoid radical changes to personnel systems based largely on ideological and political preferences. Reforms that are more incremental in nature and grounded more firmly on technical matters related to the implementation of core personnel functions will, in our view, be more likely to succeed. Yet a conundrum exists: if presidential scholars are correct, even these types of reforms may be held hostage by proposals that reflect the views of partisans unwilling to compromise in what appears to be an enduring era of polarized politics in Washington.

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Civil service merit systems traditionally are founded on three core principles, including employee selection on the basis of open and competitive examinations, political neutrality of the public workforce, and relative security of tenure for public employees (Van Riper, 1958). The purpose served by these fundamental ideas is to establish and preserve a public workforce grounded on what is broadly known as politically neutral competence—that is, a system based on competency, equity, and professionalism that simultaneously limits the intrusion of partisan politics into the public bureaucracy. Typically, a central personnel agency, such as the former U.S. Civil Service Commission, is established to ensure the integrity of the system and fairness in its administration. For the past 30 years, however, we have witnessed dramatic changes in the manner in which civil service systems are organized and operated. Decentralization and management flexibility have become the standard, and most recently, significant challenges to many of the foundations of merit emerged across the states and in the federal service under President George W. Bush as he pursued his "big government conservative" agenda.[1]

Whether or not they are pursuing the agendas of what the editors of this symposium, citing Skowronek (2008), call "orthodox innovators" (such as President George W. Bush), the attention of reformers frequently is focused on civil service systems and public personnel management because personnel systems provide a critical link between political leaders and the vast public bureaucracy (Kellough & Nigro, 2006). Personnel administration provides the structure through which we recruit, select, train, and deploy the legions of public servants who do the work of government. It is, in essence, the major means by which we control the offices of the government and the powers of those offices (Nigro, 2006). It follows, then, that if one can direct personnel policy, one can substantially influence the character of the public workforce and the quality of work performed. Concomitantly, the failure to control personnel policy can be interpreted as a failure to govern effectively. It is, therefore, easy to see why so many different groups of stakeholders—including overhead political officials, special interests, citizens, labor organizations, and public employees themselves—are interested in public personnel policy.

As others in this symposium have discussed, the Bush administration clearly understood this principle and its centrality to realizing the conservative agenda they hoped would extend Republican dominance in U.S. politics for a generation. Ultimately, however, Bush's agenda met much the same negative fate as those of other orthodox innovators in U.S. presidential history. We argue in this article that a major lesson drawn from this experience is that reformers should avoid radical changes to personnel systems based largely on ideological and political preferences. Reforms that are more incremental in nature and grounded more firmly on technical matters related to the

implementation of core personnel functions will, in our view, be more likely to succeed. The rub is this, however: if presidential scholars are correct, the prospects for needed civil service reforms are not particularly good given the current polarized atmosphere of politics in Washington.

In making this argument, we begin by offering an analytical framework for examining human resource management (HRM) administrative reforms in general. The framework identifies three key motives for reform and assesses their implications. Next, the article applies the framework to the Bush reform agenda, summarized by Jim Thompson in this symposium, for the Department of Defense (DOD) and the Department of Homeland Security (DHS), only this time with a more substantial focus on the political, technical, and ideological dimensions driving the process. The article concludes by arguing that more incremental personnel reforms that are technical in nature are more likely to be implemented successfully in the federal government than broad-based and more ideologically or politically motivated efforts. Yet in an era of heightened partisanship, technical solutions are not the fodder of political debate nor the default option for deliberation in Washington for the foreseeable future. This, in turn, means that efforts to address the kinds of problems facing the federal civil service that Jim Thompson summarizes in his contribution to this symposium ultimately may gain little traction.

A Framework for Investigating HRM Reforms

When considering the history of public personnel management in the United States and the justifications for and types of changes implemented in the past decade, we believe that there are usually three prominent motivations for reform. These rationales include (a) technical concerns regarding the performance of core personnel functions, (b) ideological beliefs about how government should operate, and (c) a desire to enhance or extend political control by the executive (Kellough & Nigro, 2010; Nigro, Nigro, & Kellough, 2007). Each justification provides a distinct orientation to personnel management problems and administrative or organizational responses to those problems. Collectively, these orientations provide a heuristic device or analytical framework to guide the investigation of reforms, which may be simultaneously motivated by all of these concerns. It may be impossible, therefore, to categorize reform efforts precisely, but at any particular point, one or more of these orientations may be prominent. Below, we consider each of these motives and then review major personnel management reform efforts undertaken recently in the DHS and DOD. Our objective is to understand better the development and attempted implementation of those reforms and the orientation of the George W. Bush administration to civil service reform more generally.[2]

Technical Concerns

Some observers of public personnel management focus primarily on technical aspects of core personnel functions. The design and operation of job classification methods, the construction and validation of examinations, the specification and weighting of

selection criteria, the construction and implementation of performance appraisal systems, and the administration of pay schemes are all technical concerns lying at the heart of public personnel management. Reform is often motivated by a desire to refine the techniques associated with these functions to improve the efficiency and effectiveness of public organizations. For example, the number of job titles and/or classes may be adjusted to reflect accurately the different types and levels of work within an organization. Performance appraisal criteria may be altered in an effort to improve performance appraisal processes, or authority for examination of applicant qualifications may be shared between a central personnel agency and line agencies or departments within the government. These kinds of reforms are intended to make refinements to personnel systems and processes so that essential personnel management activities are performed more adequately.

Ideological Beliefs

Reform also may be undertaken for ideological reasons. *Ideology*, as the term is used here, refers to an organized set of beliefs about how public affairs should be conducted. The beliefs or values underlying an ideological perspective are typically accepted as a matter of faith. In fact, there may be little or no empirically verifiable evidence to indicate that changes made consistent with specified values will produce better functioning public organizations. In the case of personnel policy, ideologically driven reforms may involve "market-oriented" approaches to managing public agencies. For example, reformers may give priority to contracting out government operations because of an ideological belief that most activities can be handled more efficiently and effectively by the private sector and should, therefore, be carried out there. In recent years, many personnel or HRM activities have been outsourced or privatized, including training, health and benefits administration, employee assistance programs, and information systems operations (Fernandez, Rainey, & Lowman, 2006). Of course, other government operations also may be privatized, with broad implications for the resulting size and duties of the public workforce.

Ideological predispositions also may lead reformers to pursue selected incentive or performance management techniques, such as the implementation of performance appraisal techniques tied to pay-for-performance systems. Despite research evidence showing that performance appraisals are dreaded by managers and employees alike, and that pay for performance does little to motivate workers or stimulate their performance, many reformers find these techniques utterly irresistible (Kellough & Lu, 1993; Kellough & Nigro, 2002; but see Thompson in this symposium). In addition, reformers may seek to expand managerial rights vis-à-vis employees or restrict the rights or activities of organized labor because of ideological beliefs rooted in the market-based principles of managerial prerogative and "at-will" employment. Some reformers view deregulation of personnel systems as necessary to give managers the discretion they need to manage effectively, without stopping to consider the potential impact these reforms may have on the core values of equity and due process that traditional personnel structures are intended to protect.

Political Motives

Finally, there are often political motivations for personnel reform. Some reforms, for example, are primarily motivated by the desire to exert more control over the bureaucracy or enhance the power of certain political actors (who are usually the reformers themselves). Frequently, this involves efforts by elected political executives to weaken personnel systems and thereby enhance their own authority. Efforts to increase "managerial flexibility," for example, may be as much about increasing bureaucratic responsiveness to executive leadership as they are about making government agencies more efficient and effective. Traditional merit systems create barriers to executive control and for good reason. Political executives often enjoy a strong political mandate, have considerable energy and will, and have only a short timeline to leave their mark, so it is natural for them to grapple for control of the bureaucracy.

However, enhanced control may not be in the public's best interest. Rourke (1969) points out that the bureaucracy is a reservoir of expertise and experience, and it can be more representative of the people than any other political institution. However, executives seeking to promote their particular political or policy agenda often try to suppress the role of bureaucrats in the policy process. That objective, in turn, may require a relaxing of traditional restrictions on managerial authority over personnel matters, including classification, pay, or adverse actions such as demotion or removal. The expansion of "at-will" employment in the states may, for example, be motivated primarily by a desire to make government bureaucrats more responsive to agency leadership and, ultimately, gubernatorial authority (Hays & Sowa, 2006; Kellough & Nigro, 2010). In addition, certain reforms are useful politically because of their symbolic quality. That is, they send a clear message that resonates positively with the public. Politicians frequently rail against supposed bureaucratic inefficiencies, for example, and certain reforms, such as pay for performance, suggest that political leaders are holding government bureaucrats accountable for their performance.

Mixed Motives

As noted above, the foregoing motivations for reform are usually intertwined. Technical, ideological, and political motives may be present to some extent in all reforms. For example, efforts to enhance political control may be mixed with ideological predispositions to limit employee rights. Technical concerns with cumbersome employee transfer or disciplinary procedures also are often present. Indeed, as noted, many reforms that aim to enhance managerial "flexibility"—including broadbanding, restrictions on employee appeals rights, and limitations on collective bargaining—also may enhance control by political executives and their appointees who head public agencies.

Pay for performance is a classic case in point. As a concept, it is appealing to many people because the underlying logic seems so compelling: we should reward high performers and withhold rewards from those who are substandard. In this manner, good performance is incentivized. Nevertheless, a significant body of research shows

that such programs frequently do not work because of problems inherent in the performance appraisal process and/or the lack of adequate financial incentives in the public sector (e.g., see Bowman, 2009; Kellough & Lu, 1993; Kellough & Nigro, 2002; Kellough & Selden, 1997; Milkovich & Wigdor, 1991; Perry, 1986; Perry, Engbers, & Jun, 2009). Moreover, the underlying theory is based on the power of self-interest as a driver of bureaucratic behavior, although several competing motives—which can be referred to collectively as *public service motivation*—may diminish or subordinate the importance of self-interest as a motive for performing public service (see Perry & Hondeghem, 2008).[3] Past experience with pay for performance, however, does not seem to inhibit reformers, and in particular politicians, from embracing the idea as a matter of principle or ideology and as a means of strengthening the hand of management (e.g., see Bowman, 2009; Kellough & Lu, 1993; Perry, Engbers, & Jun, 2009; Thayer, 1984). Once pay-for-performance systems have been established and have served their symbolic and political purposes, politicians tend to downplay any difficulties that arise during implementation (Kellough & Nigro, 2010).

Although our typology of reform motivations may not permit precise classification of all reform efforts, it is likely that one or more of the motives will be most prominent in providing the impetus for particular reforms. For example, action by the U.S. Office of Personnel Management (OPM), under authority of the Civil Service Reform Act of 1978, to delegate responsibility for the development and administration of selection examinations to federal agencies in the early 1980s was motivated primarily by technical concerns for the operation of the examination process. The government had experience with both centralized and decentralized administration of exams in the past, and this move back to decentralization was prompted by frustration with the delay and inefficiency characteristics of a more centralized approach. Although political motives also may have been present, the primary rationale was largely technical (Ban & Marzotto, 1984). The purpose of the shift was to give individual agencies the flexibility to adapt examinations to fit their specific needs better. A similar argument can be made regarding reforms focused on reducing the number of job titles in an organization or reducing the number of pay grades through implementation of a system of broadbanding (Whalen & Guy, 2008). Such efforts are designed to increase managerial flexibility, but they are motivated largely by technical concerns rather than ideological or political reasons (see Durant, 2008, however, for an examination of how technical initiatives like these can be "weaponized" for political purposes once launched in an organization).

Applying the Framework: George W. Bush, Big Government Conservatism, and the Realpolitik of Civil Service Reform

With our framework in mind, we now turn to consideration of the Bush administration's HRM reforms in DHS and DOD. Only 8 months after his first inauguration,

George W. Bush became a wartime president following the September 11, 2001, terrorist attacks. Those attacks and their aftermath created a watershed of political support for Bush, enabling him to reorganize the national security establishment and enact sweeping civil service reforms in agencies with national security responsibilities. Initial efforts focused on the newly established DHS, but the DOD was also soon targeted for dramatic reform. Although Jim Thompson offers a review of these initiatives in his article in this symposium, we drill substantially deeper into the substance, logic, and dynamics of these two major initiatives.

Personnel Reform in DHS

The federal government's response to the terrorist attacks of September 11, 2001, included the invasions of Afghanistan and Iraq, passage of The Patriot Act of October 2001, and, most relevant for our purposes, passage of The Homeland Security Act of November 2002. The Homeland Security Act transferred 22 domestic federal agencies and 170,000 employees with responsibility for various disparate aspects of national security policy into a newly established DHS. Many of the agencies brought into the DHS had been granted expanded powers earlier under The Patriot Act, including such organizations as the Coast Guard, the Border Patrol, the Customs Service, the Immigration and Naturalization Service, and the newly created Transportation Security Agency established to protect the nation's airports, railroads, and subway systems.

The Homeland Security Act resulted in the largest reorganization of federal agencies involved in national security since President Truman established the DOD in 1947. Interestingly, however, a major obstacle to ultimate passage was the Bush administration's desire to impose a "reformed" personnel system on the new department. On national security grounds, President Bush sought significant personnel "flexibilities" for management, including substantial limitations on collective bargaining for employees transferred into the new department (Brook & King, 2008). Democrats in Congress, responding to labor union constituencies, opposed these changes, and the legislation stalled until after the midterm election of 2002 brought Republican control to the Senate. Rather than delay the bill further, Democrats allowed it to pass on November 25, 2002.

The Homeland Security Act gave the administration precisely what it wanted: a very broad grant of authority for reform. The act amended Title 5 of the U.S. Code, which covers federal civilian personnel matters, by specifying that the secretary of DHS and the director of OPM could at their discretion establish a new personnel system for the department. The law proclaimed that the system established must be "flexible" and "contemporary." The act protected specified merit principles associated with hiring and required maintenance of the concept of equal pay for equal work, the protection of whistleblowers, and adherence to equal employment opportunity laws. Departmental employees were also assured of their right to collective bargaining through their labor organizations, but the law specified that this right could be limited and that employees

involved in matters of intelligence collection, counterintelligence, or investigative work in the battle against terrorism could be excluded. In general, however, the secretary of DHS and the director of OPM were given a free hand to reshape human resource policies for the new department in a manner consistent with the views of the Bush administration.

In April 2003, officials from the new department, OPM, and ten representatives from three federal employee unions were brought together to begin developing proposals for new personnel policies in six core areas: classification, compensation, adverse actions, appeals, labor relations, and performance management (Clarke, 2003). This design team consulted with representatives from a variety of federal agencies, state and local governments, and private organizations and reviewed publications addressing public personnel management issues (U.S. General Accounting Office, 2003). The team developed a long list of alternative proposals for personnel policy in the areas specified, including options that ranged from maintenance of current practices to dramatic departures from traditional civil service procedures (U.S. Department of Homeland Security and Office of Personnel Management, 2003; Zeller, 2003). Final decisions on the nature of the new system favored the most far-reaching reform ideas and were published as proposed regulations in the *Federal Register* on February 20, 2004 (U.S. Federal Register, 2004).

The proposed new rules for the DHS personnel system called for the establishment of new systems for job classifications, pay administration, and employee performance appraisals (U.S. Federal Register, 2004). The department would abandon the government-wide General Schedule classification system for white-collar employees by grouping jobs into broad occupational categories based on the type of work and skills needed on the job. A broadbanded pay structure would then be developed, with broad salary categories corresponding to work at specific levels (designated "entry or developmental," "full performance," "senior expert," and "supervisory"). Individual pay adjustments within each band would consist of market-related adjustments, locality pay supplements, and annual performance-based pay increases.

The regulations also relaxed the requirement that managers develop specific written performance standards for each employee at the beginning of an annual performance appraisal period and allowed managers to communicate expectations through a variety of other mechanisms, including the use of directives or specific assignments. In the performance appraisal process, the regulations specified that only three performance standards would be used: "unacceptable," "fully acceptable," and "above fully acceptable." The results of individual performance appraisals were to be used to inform decisions regarding annual increases in salary.

The proposed rules also significantly reduced employee rights to collective bargaining (U.S. Federal Register, 2004). Of course, bargaining over wages and benefits was already prohibited, but in the DHS, bargaining over fundamental working conditions also was to be restricted. This provision of the new rules ensured that almost all decisions regarding the conditions of work were exclusively in the hands of departmental administrators. Bargaining was essentially limited to issues affecting individual

employees, such as arrangements for employees adversely affected by implementation of the new regulations' provisions (provided those impacts were significant), the reimbursement of employee out-of-pocket expenses incurred as a direct result of the requirements of their jobs, and personal hardship or safety measures. The rules specifically prohibited negotiation over the number and types of employees in a given unit; the methods and means employees use to perform work; management's right to determine mission, organization, budget, and internal security practices; and management's right to hire, assign, and direct employees. The department retained authority to take any action in any of these areas without advance notice.

Oversight of the limited bargaining process and the adjudication of disputes involving such issues as bargaining unit determination, unfair labor practices, bargaining impasses, and issues of negotiability were to be handled by a Homeland Security Labor Relations Board rather than through the independent Federal Labor Relations Authority, which has authority over such matters in other federal agencies. Furthermore, the Homeland Security Labor Relations Board was to work from a position sensitive to the department's mission and goals. However, in case these provisions still inadequately protected management's rights, the secretary of the DHS was granted unilateral authority to disapprove and disallow any provision of any negotiated labor contract whenever he or she alone determined that it was contrary to law, regulation, or management rights.

The proposed new regulations also addressed adverse actions, including removals, suspensions, demotions, and reductions in pay (U.S. Federal Register, 2004). For example, all employees were to serve a 1- to 2-year probationary period, called an *initial service period*, following initial appointment to the department, although prior federal service would count toward that requirement for employees transferring in from other agencies. This probationary period was up to twice as long as the standard 1-year period required elsewhere in the federal service by the Code of Federal Regulations (Title 5, Part 315, Subpart H, Section 315.801: Probation and Initial Appointment to a Competitive Position). Such an expansion of the probationary period is, of course, significant because employees are subject to discipline and even removal during probation without any requirement of prior notice or any right to respond as required by procedural due process. In addition, once the initial probationary service period was completed, employees were to be subject to new adverse action procedures that provided for a shorter advance notice of 15 days (rather than the 30 days required under Title 5 of the U.S. Code) and a requirement that employees respond to any such notice within 5 days (rather than the Title 5 requirement that employees simply be given a "reasonable time to answer orally and in writing" any allegations of misconduct).

The secretary of DHS also was given authority to identify offenses that have a "direct and substantial" impact on the department and for which the penalty would be mandatory removal from federal service. In these cases, an advance notice of 5 days was all that was required, and employees charged were required to respond within 5 days. In all cases, employees were entitled to a written decision, but the burden of proof on the department was substantially reduced from past practices and required

only that the department establish a "factual basis for the adverse action and a connection between the action and a legitimate departmental interest." The factual basis could rest merely on "substantial evidence" rather than on a "preponderance of the evidence." In addition, problems of poor performance and of employee misconduct were to be handled through the same adverse action procedures. The earlier requirement that poor performers be given a formal period of 60 to 90 days to improve their performance prior to adverse action was eliminated.

Common adverse actions could be appealed to the U.S. Merit Systems Protection Board (MSPB), but new standards for reviews by the MSPB were established to ensure that the DHS's critical homeland security mission was accommodated in the appeals process, and restrictions were placed on the MSPB's ability to alter any penalties imposed (U.S. Federal Register, 2004). Mandatory removals, however, could be appealed either directly to the federal judicial system or to the MSPB. However, in the latter case, a deferential standard of review was to be employed, and a decision from the MSPB was required within 20 days.

On balance, the DHS regulations were decidedly pro-management and anti-labor. In the days immediately following publication of the department's regulations, Senator Susan Collins of Maine, the Chair of the Senate Committee on Governmental Affairs at the time, expressed concern over the reduced burden of proof on the department in adverse action proceedings and the restrictions placed on the MSPB in the appeals process, but otherwise she praised the proposals (Zeller, 2004). The General Accounting Office also weighed in on the proposed new rules just 5 days after they were announced. In testimony before subcommittees of the Senate Committee on Governmental Affairs and the House Committee on Government Reform, Comptroller General David M. Walker supported the proposed new personnel system, although he called for the identification of "core competencies" as part of the performance appraisal process, urged caution in the specification of mandatory removal offenses, and expressed concern that employees continue to be involved in a "meaningful manner" in departmental affairs despite the reduction in the scope of collective bargaining (U.S. General Accounting Office, 2004). Walker also called for continuous evaluation of the system and its implementation to allow for adjustments as elements were put into place.

Final regulations outlining the new DHS personnel system, ultimately known as MAX^{HR}, were announced on February 1, 2005 (U.S. Federal Register, 2005a). These rules were essentially unaltered from what had been proposed earlier. Federal employee unions strenuously opposed the new system and immediately announced plans to file a lawsuit against the DHS arguing that the new collective bargaining rules violated guarantees of collective bargaining in the Homeland Security Act. In August of 2005, the U.S. District Court for the District of Columbia handed the unions a major victory by striking down the labor relations provisions of the new DHS system. Judge Rosemary M. Collyer, a George W. Bush appointee, ruled that the department's regulations violated the Homeland Security Act because they did not ensure collective bargaining rights for federal employees. Judge Collyer stated, in her opinion, "When good-faith bargaining leads to a contract that one side can disavow without remedy, the right to

engage in collective bargaining *ab initio* is illusory" (*National Treasury Employees Union, et al., v. Michael Chertoff, Secretary, Department of Homeland Security, et al.*, 2005, p. 20).

The government immediately submitted a motion to limit the scope of the court's injunction, pursuant to the court's invitation, but on October 7, 2005, Judge Collyer found that proposal insufficient and denied the motion. The government then appealed the original opinion of the District Court to the U. S. Court of Appeals for the District of Columbia Circuit. In a unanimous decision, the Court of Appeals not only upheld the lower court's decision but also expanded it by ruling that the DHS had inappropriately restricted the scope of bargaining (*National Treasury Employees Union, et al., v. Michael Chertoff, Secretary, United States Department of Homeland Security and Linda M. Springer, Director of the Office of Personnel Management*, 2006). Following this decision, the government abandoned the labor relations provisions of its new system, but it continued to implement other aspects of the system dealing with classification, performance management, and adverse actions.

Prospects for those reforms changed, however, when Democrats gained control of Congress following the midterm election of 2006. The unions, including the National Treasury Employees Union and the American Federation of Government Employees, intensified their lobbying efforts in Congress and were able to secure language in a fiscal year 2008 omnibus spending bill (signed into law in December of 2007) eliminating additional funding for the new personnel system. The following year, on September 30, 2008, President Bush signed the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act for fiscal year 2009, which further prohibited the expenditure of funds for the DHS system and repealed rules governing adverse actions and appeals, labor relations, and pay for performance. This legislation effectively ended the DHS experiment in personnel reform. On October 1, 2008, the DHS announced that it was abandoning the new system and that its employees would remain under the civil service provisions of Title 5 of the U.S. Code.

Personnel Reform in DOD

While alternative approaches to personnel policy were being formulated for the DHS, legislation seeking a similar system to govern civilian employees of the DOD was moving through Congress. This bill, the National Defense Authorization Act for Fiscal Year 2004, passed in November 2003, amended Title 5 by permitting the establishment of the DOD National Security Personnel System (NSPS). In a manner similar to what had happened in the DHS, the DOD bill gave the Secretary of Defense and the OPM director joint authority to establish a completely new personnel management system subject only to specified restrictions prohibiting the elimination of core merit principles and equal employment opportunity. The new system was to be "flexible" and "contemporary," as was the case in the DHS. The DOD bill also specifically called for the establishment of a new performance management process that would include a pay-for-performance system linking individual pay to performance.

The NSPS was to be developed through a "collaborative" process as had been called for previously at the DHS, and ultimately, the DHS rules provided a basis for proposals developed for the DOD. In early February 2004, the DOD released preliminary proposals for a new system of labor relations as a way of beginning the collaborative process. The proposals called for the removal of the DOD from coverage of Chapter 71 of Title 5, which governs federal labor relations; the elimination of oversight by the Federal Labor Relations Authority of the process of collective bargaining in the DOD; and the establishment of the Defense Labor Relations Board to make final decisions on labor issues. All of these proposals looked very much like what had happened earlier in DHS. The DOD argued that these changes would allow a better balance of its national security mission with employee and union rights. Employees in supervisory, management, or confidential positions and any employees performing intelligence, counterintelligence, investigative, or security work were prohibited from bargaining. Attorneys, human resource workers, and employees hired on limited-term assignments also were prohibited from union activity. A very restrictive scope of bargaining was to be established and maintained (as had been done in DHS), and a broad grant of management rights was endorsed, along with the right of DOD managers to waive requirements for collective bargaining during emergencies or for national security reasons. In addition, high-level departmental administrators—including the secretary, deputy secretary, principal staff assistants, and the secretaries of the military departments—were granted authority to issue directives that would void aspects of any collective bargaining agreements that they determined were inconsistent with the department's mission. Proposed regulations for the system were published in the *Federal Register* on February 14, 2005 (U.S. Federal Register, 2005b).

Defense employee unions objected vigorously to the department's proposals, arguing that they would seriously undermine labor relations. Congressional hearings were held regarding the new system, and the DOD engaged in negotiations with a coalition of federal employee unions led primarily by the American Federation of Government Employees. The department delayed and scaled back planned coverage of its system but issued final regulations on November 1, 2005, 9 months after final rules for the DHS system were announced (U.S. Federal Register, 2005c). The unions remained intensely dissatisfied, particularly with provisions regarding labor relations, and ultimately filed a lawsuit in the U.S. District Court for the District of Columbia. On February 27, 2006, Judge Emmet G. Sullivan ruled in favor of the unions, noting that provisions of the NSPS regarding labor relations and adverse actions violated the original authorizing statute (*American Federation of Government Employees, et al., v. Donald H. Rumsfeld, Secretary of Defense, et al.*, 2006).

The department subsequently appealed to the U.S. Court of Appeals for the District of Columbia Circuit, but while awaiting a decision from that Court, it proceeded to implement the system by moving nonunion workers to the NSPS. In April of 2006, 11,100 workers were converted to the system. From October 2006 to February 2007, 66,600 additional workers were converted, and in April of 2007, 35,400 more were moved. Finally, from October to December of 2007, 75,000 more were converted. As

a result, by December of 2007, 188,100 nonunion civilian DOD employees were placed into the NSPS. Obviously, this is a large number of employees, but it was less than 30% of the total civilian workforce of the department.

The Court of Appeals issued its ruling on May 18, 2007 (*American Federation of Government Employees, AFL-CIO, et al., v. Robert M. Gates, Secretary of Defense, and Linda M. Springer, Director,* 2007). In a split decision, the court's three-judge panel (consisting of judges different from those who heard the appeal of the DHS case) sided with the DOD and overturned the earlier decision by Judge Sullivan of the D.C. District Court. The Court of Appeals majority argued that the department had acted in a manner consistent with its statutory authority under the law authorizing creation of the new personnel system. The majority observed that the DOD was required to ensure collective bargaining rights only "as provided for" and "subject to the provisions of" the authorizing statute, and they noted that statute gave the department temporary authority (set to expire in November 2009) to curtail collective bargaining for the department's civilian employees. From the majority's point of view, therefore, the rules promulgated by the DOD were legal.

Faced with this major setback, the unions redoubled their efforts to enlist the support of Congress in overturning the NSPS labor relations provisions. Success on that front was achieved with passage of the National Defense Authorization Act for Fiscal Year 2008, which was signed into law on January 28, 2008. This law prohibited implementation of NSPS rules related to all aspects of labor relations and adverse actions and appeals. From that point forward, all that remained of the NSPS was an elaborate pay-for-performance system for nonunion employees overlaying a job classification structure based on the concept of broadbanding.

Nevertheless, debate over the NSPS continued through 2008 and accelerated during the first half of 2009. The focus of the debate was largely on the desirability and fairness of pay for performance. In August of 2008, the *Federal Times*, a weekly print and online newspaper addressing issues of interest to federal employees, published an analysis of employee pay increases under the NSPS suggesting that the system was biased against minority workers. That report subsequently prompted members of Congress to call for suspension and review of the NSPS pay-for-performance system. In November of 2008, the Congressional Budget Office (CBO) released the results of an extensive evaluation of the NSPS, which found weak support for the system among covered employees (CBO, 2008). The CBO report noted, among other things, that only 15% of the employees converted to the NSPS believed that the new system was "better or much better than the previous personnel system" (2008, p. 8). At this same time, the DOD officially abandoned any plans to bring unionized employees into the pay-for-performance system. On March 16, 2009, the Obama administration halted the conversion of any additional workers to the NSPS and announced plans to establish a task force to review the system's operation. The DOD released an internal evaluation of the system on May 21, 2009, finding problems similar to those reported earlier by the CBO, but the department attributed those difficulties to the newness of the program and the substantial magnitude of the change undertaken. The Obama administration's task force on the

NSPS released its report in July of 2009. To the disappointment of the unions, the report recommended against the abolition of the NSPS and instead advocated for its "reconstruction" based on a "true engagement of the workforce in designing needed changes and implementation" (Defense Business Board, 2009, p. 4).

Federal employee unions and their supporters in Congress continued to push against the system, and in late October of 2009, despite the recommendation of the Obama administration's task force, the NSPS was abolished when President Obama signed the Defense Authorization Act of 2010. All NSPS employees were required to be moved back into the General Schedule. Interestingly, however, despite the fact that the NSPS and its pay-for-performance system were terminated, the Defense Authorization Act of 2010 also required that the Secretary of Defense consult with the OPM director to plan for a new system of performance management. The precise nature of any such future reform is currently unknown, but given our experience with the NSPS, new efforts will likely focus on improvements in employee performance appraisals without connecting the outcomes of those appraisals to compensation.

Conclusion

Based on our review of the experiments in personnel reform at the DHS and DOD, it seems clear that ideological and political motives were at play and dominated technical concerns. As Thompson illustrates in his article, some of the DOD and DHS initiatives reviewed here can trace their lineage to decades of HRM reform proposals (e.g., broadbanding and pay-for-performance efforts). However, for most of the major elements in these initiatives, it was the clear political and ideological substance, scope, and implementation style that dominated and ultimately unhinged those efforts. Many of the changes illustrate that orientation. These include the dramatic restrictions on collective bargaining, such as the authority given to departmental secretaries (and, in the case of the DOD, other high-level officials as well) unilaterally to abrogate negotiated agreements and the limitations imposed on employee rights in adverse actions.

To be sure, the Bush administration was enamored of practices believed to be common in the private sector where managers typically have greater discretion than their counterparts in the public service in recruitment, selection, management, and retention of employees. Prior administrations were similarly intrigued by the idea of bringing private sector management practices into the public sector. Nevertheless, major differences existed. For example, although these types of reforms had a political and tactical dimension for the Clinton administration as they sought to attract Ross Perot voters for the president's reelection campaign in 1996 (Baer, 2000), Clinton's efforts lacked a comparable political or ideological bent on the scale mounted by the Bush administration. Clinton's initiatives also had a technical legacy that extended from his earliest days as Governor of Arkansas when he spoke repeatedly about the need for government to reconnect with citizens in the wake of unresponsive bureaucracies ill-suited to changing demands on government (see, for example, Durant, 2006).

In contrast, and as the editors write in their introduction to this symposium, Bush's political aims as an orthodox innovator were nothing less than a political realignment toward Republicanism in the United States that would last for a generation and complete the Reagan Revolution. Moreover, the tool for doing so was a big government conservative ideological agenda that envisioned nothing less than privileging executive over congressional authority, diminishing the power of labor unions while asserting managerial prerogatives within agencies, and circumventing agency power by hiving off functions to the private sector and engaging in competitive sourcing for the remainder of these activities. This ideological bent was reflected in the constraints imposed on employee unions and also in new flexibilities sought for managers regarding job classification, pay, and disciplinary procedures.

It would have been astounding if HRM initiatives that were part and parcel of an agenda this ideologically and politically threatening to opponents had not produced conflict and blowback like those described in this article. Various stakeholder groups with opposing views, especially federal employee unions, mobilized and used the political process and the courts to stall and finally defeat the reforms. The Bush administration failed to build a strong, broadly based, supporting coalition for reform that included the employees who would live under the new systems.

The question, of course, is: Could Bush have done otherwise? As Skowronek (2008) argues, orthodox innovators such as Bush find it difficult to hold traditional coalition members intact with their innovations, while they simultaneously confront opposition in the face of that perceived weakness from political adversaries. As the editors of this symposium note in their article, leading scholars have argued that bipartisanship was not only possible but also the most prudent way to govern for a president elected with legitimacy problems (Fiorina, 2008). An increasing majority in the field, however, argue that enduring and virulent polarization of politics is a constant feature of the contemporary political scene in Washington.

As Durant, Stazyk, and Resh write in this symposium, "Campbell (2008) points to polling showing the degree of illegitimacy surrounding Bush's election was sustained in Democratic quarters throughout his presidency." Others point to the "institutional thickening" that Bush—and all recent presidents—have confronted (Skowronek, 1997, p. 413). They further quote Schier noting that the "permanent Washington of lawmakers, bureaucrats, judges, and interest groups" (2009, p. 5) has typically made agendas such as Reagan's, Bush's, and Obama's "more rhetorical than real" (Skowronek, 1997, p. 413). In the end, they write that partisan polarization in Congress diminishes the predisposition of presidents to bargain and imbues them instead with a passion for unilateral action (Canes-Wrone & Shotts, 2004; Fiorina, 2008; Jacobs & Shapiro, 2000a, 2000b; Shapiro, Kumar, & Jacobs, 2000; Wood, 2009).

All this poses a conundrum. We believe the implications of our analysis of the DOD and DHS cases during the Bush era are straightforward: federal personnel reforms are likely to be more successful when they are designed openly, are based on empirically verified evidence, and are implemented collaboratively. Such an approach to reform

could minimize some of the political and ideological motives for administrative change while placing greater emphasis on improving the technical aspects of public personnel administration. Given the spate of recent research on the power of public service motivation to inspire higher quality performance in public organizations, as well as research indicating that individual performance-based measurement actually hinders performance when public service jobs are complex and require internal motivation, a more technical and participative approach is likely to be more effective within organizations as well (see, for example, Brewer, 2008; Perry & Hondeghem, 2008).

Wallace Sayre (1948) once complained that public personnel administration was the "triumph of techniques over purpose." We would certainly not advocate a neglect of the overarching purposes of personnel systems or believe that politics can be completely removed from the reform process. However, we do think that a refocusing of reform on technical issues consistent with core merit principles and objectives would represent a welcome reprieve after our recent experience with more politically and ideologically oriented proposals. As noted earlier, however, such reform may not be possible given the current political environment in Washington.

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Notes

1. For a review of developments in the states, see Kellough and Nigro (2006).
2. The analysis in this article is drawn in part from the work of Kellough and Nigro (2010). Our conclusions are based on a review of the academic literature, government reports, and reports in more popular outlets, including *The Washington Post*, *Government Executive Magazine*, *The Federal Times*, and federal employee union publications. A discussion was also held with the chief counsel for the American Federation of Government Employees.
3. These motives include altruism; meaningful public service; the desire to formulate and implement good public policy; a willingness to sacrifice oneself for larger causes; concern for neighbors, community, and humankind; a combination of patriotism and benevolence; and the desire to further the common good and protect the public interest.

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