

## Civil Service, Democracy and Economic Development

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*This article examines the links between merit-based civil service, economic development and the robustness of democracy. It also argues that patterns of public employment prevalent in the past, such as patronage (including political patronage) and venality of public offices, can no longer be followed if poverty is to be reduced, economic development sustained and democracy reinforced.*

Raktažodžiai: *viešoji tarnyba, demokratija, ekonomika.*

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### Introduction: The Merit System

Most countries feel the necessity to create professional civil services that are aligned with the requirements of democratic states. Political democracy, modern capitalism and complex states and societies require professional public administrations. The merit system is for the moment the only known way of building up public administrations that attain an acceptable degree of autonomous professionalism.

The merit system should be understood as a key instrument for making legal certainty an actual public good. Legal certainty, or juridical security, has a fundamental value for the economy and for the society. It is even more valuable as a product of the state than are such values as efficiency and effectiveness in conducting public affairs. The reason is quite obvious: legal certainty allows society to be efficient and effective in itself, and this is an essential precondition for the development of the economy. The state should be effective and efficient in producing legal certainty. Legal certainty also requires – upstream – good law-drafting, good quality of legislation and good professional policy advice.

In welfare states, the quality of public services provided or produced by the state requires managerial efficiency, but public services must be delivered on the basis of equity and entitlements of individuals, as defined and recognised in legislation. Consequently, efficiency in the management of public services is legitimate if it falls within the procedural and

entitlement parameters set down in law. From the standpoint of public services delivery, the notion of legal certainty is just as crucial, but this issue is not the focus of this paper.

The merit system, like any other public administration mechanism, has not developed because it is intellectually or culturally more appealing than other systems, but because it has been better able to solve practical political, social and economic problems in countries with western-type cultural backgrounds, i.e. where the individual, and not the social group, is the cornerstone of society. The merit system has proved to be an indispensable instrument for producing legal certainty and predictability in public decision-making. Each country's merit-based civil service has its own particular historical and cultural roots, but each country has also borrowed from others<sup>1</sup> in such a way that today several common trends can be discerned in the civil services of the world's most advanced democracies and economies.

### Essentials of the Merit System

With national variations and modalities, the main characteristics of civil service systems in advanced democracies, be they career-based or position-based, can be summarised as follows: Civil servants are recruited and promoted by means of competitive examinations, which have replaced previous selection modalities based on patronage and venality; restrictions to arbitrary transfer, demotion or dismissal of

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<sup>1</sup> European countries in which the historical evolution of merit systems played a reference role were the United Kingdom, France and Prussia. Most European countries built their own merit systems by borrowing elements from these national frameworks.

civil servants are well established; the political neutrality and impartiality of civil servants constitute stringent obligations imposed upon them; civil service positions are established centrally and classified by grades or steps; salaries are determined in legislation and are paid according to grade and seniority rather than according to the quality and quantity of work actually performed (although this feature is currently under revision in some countries – so far with uneven and unclear outcomes – so as to introduce a more performance-related salary treatment); in certain countries restrictions apply to lateral entry into the civil service, particularly in those countries where career systems are prevalent (the majority of senior positions are filled through internal promotions, and the majority of civil servants enter the service at the lower levels of the hierarchy). The system as a whole is monitored by means of strong control mechanisms and institutions, including independent civil service commissions (mainly in Anglo-Saxon countries) or independent judicial review of the management of the civil service (mainly in administrative law countries).

The professionalism and political neutrality of the civil service postulate its autonomy from politics and its autonomy as a state institution. This institution is formed of heterogeneous professions and trades, but has the capacity to build common practices and rules of behaviour, as well as its own set of values and group culture (*esprit de corps*), which in turn contribute to legitimising its existence and its actions [1]. The professionalisation of the civil service in democracies can only be achieved by means of the merit system. This system is at the foundation of modern bureaucracies.

Bureaucracies – and by extension key elements of the merit system – have been under attack for the past two decades or so, accused of strangling the legitimate power of governments, undermining efficiency incentives, blurring accountability and impeding administrative responsiveness, among other misdeeds. These criticisms, coming mainly from ultraliberal economic viewpoints, are neither original nor new. They are reminiscent of other criticisms voiced by Marx, who branded the state machinery “the dreadful parasite body covering the French society as a suffocating membrane” [2].

If bureaucracy is as bad as it has been depicted recently, it would be difficult to understand how an institution that has enabled the development of the economies of “rich” countries can be so unfit to provide real solutions. Criticism of the merit-based civil service derives perhaps from a lack of understanding of the real nature of the problems that the merit system is meant to solve. The remainder of this paper will focus on this issue.

## Patronage was Historically Useful

It is worth remembering that patronage played a positive role at the dawn of contemporary western democracies. It was a respected means of popular participation in public affairs and an invaluable instrument for laying the social foundations of political parties, especially in the USA, for the most part of the 19<sup>th</sup> century and well into the 20<sup>th</sup>. Patronage was even regarded in the USA as an element for democratisation, as opposed to the “mandarin” administration of the former metropole. Even if patronage was unable to guarantee societal values, such as professional competence, impartiality and legal certainty in public affairs, such values were not fundamental at that time for a number of reasons: the American internal market was not yet an integrated market; economic externalities (e.g. legal certainty) provided for by the state were still limited; regulatory intervention by the state was rare and extremely limited; and private and public investment in large fixed-capital assets was not significant (the USA railway network is often cited as one of the first large investments of this kind).

As in the course of time this situation started to reverse into its opposite, the usefulness of the patronage system in running the state also dwindled. The system became an unbearable deadweight, particularly when economies developed – mainly as a result of industrial revolutions – and the size of administrations expanded. Under these new circumstances, the personal monitoring of the patronage system by politicians weakened or became plainly impossible. Emerging modern capitalism required a different state. Expanded sources of state revenue became necessary; modern taxation and budget systems started to develop; a different, more impersonal, rule-bound administration was necessary because the direct monitoring of recruitment by political masters (be it through patronage or through venality) became impracticable.

Certain parallels to the American patronage pattern can be found in some European countries that practised the patronage and venality of public office up until the beginning of the 20<sup>th</sup> century. Only once politicians or the European monarchs were no longer able to monitor the system, and extract sufficient profit from it, were patronage and venality abandoned and slowly replaced by merit-based systems. It was more yielding to extract profits from the incipient development of the economy, through new taxation schemes, than from the old patronage and venality business. However, certain official posts still remained “in the market” up until and just after World War II.

These developments were coupled with the large fixed-capital investments of budding capitalism and the consequential constellation of small firms that coalesced around them, since the direct participation of these small firms in the political process was too costly or impossible. These developments made it necessary to abandon patronage and venality schemes and to develop in their place acceptable regulatory frameworks for the new situation, as well as to ensure that these norms would be applied to everyone without arbitrariness and in a predictable way. The social demand for legal certainty increased significantly, and as a consequence this shaped the executive power differently and demanded sound judicial review of decisions. Patronage and venality could neither overcome the monitoring problem nor provide solutions for the new necessity of ensuring legal certainty and developing and enforcing durable regulatory frameworks based on negotiated legislative agreements. This necessity was also at the origins of the progressive introduction of a public administration governed by the merit system in the constitutions of economically advanced countries.

The patronage system has never become totally inoperative. Patronage is still well alive and wedging itself between politics and administration in modern developed economies. However, the patronage governing contemporary political appointments is – or should be – a resource of politics and not of the merit-based professional administration. This patronage wedge is tolerable only insofar as it is political and remains confined to a certain limited number of posts. It is not tolerable if it becomes, by encroaching on regular administrative territory, a nuisance for the proper functioning of the state, as is often the case. In other words, patronage is legitimate in modern administrations only insofar as it is not allowed to manipulate or bias legislation and its application. Such a situation would go against the interests of those who negotiated the legislation and against the interests of socioeconomic groups who make economic calculations on the basis of existing legislation and rely on its being applied impartially and with regularity.

### **Institution-Building: The Societal Problems that the Merit System Can Contribute to Solving**

The institutionalisation of the merit system for the civil service is a fact in all developed countries, but it is still very weak in, or absent from, countries in transition from planned economies, and even more markedly so in developing countries. These countries are often referred to euphemistically as countries having a “weak institutional environment”, which

mainly means that they have an unprofessional civil service ruled by patronage, cronyism, corruption and other such misfortunes. Often this lack of professionalism is accompanied by insufficient constitutional and administrative legal arrangements to effectively constrain the actions of the administration. The end result is usually a public administration incapable of producing the minimal legal certainty necessary for launching economic and social development.

In many developing countries the problem is often summarised by an assessment that they do not have the “administrative capacity” or the “necessary institutional minimum” [3]. This “institutional minimum” includes several elements, ranging from the very minimal to a more complete threshold, which the state should guarantee: 1) personal safety of individuals and families; 2) guarantee of property rights and contract enforcement; 3) an institutional framework that guarantees macroeconomic and fiscal stability and therefore a positive investment climate; 4) democracy and the rule of law. Each of these elements – we could call them public goods – subsumes all of the preceding elements.

These public goods can only be ensured on condition that patronage and political clientele patterns pervading public administrations are overcome, or at least reduced. This implies building up modern bureaucracies that are shaped to merit system patterns, endowed with professional technical autonomy, subject to the rule of law, and accountable to governments and society. This also implies that political classes need to overcome certain temptations of political populism and patronising of public employment, the civil service included. These preconditions represent the only guarantee that the so-called “commitment problem” will be solved, i.e. that there will be sufficient institutional guarantees for legislation to be effectively applied and implemented by the administrative apparatus [4] and for implementation gaps to be reduced to a minimum.

We would understand the merit system better if it were analysed from the perspective of the societal function it is meant to accomplish; we would then see from that standpoint whether it is an efficient institution or not. The merit system is justified not by itself but by the societal function it is meant to accomplish. Historically it was embraced by countries (that are now rich) only when the patronage system and the venality of public office became inoperative deadweights – mainly because the state was in need of massive accumulation of capital, production means and investments, particularly those capable of widening the economic base of the state (such as infrastructure and warfare), i.e. investments which could ensure sufficient fiscal revenues to finance the state. The merit system was deemed to be

a better and more efficient instrument than buying and selling public offices or using “voluntary” (today we would say “militant”) work provided by those patronised.

### **Max Weber in the Background**

It is useful at this point to turn to Max Weber, one of the most insightful analysts of modern capitalism and its instruments. Max Weber considered that the rational state rests upon an expert civil service and a rational legal order that is “the only within which modern capitalism can thrive” [5]. The preconditions for the original development of capitalism included: a predictable legal system, and behind that a state bureaucracy; and a habit of treating all people as having rights and as possible partners in law-regulated commercial dealings, which is a requirement for establishing wider markets intertwined with regular and frequent commercial exchanges.

The legal order also requires a bureaucratic state to enforce the law, i.e. professional administrators in the administration and competent jurists in the judiciary. Reliable application of legal procedural and substantive rules is one of the highest values in a well organised bureaucracy. Another feature is the impersonal application of general rules, both to outsiders the organisation deals with and to its own staff. This impartiality is the most important feature of the bureaucracy for Weber – the bureaucracy should act regularly, in a predictable way, and according to what is foreseen in law.

Weber’s ideal bureaucrat is a full-time, lifetime professional. This requires a sufficient salary and job security, because otherwise people will not stay in the job full-time for life. Unless they do, the organisation will not be efficient. Stability helps keep the institutional memory alive and helps render it a source of organisational learning, thus making the institution more efficient. It takes time and experience to learn the job, not so much because it is difficult to perform a particular task, but because it all has to be co-ordinated and routines have to be set. Consequently, promotion should be based mainly on seniority because seniority is one of the best guarantees for the efficient functioning of the bureaucracy. Likewise, an elaborate division of labour requires the stability of staff. Because of the nature of bureaucratic work, and also perhaps because of the importance of training and co-ordination on the job, the bureaucracy is in need of educated recruits. Their education must be attested by some certificate. Certified education is necessary not only to prove that recruits have been educated, but also because a good bureaucracy needs to work with impersonal criteria. In Weber’s thinking, all of these elements – academic credentials,

fixed salary, tenure, and stability – are required for the efficient functioning of a modern administrative machine with the capacity to live up to its societal function, which is to produce and instil regularity and legal certainty (Weber would perhaps have preferred to use the word “rationality”) – into social and political life. These were the societal problems that Weber had in mind when he analysed the role of the bureaucracy in the emerging economies of production en masse at the time.

### **Merit System, the Rule of Law and Democracy**

So far we have not made explicit references to the relationship between the merit system and the development of democracy, except by juxtaposing democracy and the rule of law. Nowadays the association between democracy and rule of law seems undisputed, but this was not always the case. In the 1960s and 1970s certain international agencies active in the field of co-operation for development operated under the assumption that the rule of law and democracy should not necessarily go hand in hand. The important element for economic development was the rule of law, and this could be guaranteed by both democratic and authoritarian political regimes. It was assumed that even authoritarian regimes, such as those under the Soviet influence, were able to ensure economic development for their populations. The same assumption concerned authoritarian regimes in Spain and more recently in Chile. Furthermore, experience in the development of early capitalism under economically liberal doctrines in western countries, in particular the USA experience, showed that it was possible to launch the economy simply by making sure that contracts were enforced and commercial transactions respected, regardless of the more or less authoritarian character of a political regime. In summary, the rule of law was deemed possible outside of fully fledged democratic political regimes.

This assumption has proved to be mistaken. In fact, mainstream economic theory follows the direction that “democracy is the most effective guarantor of good governance – in the economic sphere no less than in the political sphere. Civil liberties, political freedom, and participatory procedures are the best way to ensure appropriate labour standards, environment sustainability, and economic stability. The performance of democracies in all of these areas has been superior to those of regimes with restricted political participation” [6].

Today the notion of the rule of law has evolved and its meaning has enlarged. It is no longer solely an expression of the supremacy of parliament (in its original British meaning), but includes, in most EU

Member States, notions such as the separation of powers and the principles of legality, accountability, proportionality and due procedure in the performance of the administration. It also includes fundamental rights and democracy as part of the rule of law or *état de droit*. Even certain poverty reduction-related aspects have been included in the notion of the rule of law, first by intellectuals and practitioners and then in some constitutions (Italy, Germany, Spain and others), in which the state is referred to as a “social and democratic state of law” (*état social et démocratique de droit*). The constitutional association of democratic and social aspects with the rule of law was meant to denote the idea of a more active role of the state in reducing social inequalities, while at the same time establishing the role of the state as an “enabling state”, since society can only develop if all, or the majority, of its members (political democracy) can develop themselves (social aspect). Therefore the state has to create the political and social conditions enabling such development.

With this shift of perspective, the accepted assumption is that poverty is one of the main enemies of the rule of law, the *état de droit*. Consequently, a shift is observable from the old liberal rule of law to a more modern social rule of law, which is intertwined with democracy: The societal function of the rule of law should be not only the guarantee of individual property rights, but also the guarantee of the personal development of the majority of individuals in a given society. The rule of law is meant to free social assets for the benefit of the society as a whole, and this effect can only be obtained if the state promotes equal opportunities for everyone and inclusiveness<sup>2</sup> within an environment of legal certainty. In this way, the rule of law tends necessarily towards democracy and becomes the cornerstone of the notion of governance.

In this respect, the merit-based civil service is also a necessary element for democratic governance, as long as the relevant constitutional and administrative law frameworks are also in place, i.e. those legal arrangements that set the foundations and the rules of the game for the state to operate in a democratic way. These new notions of the rule of law and good democratic governance have also entered mainstream political discourse. European international organisations, such as the Council of Europe, recently issued a recommendation for governments to lay down “fundamental principles for European and national public officials, such as universal and fair possibility to access the civil service, equal opportunities for

women, integrity, loyalty, objectivity and probity, in consideration of the fact that a high-quality civil service is a vital precondition for strong democracy and the rule of law” [7].

The same spirit inspired the Declaration of the Summit of Ibero-American Heads of State and Government in November 2003: “The role of the State is essential for governance, to reduce social inequality and promote economic development and to achieve increasing levels of collective welfare. For this it is an indispensable precondition for the professionalisation of the civil service. Making the civil service professional stands for a civil service characterised by the merit system, professional capacity, service-oriented, performing efficiently, accountable, ethically scrupulous, and adherent to the principles and values of democracy ... because public administrations that embrace such values contribute to strengthening the State institutions and to making democracy more robust” [8]. In this political declaration the underlying assumed linkages are manifest between the merit system, the rule of law and democracy.

### **Civil Service Reform Beyond the Reform Rhetoric: a Necessity for Countries in Transition**

Civil service reform is thus becoming a major component of democratic institution-building, but it is also another arena for long-standing conflicts between traditional elites (either feudal or communist) and emerging democratic, urban, enlightened elites. These elites would also include certain economic actors based more in industry and services (i.e. more transnationally-oriented) than in land ownership (i.e. more nationally inward-looking). Modernising elites in transition countries are in general strongly supported by the so-called “international community”, a conglomerate of different actors and interests powerful enough to promote a reformist public opinion and a reformist political discourse, which emphasises the merit system as a key instrument for economic development, as indicated above. This public opinion includes the production of literature on “governance” that establishes the merit system and the rule of law as the main preconditions for economic growth.

This view constitutes the bandwagon of the contemporary thinking on governance and development, and inspires the rhetoric of reform in many countries, to such an extent that it is difficult for traditional elites to fight openly against reform. What is more, traditional elites tend to adopt the reform rhetoric in the same way as modernising elites. It is amazing how traditional elites in some

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<sup>2</sup> Not surprisingly, the Public Administration Reform Strategy of Brazil bears the title “Public Management Towards a Socially Inclusive Brazil: Public Management Plan of the Lula Administration”, Publications of the Ministry of Planning, Budget and Public Management, Brasilia, 2003.

central and eastern European countries – and elsewhere in the world – have adopted the reformist political discourse, a discourse that resounds well – and is even convincing at times – to international community ears. Sometimes these “old” elites with a “new” rhetoric gain explicit political support from the powers that count internationally. However, in most cases traditional elites pay only lip service to reformist ideas, as their intentions do not go beyond diverting internal and international criticism, since few national leaders in transition countries can afford to be perceived as reactionaries blocking progress. Effectively, the political discourse in many countries is reformist, but effective implementation of reforms remains very limited or non-existent.

One could argue that what is important is the political will to pursue reforms, or the so-called political commitment to reform, including the strong political leadership of a prime minister or president. Apart from the fact that political commitment is difficult to define conceptually and even more difficult to measure<sup>3</sup>, it depends on political capacity, an elusive concept. Another sacred word in reform literature is national “ownership” of reform efforts, which is used to refer to national leadership and political commitment. Thus political will, political commitment and ownership are different words representing aspects of the same idea. As the President of the World Bank expressed it, ownership means that “countries must be in the driver’s seat and set the course. They must determine goals and the phasing, timing and sequencing of programs” [9]. The European Union has been assessing state reforms in EU candidate countries since 1997 in terms of “administrative and judicial capacity to apply the *acquis*”, but very few assessments have been made of the political capacity of these countries to conduct the modernisation of their public administrations and civil services, i.e. to move from the *nomenklatura* system to a system that is democratic and merit based. In certain EU candidate countries the old political elites have remained in command, although they have been more or less converted to democracy and change. In the region it is not unusual to hear political assertions blaming civil servants for their laziness and lack of interest in their work as the rationale for the necessity of reforms, which is another way of diverting the attention away from the real issues.

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<sup>3</sup> A model for defining political commitment is proposed by Willy McCourt, based on a civil service reform case study, that of Swaziland. See Willy McCourt, “Political Commitment to Reform: Civil Service Reform in Swaziland” in: *World Development*, Vol. 31, No. 6, pp. 1015-1031, June 2003. At: [www.elsevier.com/locate/worlddev](http://www.elsevier.com/locate/worlddev) (doi:10.1016/S0305-750X(03)00044-5)

If civil service reform is perceived as building or reforming a fundamental institution of a democratic state, and if this reform effort is justified insofar as it is included within a policy framework for economic development and modernisation, the first important issue is not how to overcome the laziness and inefficiency of public employees but how to overcome political populism and current patronage patterns affecting public services in several transition countries and how to replace these ills with a merit system ruled by law. This challenge also implies the creation of an appropriate legal administrative framework for the public administration, which includes regulating how public staff are managed, how public decisions are made and how public action is controlled by independent administrative and judicial institutions.

This legal administrative framework should be aimed, among other things, at reinforcing the public accountability of civil servants and ensuring that legal means compel public servants to serve the general public interest and to not be influenced by vested interests of any kind. The best available means for ensuring this and encouraging appropriate behaviour by civil servants is the merit system. The merit system is likely to limit the capacity of politicians to meddle disproportionately in the appointment of civil servants. It is also likely to elicit an active and positive attitude of civil servants towards their own professionalisation and to encourage their long-term service. Such changes in attitude in turn represent an incentive for civil servants to commit to democratic constitutional values and to the general public interest.

## Conclusions

The first conclusion is drawn from the fact that the institutionalisation of the merit system was historically legitimised by its societal function and that its role was to provide legal certainty through institutional guarantees safeguarding the professional impartiality of civil servants. To a great extent this impartiality is determined by recruitment, promotion and remuneration schemes based on professional expertise and rank within the hierarchy, schemes that are closed to political or otherwise undue bias. This institutionalisation of the merit system represented the only available means of providing *a priori* guarantees of legal certainty, which was in turn essential for developing the industrial and commercial economy.

The second conclusion is that a merit-based civil service was not historically imposed against the will and interests of politicians, but in fact because of these interests. Under the new economic conditions created by emerging capitalism, political classes nee-

ded a professional bureaucracy that was consistently less vulnerable to political manipulation and therefore capable of ensuring the durability of legislative agreements. These early capitalists were aware that the worst enemies of capitalism were the capitalists themselves, and to reduce the perils which they represented, a strong state and an impartial public bureaucracy were needed. This view continues to be valid for contemporary emerging democracies in need of consolidation. Politicians have an interest in limiting their own meddling in administrative affairs and leaving room for the development of a professional administration.

The third conclusion is that the merit system was created in the first place to neither produce efficiency within the state administrative apparatus nor to improve public services, but to efficiently produce legal certainty, impartiality and societal trust in the legal system of the state. In other words, its role was to produce efficiency in the market through what Posner referred to as “allocated or external efficiency”, consisting of making structures and procedures available and capable of promoting private social and economic efficiency [10]. Social and economic efficiency is needed for social and economic development, and this development is in turn necessary for developing robust democracies. The merit system in public employment in general, and in the civil service in particular, has a direct influence on the strengthening of both economic development and democracy.

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### **Viešoji tarnyba, demokratija ir ekonomikos raida**

#### Reziumė

Straipsnyje nagrinėjamos viešosios tarnybos, ekonomikos ir demokratijos raidos sąsajos. Akcentuojama, kad anksčiau paplitęs valstybės tarnautojų parinkimo ir įdarbinimo būdas, rėmėsis įtakingų asmenų, tarp jų politikų, globa, taip pat valstybės įstaigų darbuotojų paperkamumas, ateityje turėtų išnykti. Tai sąlygos skurdo mažėjimas, subalansuota ekonomikos raida ir demokratijos stiprėjimas.

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