

Why Government Matters: The Advancement of Civil Rights

Susan McKay

Graduate Student, Public Administration, Tennessee State University

March 23, 2010

Author Note

Correspondence concerning this article should be sent to Susan McKay

E-mail: [smckay4@elearn.tnstate.edu](mailto:smckay4@elearn.tnstate.edu)

### **Abstract**

Our Constitution guarantees *Justice, general Welfare, and Blessing of Liberty* for all. Yet, for much of our history, We the People, have been divided and segments of our society have been unable or unwilling to ensure and protect guaranteed freedoms for everyone. This is why government and its bureaucracy, i.e., public administration, are essential for adherence to and advancement of the ideals and guarantees of our Constitution. Why an empowered government matters in a large democracy, which by its nature will have diverse and, at times, divisive interests, will be explored through the examination and consideration of the implementation of civil rights laws from the Reconstruction era and the Great Society era and the varying role and effectiveness of American bureaucracy in the discharge of Constitutional guarantees. Political and societal similarities and differences between the two periods and within the connecting century will be considered as well.

*Key words: U.S. Constitution, U.S. government, bureaucracy, public administration, civil rights, Reconstruction, New Deal, Great Society*

### **Why Government Matters: The Advancement of Civil Rights**

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic tranquility, provide for the common defence, promote the general Welfare, and secure the Blessing of Liberty to ourselves and our Posterity, do ordain and establish this Constitution of the United States of America.* This statement, the Preamble to the Constitution of the United States of America, offers the reasons why, despite never being explicitly mentioned in the document, bureaucracy is essential for implementation of policy and carrying out the complex duties and responsibilities required of the government and its three branches. For the purposes of this discussion, we will follow Goodsell's (2004) definition, "When using the word *bureaucracy* I am referring, quite simply, to the institutions of public administration in America."

Griffin (1999) notes that any active government with important, permanent tasks must have a means of summoning authority from the public. Goodsell (2004) discusses the importance and necessity of bureaucracy. He writes that government and its administration make crucial, indispensable contributions to society. He goes on to offer supporting opinion from other scholars, including Max Nieman, who says, "There is much to celebrate in terms of the public's achievements through government" and Carl J. Friedrich, who views bureaucracy as "the core of modern government."

The brevity of this discussion obviously does not allow for a comprehensive investigation and comparison of the full history and development of American bureaucracy and its role in upholding and advancing the Constitution and the myriad of public policies derived from its guarantees. Instead it will touch upon why a robust and responsive bureaucracy is necessary for ensuring democratic guarantees to *establish Justice...promote the general Welfare, and secure*

*the Blessing of Liberty to ourselves and our Posterity....* Answers as to why government matters will be found through an examination and comparison of civil rights laws from the Reconstruction era and the Great Society era and the varying role and effectiveness of bureaucracy during and between these periods.

The first era of landmark civil rights legislation began during the Civil War with the Civil Rights Act of 1866 and continued into the post-war period known as Reconstruction. The era was short-lived, lasting only a dozen years. This period, however, coincided with the beginning of a transformational tug-o-war over federalist doctrine as power shifted from state governments to the national government. From the time of the Civil War through the first decade of the 20th century, state-centered federalism gave way to dual federalism, with the national government's power gaining and state governments' powers waning; thus, power began to be more equally shared (Dye 2008). The industrial revolution, development of a national economy, and the 16th amendment creating a federal income tax broadened and strengthened the power of the federal government (Dye 2008). The significance of these influences cannot be overstated as American bureaucracy as a whole, and the federal bureaucracy in particular, was historically and intentionally made and kept (mostly) weak until political and cultural views concerning the need and importance of public administration began to change in the early part of the twentieth century. Griffin (1991) explains that the concept of the state has never been popular in American public rhetoric or political theory and that the relationship between the Constitution, government institutions, political system, and policy-making has not been a traditional focus. Americans held a strong belief that they ruled and all parts of government were but limited spokespeople for their will. This view began to change for the reasons given above, and also because of two other significant factors. First, was the new and serious consideration of the essence and role of public

administration, which was launched with Woodrow Wilson's landmark essay of 1887, *The Study of Administration*, in which he proclaimed that public administration is detailed and systematic execution of public law. Every particular application of general law is an application of administration. Secondly, progressive reformers had a mission to dismantle the powerful political machine, i.e., political parties, which exerted partisan influence that often controlled administration in the executive and legislative branches at all levels of government. Griffin (1991) explains that a crucial development of this period was the reorganization of the political institutions of civil society. Political parties, the most vital organizations in 19th-century politics, lost the ability to mobilize the electorate and control their own fate. The result, over time, was a displacement of public authority away from the party-legislative process to the executive and judicial branches of government and the new regulatory agencies. There was a push for a nonpartisan, merit-based public administration that was strictly separate from politics. Politics has to do with policies or the expression of state will. Administration has to do with the execution of these policies (Goodnow 1900).

The fledging academic field of public administration, its ongoing development, and its increasing role in public policy is sandwiched between landmark civil rights legislation of the late 19th century and mid 20th century; thus, played a differing role over the span of a century. Changes to the political, social, and legal fabric of the nation influenced public administration and vice versa, and all must certainly be factored into the comparison and measured by how and why these elements advanced, inhibited, or otherwise influenced civil rights policy.

### **Discussion**

For twenty years following the end of the Civil War, federal legislation was passed to broaden and guarantee civil rights to people of color (former slaves). Three amendments, the 13th

to abolish slavery (1865), 14th to guarantee former slaves full citizenship and due process (1868), and 15th to guarantee voting rights (1870), and the Civil Rights Act of 1875, which among other things guaranteed full and equal rights to accommodation in public facilities (from transportation to lodging). These watershed laws resulted in policies that from the long-view of history were essential to upholding and advancing ideals of democracy; however, the inability of the federal government to fully implement the laws and policies and the ability of southern states to resist implementation was problematic. During the Reconstruction period (1865-1877), the federal government struggled with implementation of civil rights laws as it had limited regulatory power over the states, especially the former Confederate states. Most of the new administrative agencies created during the Civil War were dismantled after the war ended, preventing any permanent gain in bureaucratic competence (Griffin 1991). Its only practical power existed in coercive authority wielded through the Union Army's occupation of southern states. During Reconstruction only military force could induce the South to accept national racial prescriptions (Klarman 1998). Despite the occupation, the national government was unable to prevent a wave of counterrevolutionary terror from sweeping the region in the 1870's, suppressing new political rights of blacks and decimating the Republican party (Griffin 1991). Following the Civil War, most northerners supported the federal government's programs for education, economic assistance, and equal and civil freedoms, but within a decade public opinion had shifted (McPherson 1966). This shift was due in large part to the post-war recession that brought hard economic times to the entire country and the continued reports of violence and bloodshed in the occupied South, for which northerners no longer had the stomach. The New York Tribune reported in 1870 that it was time to have done with Reconstruction and that the country was sick and tired of it (Klarman 1998). The final nail in the Reconstruction coffin was struck when

Republican presidential candidate Rutherford B. Hayes formed an alliance with southern Democrats during the disputed presidential election of 1876. Hayes promised that he would remove federal troops from the South if the Democrats would support his inauguration (Klarman 1998). Support was forthcoming and President Hayes ordered a complete withdraw of Union troops in 1877, leaving the South to its own devices. This, coupled with the Supreme Court's overturning the Civil Rights Act of 1875 as unconstitutional, effectively ended Reconstruction. What followed was an 80-year period of de jure segregation (ultimately supported by the Supreme Court's "separate but equal" ruling in *Plessy v. Ferguson* of 1896) that would come to be known as Jim Crow—the name derived from an infamous character of derogatory blackface minstrelsy (Cockrell 1996).

Despite the short-lived Reconstruction period, it would be inaccurate to say that the first period of landmark civil rights resulted in little tangible effects, or that government and the rule of law were completely shunned. For instance, southern judges did not automatically rule in favor of whites over blacks in nuisance cases during the Jim Crow era. Precedent was set by the Kansas Supreme Court in *Falloon v. Schilling*, in which the Court unanimously issued the decision that the mere presence of a black family is not a nuisance....Equity will not interfere simply because the occupants of a house are by reasons of race, color, or habits, disagreeable or offensive....a white man cannot prevent his neighbor from renting his home to a negro family any more than he can to a German, an Irish, or a French Family (Godsil 2006). Another example of advancement occurred in Louisiana where Radical Republicans and the Union Leagues organized black communities, particularly through black churches and local bureaucracy, to advance voting rights through new federal voting mandates, which led to (temporarily) weakening the white supremacists. In 1868, F.E. Duman, black candidate for governor, lost the party nomination by a

45 to 43 vote; however, another black candidate named Oscar Dunn won the election for lieutenant governor (Barnes 1999). Even during Jim Crow the tide could not be entirely swept back. Courageous southern blacks (and whites) continued to exert pressure points to the system and demand their rights. For instance, seventy years before Rosa Parks refused to yield her bus seat, Ida B. Wells chose to sit in the section of a train reserved for whites, refused to move when requested to do so, and was forcibly escorted out of the compartment. She sued the railroad and the case went to the Tennessee Supreme court, which ruled against her (Mack 1999). African-American lawyers and non-racist white lawyers of the time advanced the idea of voluntarist-autonomy status, which was effectively a separate but equal stance, with the goal of improving educational and economic opportunities for blacks within society (up to point) and minimizing white violence that often was leveled against blacks who demanded full equality (Mack 2005).

In the ensuing years, political and social mores changed considerably as did the development and influence of public administration (Henry 2010). In addition to the aforementioned industrial revolution and federal income tax broadening the power and influence of the federal government, two World Wars and the Great Depression necessitated more concentration of federal power, and through it the establishment of a broader network of federal, state, and local bureaucracies to implement the vast expansion of public programs and services, especially during the New Deal period. This set the stage for a vigorous bureaucracy that would be essential for the implementation of a series of landmark economic and social policies leading up to the culmination of civil rights advancement with the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

The national economic policies for the FDR administration in the 1930's had profound impact on the South and racial norms. His national landslide reelection liberated him from the

southern Democrats, and he proceeded with national policies that would ultimately destroy the plantation/agricultural economy of the South and make the region increasingly dependent on the federal government for resources (Klarman 1998). The 1938 report on the Economic Conditions of the South highlighted the region as a threat to the entire nation's recovery from the Great Depression and, from that point and going forward, the federal government began to narrow the economic divide between southern states and the rest of country. This effort along with related progressive policy efforts, such as the Fair Labor Standards Act that positively impacted wages of both black and white southerners, are examples of economic measures that impacted social standing and civil rights.

All state governments were seeing an increase in federal monies, but the southern states were above the national average in this trend, and began to choose economic gain over segregation. Klarman gives the example of the Mississippi State Sovereignty Commission, the state's institutional defense mechanism against integration, preference to building (with federal funds) an integrated Veterans' Administration hospital to building none at all. Beginning with World War II and continuing for decades, the South won disproportional amounts of military contracts; thus, established more military bases than any other region. This trend went beyond being economically momentous to becoming socially significant when President Harry Truman ordered the Armed Forces to desegregate in 1948. He made it clear that bureaucracy would be in charge of implementation. "There shall be created in the National Military Establishment an advisory committee to be known as the President's Committee on Equality of Treatment and Opportunity in the Armed Services.... The Committee is authorized on behalf of the President to examine the rules, procedures and practices of the armed services in order to determine in what respect such rules, procedures and practices may be altered or improved with a view to carrying

out the policy of this order” (Truman 1948). This decision was no less controversial or distained in some quarters than the desegregation directives of eighty years early. Yet, times had changed and the federal bureaucracy had the teeth to implement the policy.

The trend toward a vigorous federal bureaucracy did not end with the Democrats. President Eisenhower’s Federal Aid to Highways Act of 1956 literally opened pathways in and out of the South for an increased cross-pollination of diverse and modern political and social views. The Highway Act constructed more roads in the South within a three-year period than southerners themselves had created in between 1789 and 1930 (Klarman 1998). The 1950’s saw a vast increase in the number of interstate highways and televisions. Americans were becoming connected in ways they had never been before. More and better highways also made travel easier for officials and press who were increasingly monitoring and reporting on race relations in the south after the Eisenhower administration established the U.S. Commission on Civil Rights in 1957. This agency was given the authority to investigate and make policy recommendations toward protecting and advancing civil rights.

In 1954, the Supreme Court ruled in *Brown v. Board of Education* that racially segregated public elementary and secondary education was unconstitutional. The decision declared that segregation deprived children of equal educational opportunities of which they were entitled under the equal protection clause of the 14th Amendment (Mack 2005).

By the time President Johnson enacted the Civil Rights Act of 1964 and Voting Rights Act of 1965, and gave additional regulatory power through the establishment of supportive agencies, such as the Equal Employment Opportunity Commission, the federal government was arguably at its height in its ability to pass and successfully implement significant civil rights policies. The ability of the national government of the mid 20th century to uphold and advance Constitutional

guarantees eclipsed efforts of the national government a century before. The creation and establishment of a dynamic public administration was integral to implementation of the progressive social agenda from the FDR administration onward to the Johnson administration. Further, the government both led and followed the social and political changes that were happening throughout the country. Such factors relating to government's role in the advancement and protection of Constitutional rights show why government matters.

### **Conclusion**

If elimination of prejudice cannot be achieved in the public bureaucracy it is unlikely that it will be achieved anywhere (Kellough 1992). This viewpoint addresses a fundamental difference between the 1960's and the 1860's and the attempts to enact and enforce substantial and meaningful civil rights legislation. By the 1960's and going forward, the bureaucracy led the way by literally integrating the workplace by adhering to the laws of the land. In turn, the bureaucrats, most notably, street-level bureaucrats, were first reflective of society's latest attempt at desegregation and guaranteeing equality for all people. Kellough suggests that the *representativeness* of the government workforce may affect government's responsiveness to the interest of all citizens and government organizations contribute to perceptions of social justice and potentially influences policy.

Government and its bureaucracy are necessary to uphold and advance the ideals of democracy as guaranteed in our Constitution. Yet, our society and its institutions are made up of people; therefore, are susceptible to the gamut of human foibles, folly, and fascination. Echoes of the past, conversations of the present, and dreams of the future, individually and collectively, shape America and Americans. The social and political views and customs of the day matter and strongly influence policy and its implementation. In a country as diverse as ours there is a need for

constant vigilance in weighing the desires and needs of the many with the few or the one, and protecting the rights of all. We the People cannot do this alone. We need an empowered government, made up of qualified, dedicated elected and non-elected Americans who serve as a buffer to counter public passions and discriminations, and who move us forward through their commitment to democratic ideals and their duty-bound promise to uphold the law and defend the Constitution of the United States of America.

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