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The Duty to Take Care: President Obama, Public Administration, and the Capacity to Govern

President Obama as a Public Administrator: A Midterm Review

President Barack Obama inherited many challenges as he entered the White House. One of the most important obligations he faced was the constitutional duty to "take care that the laws be faithfully executed." Meeting that commitment has been rendered more difficult because Obama seems not to have recognized that the people and organizations of the executive branch are facing a crisis in the capacity to govern. This essay argues that no matter how talented President Obama may be in public policy or on the stump, he likely will not accomplish his constitutional duty unless he engages that capacity crisis.

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Few who have entered the presidency have done so with greater anticipation among the electorate or facing more challenges than Barack Obama. In addition to the usual pattern of expectations that the new president would solve problems, bring about a better life for everyone in America, and provide leadership and support in the international arena, there was a set of demands that flowed from a devastating recession, two major military conflicts, and a national loss of civility with increasingly extreme partisan and ideologically driven behavior. There also were challenges that flowed from candidate Obama's promises of change on a grand scale, presented in sweeping rhetoric on the campaign trail during a hard-fought election. As he took office, President Obama faced the consequences of the well-known admonition that one should be careful what one wishes.

In looking back on the first year of the Obama presidency in his book *The Promise,* Jonathan Alter quoted the president's expression of frustration that his successes during his first year in office had not been adequately recognized: "I don't think people fully appreciate the degree to which, prior to health care, we had twelve straight victories in a row" (2010, 428). This statement typifies a common contemporary view that the president's job is to win a series of policy campaigns. But the presidency is more than one individual seeking to lead a team in a competitive game in order to score points in the form of policy adoption. It also is more than a contest whose object is positive public opinion poll numbers leading to reelection or, for that matter, a puzzle as to how a president can construct an image that will shape at least the near-term historical picture of the occupant of the White House when he or she leaves office.

If the president has not discharged his or her constitutional duty to "take care that the laws be faithfully executed," policy victories will accomplish little in fact, however much may have been promised when they were adopted. The president's popularity will say little or nothing about the actual state of the Union. The imagery created in an effort to shape history likely will mean nothing of consequence in terms of effective public services.

A finding that the president has carried out his or her constitutional obligations as chief executive is not about the celebrity of the occupant of the office or the transitory political contests that are the focus of media attention. Rather, it is an assessment of how the president contributed to the institution that is the presidency; to the executive branch, which the president heads; to the federal government, of which that branch is a part; and to the effectiveness of the government as a whole, not merely in proposing policies but also in carrying out the purposes and responsibilities set forth in the U.S. Constitution. One part of that assessment is, as Chester Newland put it, a question about whether the government is being managed well (1983, 1). Another goes to whether the president has done what is necessary to ensure that the executive branch has the capacity to implement and administer the policies created by legislation, administrative rules, or presidential directives. Yet a third criterion goes to whether, given the contemporary intergovernmental complexity of public policy, the national governance structure has the capacity to conduct the integrated operations that are necessary to execute the law, whatever the policy domain may be. If these three criteria are not met, it would be difficult to conclude

that the president has succeeded in the conduct of the responsibilities assigned by the Constitution to that office. The celebrations of his or her successes will ring hollow even if the spin masters are able to keep the image of a successful presidency alive for some time to come.

An examination of the early part of his presidency indicates that while President Obama plunged into policy contests and political challenges at home and abroad, what he did not seem to recognize was that there was and is a crisis in the capacity of the government to execute the law, and the victories to which he pointed in his first year and a half have only added to those capacity challenges. He has not demonstrated an awareness of serious dangers concerning the government's ability to administer public policy—challenges brought about by decades of campaigns run against the government by candidates of both political parties. These capacity deficits are not challenges that can be addressed by a general demand for change in how Washington operates, a proliferation of websites, the wider application of information technology, or the promulgation of performance standards. While less glamorous than the adulation of adoring crowds around the nation or the elegance and pageantry of international travels, and perhaps less engaging to most political leaders than dramatic debates about the formulation of new public policies, this effort to ensure the capacity to govern requires the president's attention and highly visible action.[1] The need to address this capacity deficit immediately and effectively is critical not only for the short-term success of the president's administration, but also for the long-term public interest.

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This article will consider the challenges that President Obama faced as he came into office that shaped his administration during its first year and a half. It follows in a tradition of similar articles presented in the pages of *Public Administration Review* over the years (see, e.g., Newland 1983; Pfiffner 1990, 2007; Sundquist 1979). Like those other articles, the intention is not to debate the president's policy views, but to understand what the new administration and its actions in office mean for public administration. And, like the earlier assessments, this discussion starts with a recognition of the daunting challenges facing the chief executive and an understanding that any such analysis is based on the early part of one presidential term with much to come. It recognizes that different presidents bring very different views of the office to the White House with them (Alter 2010; Barber 1972; Newland 1983; Pfiffner 2008; Pyle and Pious 1984, 61–75; Woodward 1994). It also acknowledges that presidents would like to be assessed based on their view of the presidency and what are, in their view, reasonable expectations given the conditions they found upon taking office. The discussion examines the foundations of the president's obligations in public administration. It then turns to the contemporary capacity deficit. Finally, it examines the early part of President Obama's term of office in light of that set of critical challenges.

The Foundations of the President's Obligations in Public Administration: The Duty to Take Care

The framers of the Constitution made clear from the beginning that a president was needed to ensure the execution of the nation's laws (Farrand 1966, 1:63–70). To that end, they conferred on this office "the executive power" (U.S. Constitution, Article II, sec. 1, cl. 1). And to make clear the core task of this new officer, Article II imposed on the president a duty to "take care that the laws be faithfully executed" (Article II, sec. 3). Whatever else may be expected of a president, a chief executive who does not discharge this duty could not be regarded as successful.

The Constitution did not make the president the head of government. It did not recognize the president as campaigner in chief, as if he or she were the head of a majority political party, like a prime minister. It did not make the president the nation's lead policy maker, though it did indicate that he or she should make policy recommendations to the Congress for its consideration (Article II, sec. 3). Although there has been an ironic tendency by some advocates of dramatically expanded presidential powers to claim otherwise, the duty to "take care that the laws be faithfully executed" was not a statement of powers of office, but the first, and in many respects most fundamental, legal obligation of the president, generally referred to as the "duty to take care" clause.

That the framers understood the difficult but essential nature of the executive task is plain to anyone who studies the records of the Philadelphia convention (Farrand 1966) or *The Federalist Papers* (Hamilton, Madison, and Jay [1788] 1961). At root, the concern was that the new executive was obligated to ensure that the laws would be faithfully implemented and administered. As *Federalist* No. 68 made clear, "[T]he true test of a good government is its aptitude and tendency to produce a good administration" ([1788] 1961, 414). *Federalist* No. 70 added that "[a] feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for bad execution; and a government ill executed, whatever it may be in theory must be, in practice, a bad government" (423). John A. Rohr has detailed with great care the fact that the discussion of the task of administration and the development of the institutions necessary for that purpose was central to the creation of the Constitution. Indeed, he explained, "The word 'administration' and its cognates appear 124 times throughout *The Federalist Papers;* more frequently than Congress, President, or Supreme Court" (1986, 1).

The constitutional duty also means that a president is not free to violate the obligations of law (see, e.g., *Kendall v. United States,* 37 U.S. (12 Pet.) 524 [1838]; *United States v. Symonds,* 120 U.S. 46 [1887]; *Cole v. Young,* 351 U.S. 536 [1956]). The framers took pains to explain that the chief executive was not to be a monarch (see *Federalist* No. 69, Hamilton, Madison, and Jay [1788] 1961, 415–23). Even the existence of war or other states of emergency does not lead to a suspension of the duty to take care. As the U.S. Supreme Court explained to President George W. Bush, "We have

long since made clear that a state of war is not a blank check for the President" (*Hamdi v. Rumsfeld* 542 U.S. 507, 536 [2004]).

The Capacity Deficit Builds under Both Republicans and Democrats

In the fall of 1994, looking back on his first year and a half in office, President Bill Clinton outlined his accomplishments in a speech to the City Club of Cleveland. He spoke of his efforts to cut the deficit, expand trade, deregulate, reform welfare, and leave the federal government "smaller, more effective, less regulatory, more efficient." "'If I were a Republican president saying that, all these people would be running me for sainthood,' Clinton said. 'They'd be saying, 'Let's build this guy a statue'" (Roddy 1994). As he submitted his final budget to Congress, Clinton proudly proclaimed his success in "cutting the civilian Federal work force by 377,000, giving us the smallest work force in 39 years" (OMB 2000, 4).

One major problem with his self-assessment is that the federal government by that point had far more—and more complex—administrative obligations than ever before, and its resources to implement and administer policy had been bled not only by Clinton, but also by his predecessors of both political parties, to a point that the government already lacked the capacity to do what was needed to ensure that the laws were faithfully executed. Under George W. Bush, the situation got much worse as domestic programs were further starved on the argument that the nation's resources were needed to fight the "war on terrorism" abroad and to enhance homeland security. By the time Barack Obama came into office, that capacity deficit was at a crisis level, but there was little indication that the new president understood that or, if he did, that he was making it a priority for his administration. Instead, the overwhelming focus was given to policy making. Unless and until he comes to grips with the capacity crisis, he would not be able to claim with any justification that he was taking "care that the laws be faithfully executed."

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The capacity crisis that President Obama inherited was the result of both Democratic and Republican administrations before him. Their actions and the failure to act when serious needs were going unmet compounded over time, meaning that a number of particular capacity problems would grow into a more general capacity crisis. It is a crisis with three critical elements: (1) people, (2) organizations, and (3) intergovernmental relations. Because of the limitations of manuscript length, this article focuses on the first two of these, but the case readily can be made for intergovernmental relations capacity as well.

People: Not Just Numbers but an Expert, Experienced, and Supported Workforce to Execute the Law

The president's ability to ensure that the laws are faithfully executed starts from the numbers, skills, experience, career commitment, and morale of the federal workforce. The challenges to the basic capacity of the federal workforce have been building since at least the 1970s under both Republicans and Democrats. There have been specific but critical areas of the workforce that have presented growing challenges to the federal government's ability to accomplish its responsibilities and broader challenges to the entire workforce.

One of the best exemplars of the growing problem of critical needs is in the area of government contracting. As early as the Jimmy Carter administration, the seeds of the problem were growing. The Office of Management and Budget (OMB) had come to recognize that the cohort of World War II– to Korean War–era supply and logistics personnel who had entered the federal civilian workforce would be retiring between 1975 and 1982, leaving a gaping hole in an increasingly important area of federal responsibility, not only in terms of numbers but also in terms of expertise and experience.

The situation got worse over time with reductions in force during the Ronald Reagan years, in addition to retirements and a surprising lack of attention to support for government contracting by an administration that sought to do more of it (see Cooper 2003, 44). By the first Bush administration, the so-called SWAT Team on Civilian Agency Contracting added additional warnings that the capacity for contract management was already inadequate and that the problem was growing. There was, the report said, an additional problem that even many program managers and line administrators failed to recognize: that contract management was no longer, as some of them seemed to suggest, simply a technical staff activity only slightly above a clerical function, but rather was becoming the way those agencies did their work (OMB 1992).

By 2003, the Government Accountability Office (GAO) was reporting that service contracting had increased dramatically across federal agencies, but noted that on top of the losses in the contracting workforce in the previous period, there was an additional decline of 22 percent from 1991 to 2001, even though 24 percent of the federal budget was spent through contracting (GAO 2003, 4). The George W. Bush administration pressed even more than the Clinton administration before it to increase the contracting out of federal services, but the capacity to administer policies that relied on contracting continued to decline.

The Federal Acquisitions Institute (FAI) annual reports on the acquisitions workforce found the situation far worse than the GAO report. In 2006, the FAI warned that "retirement eligibility for full retirement climbs to 32% in 2010 and 54% in 2015" (2006, v; see also FAI 2009). With the retirements come a dramatic loss of experience. While efforts to recruit new employees continue, they are not keeping pace with the increase in amounts or complexity of the work. Even if they do, the current trends suggest that a serious experience gap is developing. Additionally, the contract management professionals have enhanced skills and experience that make them highly attractive to the private sector.

The impact of the failure to respond seriously to the capacity deficit as demands for dramatically expanded contracting grew became evident in several settings. With the rise of homeland security after

2001 and the creation of the Department of Homeland Security a year later, it soon became clear that the new department could not spend the dramatic amount of funds it was given well enough and fast enough with the limited capacity it had for contract management (see, e.g., DHS 2004; GAO 2005). Then came Hurricane Katrina, and with it, dramatic illustrations of the lack of capability to provide or acquire necessary services and manage the contracts needed to do so (DHS 2005; GAO 2006a, 2006b), providing fodder to the news media.

Even in the war-fighting arena, the lack of capacity was apparent. The U.S. Army Commission on Army Acquisition and Program Management in Expeditionary Operations, known as the Gansler Commission, found that an increase of more than 600 percent contract workload (2007, 4), with more than 160,00 contractors "over 50% the total force" in Iraq (13), and with declining capacity and increasing complexity, had created "a perfect storm in Army contracting" that led to one major scandal and problem after another (17). The Commission on Wartime Contracting in Iraq and Afghanistan (2007) has gone on to issue reports on the continuing dangers posed by the lack of capacity (see also GAO 2010a).

Well beyond special areas of essential competency, such as contracting, the federal service as a whole was facing a significant wave of retirements. The GAO noted that by 2016, "60 percent of the government's 1.6 million white-collar employees and 90 percent of about 6,000 federal executives will be eligible for retirement" (GAO 2007, 5). That is on top of the losses during the previous administrations from deliberate efforts to reduce the size of the federal workforce under presidents of both parties and decisions by frustrated employees simply to leave federal service.

Of course, as Paul Light (1999) has pointed out, while government employees decreased, the number of contractors increased dramatically. The fact is that this trend added administrative work in a time of already inadequate contract management capacity. The government may contract out the work, but it retains the legal responsibility for its programs and policies. The expansion of the scope, types, and scale of contracting only increased the need for more contract management with new and increasing skills and knowledge. Even in existing fields, the stress was increasingly apparent. For example, the army was having such difficulties that it turned to contractors (42 percent of its contract specialists at the Army's Contracting Center of Excellence) to do contract management, which the GAO found cost, on average, 27 percent more than if the same work had been done by civil servants (GAO 2008, 1). In short, contracting and grants-based operations actually add workload demands in a number of important respects.

Over time, losses in federal employees have meant that the workforce is noticeably older. Whereas the largest age cohort in 1985 was 35- to 39-year-olds, in 2008, it was 50- to 54-year-olds (OPM 2010). In fact, as of 2008, 60 percent of the total full-time permanent federal workforce was 45 or older, and 43 percent was 50 or over (OPM 2010). According to Office of Personnel Management reports, the figures for the white-collar workforce are even higher.

The capacity problem has been exacerbated by presidents who ran against the federal government they sought to head, as has been true of a number of occupants of the White House, from Carter to Reagan and on to the present. It has been challenging to recruit and retain top talent with so much uncertainty as to the promise of a future career ladder in public service during a time when administrations seem bent on reducing the number of people or contracting out what otherwise would be done by those in government. As the GAO noted, "[A] strategic approach has not been taken across government or within agencies to focus on workforce challenges, such as creating a positive image essential to successfully recruit and retain a new generation of talented acquisition professionals" (2007, 7). The point is more broadly applicable.

Organizations under Pressure: More Demands and Declining Support

The execution of the law is carried out at the national level through federal agencies. While it is certainly true that, in the contemporary environment, federal organizations do not operate alone, but with a wide variety of other agencies, contractors, networks of nonprofit service providers, and state and local governments in various governance regimes, Congress still vests responsibility for individual policies in one or more agencies. Both Democratic and Republican administrations have stressed administrative agencies to the point that these arms of the executive branch and independent regulatory commissions cannot effectively ensure that the laws are faithfully executed.

Federal agencies have faced continuing pressure as far back as the Carter administration to implement a host of new and more complex policies at the same time they have been under pressure to absorb revenue cuts or flat funding during periods when the costs of their obligations have been escalating dramatically. Whether the effort to cut federal agency resources, directly or indirectly, was ideologically driven, as in the Reagan and George W. Bush years, or a response to the political context of the day, as in the Clinton administration, the effect was to place a variety of agencies that were being asked to take on more complexity and challenges in a seriously weakened condition. President Clinton claimed his budget cuts and reductions in government employees as two of his major accomplishments. George W. Bush boasted in forwarding his fiscal year 2007 budget, "[A]gain, I am proposing to hold overall discretionary spending below the rate of inflation and to cut spending in non-security discretionary programs below 2006 levels" (OMB 2006, 63).

The capacity crisis in many agencies is not solely the result of budget issues, but also more direct actions by the White House. When presidents run against the federal government and then do not demonstrate respect for the work of those agencies when they enter office, it makes life more difficult for the organization. When President Reagan announced in his first inaugural address that "government is not the solution to our problem; government is the problem" (Reagan 1981), and then appointed some officials, such as the secretaries of energy and education, with instructions to dismantle the agencies, he not only undermined the effectiveness of those agencies, but sent a strong negative message to other agencies as well. The Reagan administration became well known for using the tactic of counterstaffing (Durant 1992, 52) to put in place people who were intended to challenge what federal agencies were doing and how they were doing it, and to get control of or eliminate

people in the agencies who had other ideas. George W. Bush was another president who used counterstaffing to tie up organizations and cause them to spend time on dealing with resistance from their own leadership to the accomplishment of their statutory duties (see Cooper 2009, 105–13).

Among the agencies that experienced a loss of capacity in so many ways were the regulatory agencies that suffered from a combination of a lack of resources, counterstaffing, and administrative deregulation pressures amid growing regulatory problems. From the Carter years through the George W. Bush administration, there was an ongoing battle against regulation by both Republic and Democratic administrations (documented at length in Cooper 2009). Contrary to the images carefully crafted of them first by the Reagan campaign and later by the George W. Bush campaign, Presidents Carter and Clinton were active leaders in that fight. And even George H. W. Bush spoke proudly of those he called his "generals" in the war against regulation (1992, 726).

When an administration fought for deregulation legislation that eliminated regulatory mandates, the costs and impacts were matters of policy debate to be fought out in the political arena. But when the agencies involved continued to have regulatory statutes that they were charged by law to administer, and the pressures to deregulate were internal to the administration, the problems were far different. Because they were not operating entitlement programs and often were engaged in work that generally was not politically popular, they suffered significantly from the budget cuts described earlier.

Even conservative Republicans complained about some of the cuts during the Reagan years. Republication senator Jake Garn of Utah was frustrated: "I can't believe O.M.B. has any brains. . . . When we have this many banks in trouble, it's not the time to cut back the banking agencies. That is just plain stupid" (Nash 1986). Joseph Stiglitz, who served as chair of the Council of Economic Advisers during the Clinton administration, complained that just at the time when accounting, financial services, banking, telecommunications, and utilities, among other regulated fields, were becoming larger and dramatically more sophisticated, the federal agencies were losing the resources they needed to stay even, let alone catch up, with the industries they were charged to regulate (2003, chaps. 4–5). By 1996, the news media had realized that the Environmental Protection Agency (EPA), Food and Drug Administration (FDA), Consumer Product Safety Commission, Federal Communications Commission, and Securities and Exchange Commission lacked the resources to meet their regulatory obligations (Skrzycki 1996).

Funding cuts got worse during the Bush years, to the point that even Tommy Thompson, who had been Bush's secretary of health and human services, warned in speaking of the Food and Drug Administration, "You can't do it on the cheap. . . . You are going to have to put more dollars in the F.D.A." (Martin 2006). These comments came in connection with increasing concerns about food safety, but the impact of budget cuts had spread across that agency, as it had with others. The Subcommittee on Science and Technology of the FDA Science Board issued a report in November 2007 titled "FDA Science and Mission at Risk," which said, "We conclude that FDA can no longer fulfill its mission without substantial and sustained additional appropriations. Numerous reports by the National Academies of Science . . . , the Government Accountability Office (GAO), the Health and Human Services (HHS) Inspector General, Congressional committees, and other expert groups have come to the same conclusion" (2007, 7).

The administrations from Carter through Bush had required substantial amounts of increased work internally in the form of rulemaking review under executive orders that mandated complex cost–benefit analyses, risk analyses, and even peer review. Thus, agencies often have had to strain to meet both their statutory obligations and the mandates of the administration.

The lack of resources, increased demands, and lack of support led to resignations, such as that of Eric V. Schaeffer, director of the EPA's Office of Regulatory Enforcement, who complained in a letter to EPA administrator Christine Todd Whitman, "Already, we are unable to fill key staff positions, not only in air enforcement, but in other critical programs, and the proposed budget cuts would leave us desperately short of the resources needed to deal with the large, sophisticated corporate defendants we face. And it is completely unrealistic to expect underfunded state environmental programs, facing their own budget cuts, to take up the slack" (2003, 2). That is in addition to the demoralization caused by political interference in regulatory rulemaking that was a major issue during the Bush years (see, e.g., EPA 2005; U.S. House 2007). The litany of such challenges and some of the consequences have been elaborated more fully elsewhere (Cooper 2009), but the presence of a capacity crisis is clear.

In sum, by the time Barack Obama became president, the federal government was facing a serious capacity crisis, and most state and local governments were as well. The capacity problem at the national level included a major loss of people and a wave of coming retirements, with a loss of experience as well as expertise. It also included serious erosion of federal agencies' capacity to meet the statutory obligations already facing them, let alone to cope with emergency situations or the flex needed to meet demands for change in direction and operations. Indeed, it was clear that most major regulatory agencies simply could not do their jobs adequately, even when they were staffed by political appointees who wanted to do so. Increased pressure for contracting out had only exacerbated the already inadequate contract management resources in federal agencies.

The Obama Administration and the Capacity Crisis

As President Obama came into office, his actions, both direct and symbolic, indicated his priorities and his approach to the office. The emphasis would be on policy making, with a series of policy campaigns for passage of legislation in areas ranging from economic recovery responses to health care to financial regulation to energy and beyond. Second, he would use the skills he had demonstrated on the campaign trail in a continuing crusade aimed at providing political support for his policy goals and for administration change efforts at home and abroad. Third, his administration would look to high technology for answers to a variety of challenges. Finally, the other device he intended to employ to address what he repeatedly announced were the problems of government was to be performance management bolstered by Internet technology. What he did not communicate was an awareness of the capacity crisis and an intention to address it. Consider each of his leading themes and their importance for the capacity crisis.

The President as Policy Leader and Lead Campaigner: Part of the Problem Rather than the Solution

Even while waiting to take office, President-Elect Obama plunged into the role of policy leader with his decision to advocate the release of Troubled Asset Relief Program (TARP) funds (Alter 2010, 77–78). Once in office, he pressed for passage of the stimulus package that emerged from Congress in February as the American Recovery and Reinvestment Act of 2009 (ARRA). The administration also began to roll out a series of executive orders and memoranda that followed through on campaign commitments, in most cases to rescind or replace policies of the Bush administration.

The primacy of policy making was also evident in the pattern of the president's appointments. Even though President Obama wanted some variety in his cabinet appointments, a very large number of his political appointments in other posts and key advisors in the White House came from the Clinton administration's policy people or their protégés or congressional staff. They were, as Alter described them, "policy mandarins" (2010, 62).

There was another important set of signals conveyed to knowledgeable observers. The Clinton administration had encountered a variety of difficulties because of the long-standing problem of just how much control and direction to maintain in the White House and how much to delegate to cabinet and subcabinet appointees (Pfiffner 1996). When Senator Tom Daschle was speaking with the Obama administration about his nomination as secretary of health and human services, he proceeded based on his awareness of the problems of the Clinton years. The Clinton administration had not hesitated to conduct policy operations from the White House without regard for the cabinet offices, including the tensions that arose over health care reform. That had left Health and Human Service Secretary Donna Shalala in a difficult position, a situation that Daschle did not want to repeat. Thus, he insisted on both the cabinet office and the designation as White House health care policy lead.

When Daschle bowed out, the Obama administration promptly chose Nancy-Ann DeParle as director of the White House Office for Health Reform at almost exactly the same time the president named Kathleen Sebelius as health and human services secretary. DeParle had served in the Department of Health and Human Services during the Clinton years, and she knew exactly what the situation was. Secretary Sebelius was confirmed on April 28, but in the meantime, DeParle took the lead as the health care policy reform czar. Of course, there were a number of other such parallel appointments in economic and environmental policy, among other areas. One of the tensions in rebuilding agency capacity is that between the need to follow presidential leadership and the danger of creating a sense of a lack of regard for the role and stature of the federal agencies that can be lost with a White House parallel administration.

Given President Obama's capabilities as an orator and a campaigner, it is not surprising that he quickly moved to get out of Washington after taking office, with the expectation that he could gather support for his major policy initiatives, go around congressional opponents and media critics to bolster political capital, and meet with foreign leaders. There are two dangers for governance capacity in the decision to spend so much time on the road and in continuous campaign mode. The first is the lack of time in the office in Washington at the center of the federal executive branch, and the second is the risk that campaign-style speeches can fuel the kind of simplistic and often negative view of public servants and government that undermines their capacity to act.

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Getting the work done: The dangers of campaign tours. For battered and stressed employees of federal agencies, there is also the symbolic importance of having the president fully engaged in the duty to "take care that the laws are faithfully executed." That entails ensuring that leadership positions in the agencies are staffed and operating effectively. Part of the challenge in this regard was that the Obama administration was not ready as it prepared to take office to move on appointments that may not have been visible to the news media, but were key to an effective administration that would expect to address the capacity crisis.

The Obama administration's vetting process was, by all accounts, one of the factors that caused the administration to be delayed in getting its appointments completed and presented. Unfortunately, the message appeared to be that the administration was able to get the task done promptly when it considered a position important enough, but did not seem to be able to make the same progress on other positions. Thus, the administration had no difficulty announcing the appointment of Nancy Killefer to fill the newly created post of chief performance officer as early as January 7, 2009, and Obama was able to fill other posts seen as critical, such as the director of the OMB, but other key jobs that the new administration should have known were critical were not ready.

If the new administration had recognized the capacity crisis in the government it was about to lead, there were three positions that needed to be ready to go upon taking office, rather than weeks or months later, in order to support the people and the organizations of the federal government. The appointment of those officials would also send messages about the administration's awareness of the capacity issues. Given the stresses, one of these positions was the director of the Office of Personnel Management, who was not actually appointed until March. The director of the Office of Information and Regulatory Affairs, the office within the OMB responsible for policy concerning the promulgation and change of regulations, was clearly important to address a range of issues of rulemaking and regulatory process in all agencies at a time when the failures of the regulatory system were obvious and demand for action loud, but that appointment was not made until April 20 and then was not confirmed until September.

A third key person, given the obvious and growing capacity challenges in government contracting, was the director of the Office

of Federal Procurement Policy (OFFP), but David I. Gordon was not named to that position until October and was not confirmed until November. This post was obviously important in light of the capacity challenges that already existed in the field of government contract management, the massive additional work added to the system by ARRA, and the fact that Congress had grown tired of waiting for executive branch solutions and required a series of reports and policy actions to be taken by law under the Duncan Hunter Defense Authorization Act, passed in the fall of 2008. The fact that the leadership team was not in place appears to have played a role in the fact that the OFPP was half a year late in meeting the statutory obligation under the Duncan Hunter Act to address what work should be considered inherently governmental and therefore not contracted, something that candidate Obama had indicated was a serious problem (see OFPP 2010).

That lack of established leadership was important to the problems that were presented when the OMB promulgated guidance for the implementation of ARRA that the contracting system was not able to address adequately (see OMB 2009c, 2–8, 38–48). Although the elements of the guidance were laudable, the contract management workforce and organizational systems were not in place to comply in a timely manner. The GAO later would report that while all of the emphasis was on the way in which the funds would be distributed by the new competitive contracting process, "[m]ore than two-thirds of the $26 billion obligated for Recovery Act federal contract actions through May 2010 were on contracts that were in place before the enactment of the Recovery Act" (2010b, 8).

Some words hurt: The dangers of campaign rhetoric and the assumption that the private sector is superior. The other problem with the continuing campaign as a modus operandi is the potential effects on morale if the president continues the kind of rhetoric used in the campaign season into the administration. President Obama, running as an outsider, used a good deal of rhetoric typical of those who run against Washington. While he indicated some recognition that public servants are important and that public service, broadly defined, mattered, once in office, his administration did not appear to recognize the need to focus on the capacity crisis, the troublesome presidential policy and management leadership that contributed to it, or the impact of the challenges for the public service professionals and the agencies in which they work. Indeed, the emphasis seemed to be on the weaknesses of the federal government, the need to reject bureaucracy, and the challenge of making government agencies and their employees more responsible for eliminating inefficiency. This kind of rhetoric does not reinforce recruitment and retention efforts or reassure overwhelmed agencies that their efforts under difficult conditions are appreciated.

At the end of the week in which Barack Obama was elected to the presidency, the *Washington Post* ran a number of comments under the title "Federal Employees and Experts Offer Tips for Re-Energizing the Workforce" (Leonnig 2008). The piece quoted an EPA employee who said, "Do something positive as quickly as they can. That would go a long way to improving morale. That will give hope. And 'hope' is not in the vocabulary of most of the people who work for EPA, and for many other federal agencies as well." Paul Light, interviewed for the piece, added, "Obama is inspirational, but he needs to get specific very quickly about what he means by making public service cool again and getting rid of poorly-performing agencies. Federal employees need to know he supports them." Unfortunately, there has been far more emphasis on fighting bureaucracy and fixing an underperforming government than on addressing the capacity crisis and supporting public service professionals.

In a September 2008 campaign forum, Obama indicated that "part of my job, I think, as president, is to make government cool again." His discussion of public service was not focused much on civil service, but on the importance of encouraging a variety of different kinds of public service, with the stress on nonprofit and community service. His focus was, then and later, on his campaign theme that "Washington is broken." He emphasized his criticism of federal operations and of bureaucracy (CNN 2008).

Shortly after this campaign forum, Senator Obama released his document "The Change We Need in Washington," criticizing government in the kind of language not likely to help heal battered public service professionals. It spoke of "Bloated Bureaucracies," repeated the standard political refrain that there is "too much Washington bureaucracy—too many layers of managers," and charged that there is "too much paperwork that does not contribute directly to improving the lives of the American people." The new administration would "Eliminate Wasteful Redundancy" and "Fix Government Contracting" (Obama 2008, 6–9).

As he came to office, his emphasis in speeches and public events was on how he was going to fix Washington to make federal agencies and their people more accountable for the elimination of inefficiency and inadequate levels of public service. The theme that came with that commitment was that he would look to the private sector to show the public sector how to get it right. This was going to be done through the administration's commitment to "high-performance government," which would be driven by a modernization program focused predominantly on the use of high technology.

In announcing Jeffrey D. Zients as chief performance officer, the White House underscored the fact that "Zients has twenty years of business experience as a CEO, management consultant and entrepreneur with a deep understanding of business strategy, process reengineering and financial management." The president once again repeated his insistence that "we simply cannot afford to perpetuate a system in Washington where politicians and bureaucrats make decisions behind closed doors, with little accountability for the consequences" (White House 2009).

The following January, the White House hosted a Forum on Modernizing Government, to which the administration invited 50 private sector chief executive officers. In introducing its report on the forum, the White House charged that the federal government was out of touch with modern technological and management innovations and that the private sector could teach federal agencies how to do things right (White House 2010, 1; see also Obama 2010; Orszag 2010).

Virtually no public service professional would quarrel with a continuous search to find better, more efficient and effective ways to carry out public policy. Indeed, they have often supported

presidential candidates who promised to seek reform in the public arena. However, the rhetoric and public presentation of the administration has been to reiterate the low-order political language of campaigns and to juxtapose the presumed superiority of the private sector with public servants and the agencies in which they work. There is little evidence of real recognition of the capacity crisis at either level, and little in that rhetoric that will help to address it, certainly with respect to the people part of the crisis.

There is one other element to the continuous campaign rhetoric that suggests a lack of sensitivity to the capacity crisis. It goes to the president's commitment to budget cutting and deficit reduction. Just after taking office, on February 23, 2009, the president addressed his Fiscal Feasibility Summit and declared that "today I'm pledging to cut the deficit we inherited by half by the end of my first term in office" (White House 2009, 1). He followed with a message very common among both Democrats and Republicans: "To start reducing these deficits, I've committed to going through our budget line by line to root out waste and inefficiency" (2). The speech continued with more unhelpful rhetoric.

The message to public service professionals was obvious. Despite the massive TARP assistance to the private sector, the dramatic stimulus package, the staggering costs of two wars, and yet to be constrained rises in health care costs, the charge was that those who had been administering the nation's policies had been so guilty of allowing or engaging in fraud, abuse, and waste that easily could be ferreted out and remedied by the new team in the White House that the deficit could be cut "in half" in four years.

The president's approach was not helpful. It did not reflect a careful and thorough analysis of the state of near collapse in the regulatory agencies, the increasingly threatened intergovernmental program needs, the completely inadequate contract management capacity that exists in many areas, or the need to recruit, train, and develop a dramatic number of federal administrators. There followed discussions about funding freezes in the fiscal year 2010 and later budgets without evidence that there had been time to assess fully the programs, their base funding adequacy, or the administrative capacity to operate them. There appeared to be little or no awareness of the capacity deficit.

High-Performance Government and High Technology Do Not Cure the Capacity Crisis or Ensure the Faithful Execution of the Law

When President Obama came into office, he brought with him two core ideas for public administration from his campaign: high-performance government and the use of state-of-the-art technology to make it work. Neither of these ideas was designed to address the existing capacity challenges in the federal government and both could—and in some respects already have—exacerbate them.

High-performance government: A useful concept requiring careful implementation. During the Democratic candidate debate on January 15, 2008, Obama sent a strong message that he was not interested in "making sure that schedules are being run properly or the paperwork is being shuffled effectively." He received considerable criticism for that characterization of presidential management responsibilities and came back with high-performance government and high technology as themes in the fall of 2008. Once in office, the focus of the Obama administration was to be on setting performance goals and using the Internet and other technology to make that information transparent and available, which, in turn, presumably would lead to better accountability. Additionally, there would be a chief performance officer who would ensure action on the agenda and press for other innovations, along with a chief technology officer who would work with the chief performance and chief information officers to ensure that the necessary information infrastructure would be available.

The concept of high-performance government is not new (Goldsmith and Kettl 2009; Klitgaard and Light 2005; National Commission on the State and Local Public Service 1993; Popovitch 1998). While no competent public service professional would object to the appropriate use of performance management techniques to achieve better service delivery in public programs or the importance of useful tools of accountability, if the performance management actions are not done with appropriate care and resource support, the Obama prescription could actually exacerbate the capacity crisis rather than help to address it.

Beyond the Internet transparency and accountability elements, it took a considerable period of time to learn what the administration had in mind in terms of its performance standards program. Initially, the administration kept the Bush administration's Program Assessment Rating Tool in place, and only later in the year, months after submitting its preliminary budget, did it provide a very brief discussion of its intentions in the appendix to the budget (OMB 2009a, 9–12). OMB guidance to agencies followed, but it still is not entirely clear how the performance assessment will be implemented (OMB 2009d; 2010a, 73–90). The initial OMB direction to agencies was to identify "a limited number of high-priority performance goals" (OMB 2009d, 2–3). This process is still developing, and only future actions will show what the performance program will mean in practice over time and how it will relate to resources.

Beryl Radin (2006) has provided one of the most helpful sets of cautions available about the importance of understanding performance standards and using them carefully. Long a practitioner of performance management, Radin is not out to oppose this management approach, but to explain how to use it effectively and the dangers it poses when those cautions are not observed. While there have been many efforts to apply performance-based management, a host of challenges to its effective use continue to exist. For one thing, the process of developing useful and appropriate measures, doing the data collection required for effective management decision making, and constructive and effective reporting of results and lessons learned takes resources that too often must come from other time and activities that are already inadequately supported. Moreover, if the way in which performance standards are used is to be a stick with which to chastise an agency and its people, without adequate rewards for top-quality performance, then the system is likely to be counterproductive in terms of its impact on both the agencies and its people. Too often, that has been the case with inadequate new funding to provide the rewards. Finally, if a program, an organization responsible for implementing it, or the people in that organization are suffering from a capacity crisis, the performance management requirements can become one more set of challenges to the basic accomplishment of their other obligations. However well

or poorly designed the management system might be, if the capacity is not present in terms of people and organizational capability, there is likely to be little positive that results in terms of making sure that the laws are faithfully executed.

Technology: A useful tool that can become a capacity challenge. The Obama administration's early effort at performance improvement was to require the creation of Internet sites that would report policy actions and financial expenditures, with the expectation that the appropriate audiences would access those data, thus ensuring transparency and accountability. To be sure, not all of these websites were originated by the Obama White House. Indeed, many of them were required by the E-Government Act or by specific legislation such as the Federal Funding Accountability and Transparency Act of 2006, which mandated what is now known as USASpending.gov. That said, the administration has established a plethora of Internet sites, including Change.gov, Recovery.gov, Healthcare.gov, and more.

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Once again, if the use and maintenance of these sites helps agencies and their people do their work better, and if they are provided with the additional resources required to build, maintain, populate, and update the websites, then the effort may indeed help with the capacity crisis. To this point, however, it is not at all clear that the administration has been concerned with the capacity of the agencies or of their people as it has rolled out additional systems and sites. Like performance standards, if not carefully designed and supported, the technology actually can exacerbate the problems.

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Even the use of websites requires attention to capacity. One example of a situation in which the reliance on technology without careful attention to capacity exacerbated capacity challenges is Grants.gov, the federal government's portal for grant applications and reporting. In the spring of 2009, Grants.gov already was facing serious challenges, but then the ARRA passed, resulting in massive increases in filings of grant applications, which overloaded the system (GAO 2009, 1–2). At the same time, because of a lack of attention to agency capacity to support the portal, Grants.gov was in the process of failing and faced the possibility of shutdown. As the GAO explained, "Untimely payment by the 26 agencies that fund Grants.gov also negatively affects system performance. After informing agencies that it was unable to pay its vendors, the Grants.gov Project Management Office . . . developed a system shutdown plan and implemented the first step—it eliminated website updates and moved all notices to the Grants.gov blog" (GAO 2009, 1). The OMB had to institute emergency guidance to bring agencies together to find alternatives to the use of Grants.gov, to fix the administrative problems, and to update the system (OMB 2009b, 2009e). The OMB did not call for a "return to normal operations" until late April 2010 (OMB 2010b). The requirements for filing applications, performance reports, renewals, and other essential submissions through these portals sites created a complex set of challenges for applicants and grantees, but also for the responsible federal agencies.

Interestingly, the administration tucked a discussion of the problems of civil service into the Analytic Perspectives section of the fiscal year 2011 budget as well (OMB 2010a, 99–106). That is a positive step, but eight pages in an analytic perspectives appendix to the federal budget is not sufficient. This discussion is critical and deserves to be very high profile and presented by the president himself.

The Constitutional Duty and the Capacity Crisis Challenge to Meeting It

President Barack Obama came into the White House facing a host of important challenges and carrying a set of ambitious ideas and talents with an impressive level of energy for his task. However, even if he is able to move his policy proposals through Congress or advance them by presidential directive, his first task is to take care that the laws are faithfully executed. Because of the actions and inactions of his predecessors of both political parties, he inherited a capacity crisis that will stand in the way of the accomplishment of his constitutional duty and the obligations of the federal government. It is a capacity crisis that has affected the public service professionals on whom the day-to-day work of executing the law relies and the organizations to which have been delegated responsibility for public programs and policies. It is worthy of his public attention.

The addition since President Obama's arrival in office of several pieces of legislation running hundreds of pages in length and calling for complex implementation and operation make the capacity challenge more serious and the efforts to address it more essential. Consider that the American Recovery and Reinvestment Act encountered major problems of implementation in order to move the grant applications through a system that was overloaded and not functioning adequately even before the ARRA was passed. The OMB guidance on contracting under ARRA contained a range of statements about broad statements of goals and practices to avoid, but how the trade-offs would be made was far from clear. While the guidance recognized that more contract professionals might be needed, there was no clear indication as to where the resources would come from to acquire them, or where they could be found at all. The Patient Protection and Affordable Care Act is just now in the early stages of implementation. It is 906 pages long as published by the U.S. Government Printing Office, and the table of contents alone runs 12 pages, with numerous requirements for the creation of systems of rules. The Dodd-Frank Wall Street Reform and Consumer Protection Act is 848 pages of complex requirements, including the creation of a new Bureau of Consumer Financial Protection. Here again, the legislation will require a major administrative effort not only for implementation but for ongoing operations.

These new sets of policies now require massive service delivery, payment, and regulatory systems that must be built and set into operation within a series of deadlines set forth in the legislation. As

and after the initial implementation processes move forward, the organizations and programs created by them will require ongoing support. If the new Bureau of Consumer Financial Protection is not supported far better than were the Securities and Exchange Commission and Federal Trade Commission before it so that it can keep pace with the continually increasing sophistication of the organizations and instruments it is called on to regulate, it will fail just as surely as those other regulators failed in the past (see Stiglitz 2003, chaps. 4–5; U.S. House 2009). The same is true for the other agencies and people who must implement new policies.

It is also important to avoid the assumption that policies developed with market-oriented policy tools will somehow avoid the need for organizational and human resource support. Even programs based on incentive systems require serious administrative commitment. For example, when Congress enacted the Consumer Assistance to Recycle and Save Act of 2009 (also known as Cash for Clunkers), the National Highway Traffic Safety Administration (NHTSA) had to implement the program in 30 days, complete with the issuance of final rules. Even with an all-out effort and support from other agencies, NHTSA was still faced with overwhelming requirements and a great deal of uncertainty. As the Inspector General for the Department of Transportation pointed out,

> [I]n determining staffing levels needed to process transactions, NHTSA assumed dealer requests for payment would occur at a constant rate of 3,000 per day. In the first 10 days, however, NHTSA received more than 224,000 requests—more than 7 times what it expected. NHTSA also assumed that most initial payment requests would have the required data for approval. Instead, most were rejected due to insufficient or inaccurate information, requiring dealers to resubmit requests with the deficiencies corrected. The high volume of requests also exposed certain weaknesses in the information technology (IT) system used to process transactions. (DOT 2010, 3).

Fortunately for the NHTSA, the program had a very brief life and the agency did not have to sustain the administrative effort for long.

The president is head of an executive branch that is facing the effects of a capacity challenge that has been looming for decades and, at the same time, encountering dramatic new demands. Past discussions, when they happened at all, often were phrased in terms of what was coming in the next decade or two, but now that time has arrived. The loss of experienced career professionals and challenges to the weakened organizations that are now required to perform at even higher levels than before and to undertake wide-ranging new responsibilities are now realities.

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The issue here is not whether the president wishes to be a chief operating officer or that he or she should get lost in the detail of routine operations and therefore be unable to lead on large issues of policy. The capacity challenge is, however, sufficiently grave, not only across the federal government but throughout the intergovernmental system, that it requires serious and direct presidential attention and commitment. It is not enough to expect the OMB or Office of Personnel Management to deal with it. The task facing the president is about the fact that the executive branch was created to execute the law, and the president is specifically obligated by Article II to "take Care that the Laws be faithfully executed." The public administration community, including those in active civil service, those in nonprofit organizations that deliver so many public services on behalf of government, and those in the academy, will be watching with care and concern to see whether and how the president addresses this challenge, and it will be ready as always to play a constructive role in that effort.

Indeed, it would be a useful time for those in the academy to look to our curricula and courses and to ask whether we are providing knowledge in fields that will serve to respond to the capacity deficit, such as contract management, grants administration, and regulation. Of course, we also may wish to look to our research efforts to see whether and how we are providing responses to the capacity crisis not just for the present, but for the decades to come. Certainly one of the areas that is worthy of serious continuing consideration is our seeming on-again, off-again attention to intergovernmental relations, with attention not only to state–federal relationships, but with a full integration of local government as well. One would hope that the concern for the capacity to govern with attention to the federal executive is an arena in which those interested in nonprofit management would contribute their important perspectives in the hope of having strong and effective relationships with government partners through difficult times. Last, but by no means least, those of us in the academy are often in a position to say what those in government positions may not easily explain in a very public setting. If we recognize that the nation may be in danger from a weakened capacity to govern or from an administration, regardless of political party, that does not discharge its duty to take care that the laws are faithfully executed, we have a duty, as Aaron Wildavsky so frequently reminded us, to "speak truth to power."

President Obama put his view of the situation confronting his administration as he took office in stark terms in his inaugural address:

> That we are in the midst of crisis is now well understood. Our Nation is at war against a far-reaching network of violence and hatred. Our economy is badly weakened, a consequence of greed and irresponsibility on the part of some, but also our collective failure to make hard choices and prepare the Nation for a new age. Homes have been lost, jobs shed, businesses shuttered. Our health care is too costly. Our schools fail too many. And each day brings further evidence that the ways we use energy strengthen our adversaries and threaten our planet. (Obama 2009, 1)

He neglected to mention the serious challenges to the capacity to govern and to his own obligation to "take care that the laws be faithfully executed." One would hope that he will devote his many talents to that situation.

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Notes

1. This use of the term "the capacity to govern" is not a reference to Yehezkel Dror's (1994) book of that title. That phrase is employed here in a manner very different from the way Dror uses it in that volume.

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