

Public Employment Reforms and Global Economies

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A great deal of scholarship has focused on the effect of economic policy on global labor markets and labor regulations. This paper questions whether changing labor practices may also affect global economic policies. In particular, since economic policies are created and implemented by governmental agencies, the way labor or employment relations within those institutions are managed may affect the production and implementation of policy. In the United States, theories of New Public Management (“NPM”) have had a particularly significant impact on personnel practices in government agencies.¹ NPM practices have affected both inter and intra-agency employment relationships, which in turn have had effects on the functioning of the agencies and may significantly compromise their ability to anticipate, prevent or respond to economic troubles.

As we have seen from the recent global economic crisis, failures in one nation’s regulatory system can have profound implications worldwide, especially if that nation is a major global economic center like the United States. Furthermore, NPM-style reform movements have successfully spread to many other countries, including developing countries in Asia, Latin America, and Africa. Indeed, certain NPM-style reforms are sometimes required as conditions to receiving aid from the World Bank or International Monetary Fund.² Scholars should question whether such reforms will hinder the development of sound economic policy in these nations.

The Changing Landscape of Job Protections for Public Employees

Through a series of reforms beginning with passage of the Pendleton Act in 1883, the U.S. Congress created special job protections for public employees. The cumulative effect of these reforms was to establish the Civil Service Commission and merit-based

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¹ While NPM style reforms have been made in many other countries, the effects of the reforms on both employees and agencies are particularly strong in the United States because it has relatively fewer employment protections than other economies. In the United States employment is presumed to be at-will, meaning that an employee can be terminated for any reason or no reason at all. Existing constitutional protections for public employees are limited in scope. In addition, although unionization in the public sector is stronger than in the private sector, public sector unions have less representation and bargaining power than they do in other countries.

² Richard C. Kearney and Steven W. Hays, “Reinventing Government, the New Public Management and Civil Service Systems in International Perspective,” *Rev. of Public Personnel Administration* (Fall 1998), 38 (1998).

procedures for hiring, promotion, and termination.³ In addition to protections against dismissal, demotion, or transfer without cause, federal employees were required to be hired and promoted on the basis of merit.⁴ Detailed rules were established governing pay grades, promotions, and tenure.⁵ Federal employees could also take advantage of a grievance procedure for challenging adverse employment actions.⁶ These changes were considered necessary to create a public workforce that was shielded from political influence and retribution.⁷ The rationale for civil service protections was that employees who are free from arbitrary and unfair treatment, particularly in regard to termination, are more likely to be effective public servants.⁸

Over the past several decades, some legitimate criticisms were made about agency responsiveness, which were quickly attributed to lack of agency efficiency and flexibility as a result of both agency structure and civil service provisions.⁹ In particular, NPM critics attacked “protectionist” public employment practices, arguing that public employers should model their workplaces on private firms in order to increase efficiency and accountability for results.¹⁰ To these ends, reformers urged the reduction or elimination of civil service protections in favor of a private or corporate model of employment. They also urged the privatization of governmental functions, as well as limitations on public spending, decentralizing and flattening government structures and streamlining public employment rules, especially grievance hearings.¹¹

While some advocates of NPM may have been motivated by sincere concerns with agency flexibility and effectiveness, for others the real agenda has been exerting greater executive control over agencies. Career employees with job security are more able to resist short term political pressures imposed by managers who are political appointees and change with each administration. Some scholars argue that the inability of the executive to control all aspects of agencies protects against decisions based on short-term political considerations at the expense of continuity, neutral data collection, and expertise.

However, studies show that pro-managerial reformers have been successful in reshaping federal, state, and local civil service practices. Administrative structures have

³ James S. Bowman & Jonathan P. West, “Removing Employee Protections: A ‘See No Evil’ Approach to Civil Service Reform,” in L. W. Huberts, Jeroen Maesschalck, and Carole L. Jurkiewicz, eds., *Ethics and Integrity of Government* (Edward Elgar 2008).

⁴ David E. Lewis, “Modern Presidents and the Transformation of the Federal Personnel System,” *The Forum* (Vol. 7, Iss. 4, Art. 6) at 3 (Berkeley Electronic Press 2009).

⁵ *Ibid.*

⁶ *Ibid.*

⁷ J. Edward Kellough & Lloyd G. Nigro, “Dramatic Reform in the Public Service: At-Will Employment and the Creation of a New Public Workforce,” 16(3) *Journal of Public Administration Research and Theory* 447 (2006).

⁸ *Ibid.*

⁹ Patricia Wallace Ingraham, “Building Bridges over Troubled Waters: Merit as a Guide,” *Public Administration Review* (July/August 2006), 486 (2006).

¹⁰ Johan P. Olsen, “Citizens, Public Administration and the Search for Theoretical Foundations,” 37:69 *PS: Political Science and Politics* (2004).

¹¹ Kellough & Nigro, *supra* note 7; Ingraham, *supra* note 9; Olsen, *supra* note 10.

been hollowed out through contracting out government work to the private sector. Public agencies have been downsized or underfunded. In addition, civil service protections for remaining public employees have been reduced or removed.¹²

Effects of NPR Reforms on Remaining Public Employees

The weakening of public sector employment protections in the federal government began with the passage of the Civil Service Reform Act of 1978, which eliminated the Civil Service Commission and allowed some agencies to fashion their own personnel practices outside of the civil service system.¹³ Subsequent measures allowed exemptions for certain management positions. As a result, the percentage of public employees who have civil service protection has declined significantly. In 1953, almost 90% of federal civilian employees were covered by the traditional merit system. Today, fewer than 50% of such employees are covered.¹⁴ For those still covered, new incentive systems gave more control to the politically-appointed managers. For example, the ability to control an employee's pay was conferred by the move to a pay for performance, rather than a pay grade system.

In the United States today, most public employees are employed at the state and local levels. Here we see an even more dramatic transformation in public employment civil service protection, especially in recent years. For example, the Georgia legislature declared in 1996 that all new hires would be at-will.¹⁵ The number of these now unclassified employees in Georgia rose from 18% of the workforce in 1996 to more than 70% by 2004.¹⁶ In these states, the reforms effectively redefine how public employees can be treated.¹⁷

A number of scholars question what effects NPM reforms might have on the quality and nature of public services. Proponents of civil service protections point out that governmental employees perform essential public functions as part of the bureaucracy. They oversee the exercise of public power in implementing public policy. They serve as sources of expert and institutional knowledge for government agencies. They also are the conduits for the integration and coordination of the three branches of government and help to preserve a balance of power between them.¹⁸ Such commentators fear that there are antidemocratic implications in the wake of NPM reforms. Public employees staff the bureaucracies that are one means whereby citizens

¹² This paper focuses on these remaining employees and how the success of NPM has affected their morale, motivation, and performance.

¹³ Lewis, *supra* note 4.

¹⁴ Lewis, *supra* note 4 at 11. If Bush's plans for Homeland Security had been implemented, fewer than 30% of employees would be covered. *Id.* at 12.

¹⁵ Kellough & Nigro, *supra* note 7.

¹⁶ Bowman & West, *supra* note 3; Kellough & Nigro, *supra* note 7.

¹⁷ A more abrupt transformation occurred when Florida moved 16,000 supervisory positions to at-will employment by first eliminating the positions and then recreating at-will positions which were offered to the same employees. South Carolina and Arkansas recently abolished merit systems and other states have been reclassifying employees as part of reorganizations, reductions in force and attrition. Bowman & West, *supra* note 3.

¹⁸ Kellough & Nigro, *supra* note 7; Ingraham, *supra* note 9; Olsen, *supra* note 10.

have access to and can participate in government, holding it accountable for its actions.¹⁹ Protected public employees are more likely to challenge abuses of power or share information about questionable agency practices with superiors or the public. In fact, the due process hearings to which employees are entitled can be an important way for policy makers and the public to learn about agency practices and conditions.²⁰

Effects of NPR Reforms on Public Agencies

There are well documented staffing challenges for agencies as a result of public sector reforms. The anti-bureaucrat rhetoric that accompanies NPM is viewed as demoralizing to public employees by devaluing their efforts. Public employees accept pay scales lower than those in the private sector in exchange for other benefits, most notably challenging work assignments in service of one's country, the achievement of ideals, an ability to make a difference, and the opportunity to participate positively in the policy process.²¹ The significance of these motivating factors to attracting the best employees is ignored in the rhetoric of NPM, which is attuned only to performance.

Studies show that poor treatment and loss of job security have created a "quiet crisis," where agencies have difficulty attracting the most qualified people as public employees, the more gifted preferring the political realms of public service. The attacks on public employees made as part of the arguments for removal of protections for such, as well as the actual removal of protections has loosened commitment to agency purposes and policies. New entrants into public service have little reason to make a long-term commitment to public work and may switch between public and private sectors focusing on self interest in seeking the best experience and pay rather than dedication to public service.²²

In addition, some commentators point out that paradoxically some of the very measures employed in order to gain more executive control over agencies in the name of efficiency and flexibility have actually made the day-to-day work of the bureaucracy more complex and difficult to accomplish. For example, decentralization of agency authority and distribution of responsibilities across agencies carries with it an increased possibilities for things to "fall through the cracks."²³ In addition, executive efforts to impose more control over agency actions have resulted in proliferation or "thickening" of lower-level supervisors in public agencies. This presents the possibility of inconsistent or conflicting supervisory directives, as public employees working "on the ground" have multiple levels of supervision to wade through before they get to policy personnel with ability to make a difference.²⁴

¹⁹ Olsen, *supra* note 10.

²⁰ Kellough & Nigro, *supra* note 7; Ingraham, *supra* note 9; Olsen, *supra* note 10.

²¹ Ingraham, *supra* note 9.

²² Donald P. Moynihan, "The Normative Model in Decline? Public Service Motivation in the Age of Governance," in James L. Perry and Annie Hondeghem, eds., *Public Service Motivation: State of the Science and Art* (Oxford 2008).

²³ *E.g.*, Paul C. Light, *A Government Ill Executed: The Decline of the Federal Service and How to Reverse It* (Harvard 2008).

²⁴ *Ibid.*

The combination of supervisory thickening, the weakened position of career employees resulting from the decline in employment protections, and the related weakening of commitment to government service, creates agencies that are more subject to political influence, less efficient, have diminished expertise and credibility, and are generally less able to perform their functions for the public benefit.

Possible Implications of NPM for World Economies

The role of NPM in transforming the agencies responsible for assessing and monitoring economic policies and practices in the United States should be explored in more detail. For example, it may prove both interesting and productive from a policy perspective to consider how the NPM movement contributed to agency failure to identify and respond to financial sector practices that lead to the recent global economic crisis. Was the effect of NPM to position politics above practices of effective regulation? In other words, did NPM play a role in agency inability to early on identify events leading up to the crisis? Certainly the crisis in agency staffing that has been attributed to NPM policies may help to explain why the Securities and Exchange Commission lacked the expertise and sophistication to uncover frauds like the Bernie Madoff pyramid scheme. The thickening of agencies at the supervisory level may have been instrumental in sidetracking reports of concern from underlings evaluating the new market in mortgage securities. Fannie Mae and Freddie Mac, along with the SEC have been clearly identified as “maladministered” in the days leading up to the crisis.²⁵ Would a less demonized and demoralized bureaucracy been more aggressive and proactive in uncovering and addressing questionable practices in the institutions they were charged with regulating?

Also worth considering is how the effects of NPM might have influenced the response to the crisis once it occurred. The Bush administration’s initial response was to save Wall Street and the financial sector, leaving homeowners and job seekers behind. Did NPM play a role in that decision by marginalizing the input and effectiveness of less political public employees?

It may not be possible to conclusively establish what effect NPM reforms had on the global economic crisis. Nevertheless, engaging in the inquiry is instructive on a number of levels. Economic regulation is only one of many functions the government performs. The link between administrative missteps and employment policy is more obvious with other recent events, such as the United States’ failure to adequately prepare for the occupation of Iraq.²⁶ Government agencies are a powerful and integral part of the modern political state, and they must be healthy in order to function well. Any employment law system should recognize that the treatment of public employees has implications well beyond those employees’ individual rights to fair treatment.

²⁵ Peter H. Schuck, “Is a Competent Federal Government Attainable or Oxymoronic?,” 77 GW L. Rev. 101 at 102

²⁶ See, generally, Moynihan, Donald, “A Heckuva Job: How Management Failures Doomed the Bush Administration,” 11(1) *Public Management Review* 121 (2009).