A trend that bears watching is the state expansion of at-will employment in the public sector. There are 28 states that now fall into that category to various degrees, and the number may be growing. The purpose of at-will employment is to import business practices into the public sector, which is not a bad idea in itself, but in application, salient differences between the two sectors can be lost or ignored. While reasonable grievances against public employment need to be addressed, there are also values that need to be preserved.

At-will is the dominant form of employment in the private sector because it helps ensure that employees actively contribute to the company’s bottom line. However, the public sector has different and even conflicting bottom lines. For one thing, politics and administration have long been intertwined. Civil service reform was instituted to overcome the spoils system and to make public management a profession. Professionals, whether they be lawyers, doctors, or accountants in the private sector or senior officials in the public, have one thing in common—an ability to exercise discretion for the public good, checked by professional norms of behavior as well as by law. John DiIulio’s (1994) characterization of public servants as “principled agents” describes what the public should expect.

In addition to exercising the discretion needed to fulfill statutory missions, many public officials provide the indispensable ingredient of institutional knowledge—they understand their agencies’ missions and operations. As a former university president, when I wanted a deep answer to a complicated question, I often turned to faculty members from pertinent fields. Faculty are society’s institutional knowledge creators and preservers. Senior civil servants are, in a way, like faculty: they have deep knowledge of their fields that is both indispensable and irreplaceable if government is to function effectively.

Let me give you an example of why this matters. North Carolina recently made an effort to shift employees in its Department of Environmental and Natural Resources (DENR) to at-will status. In 2014, the governor expanded the number of that agency’s employees exempt from civil service protections from 24 to 179, thereby shrinking and destabilizing the professional staff (Gabriel 2014). The agency’s budget was then severely cut just at the time it was negotiating with Duke Power over a devastating coal ash spill on the Dan River. As Governor Pat McCrory was a former chief executive officer of Duke Power, the legislature intervened by creating a “nonpolitical” commission to oversee cleanup of the spills and appointed a majority of its members. The governor is now suing to preserve his constitutional authority. One wonders whether the professionals in the DENR office, had they initially been supported and not undermined, could have done this job properly all along. Why invent a constitutionally dubious solution to a problem that executive agencies were created to solve in the first place?

We need both physical and human infrastructures to become resilient against environmental disasters like those in North Carolina or, more broadly, hurricanes like Katrina and Sandy and terrorist attacks like 9/11. We desperately need investments in physical infrastructure such as bridges, berms, and dams, but the human infrastructure is largely in place, having been built over the last century. If the system already exists, why dismantle it? To skeptics, do me a favor: ask those who come into government in a political role, from either party, where they would be without senior civil servants to guide them, inform them, and, if asked, even lead them. This is not a political issue; it is a competency issue that we ignore at our peril.

That said, states and the federal government could certainly improve their respective civil service systems. Take two disparate examples: teacher tenure in two years or less and removal of nonperforming officials that takes two years or more. These are unacceptable situations. The system can and should be fixed, but it should not be eliminated. Doing so would send us...
back to a time when politics trumped administration and public sector incompetence was business as usual.

Author’s Note
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References


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