

Civil service and oligarchy: American colonial principles in early twentieth century Philippines and Hawai‘i

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ABSTRACT—This paper surveys the history of the introduction of an American-style merit-principle in the creation of a classified civil service system in the Philippines and Hawai‘i. The paper illustrates how the implementation of the idea of the “merit principle” in civil service and in organizing public workers in the Philippines and Hawai‘i was undermined by opposing forces within the American colonial governing apparatus. The Philippines was an early adopter of the Progressive-era “merit principle” reforms being pushed in the United States proper while Hawai‘i was one of the last—implemented halfway through the New Deal era. This paper attempts to understand why the historical establishment of this type of civil service occurred in entirely different historical legal periods and what the consequences of the historical formation are presently.

Keywords: civil service, public workers, merit principle, colonialism, Philippines, Hawai‘i

Introduction

This paper is a brief, comparative overview of the history of the introduction of an American-style merit-principle-governed, classified civil service system in the Philippines and Hawai‘i. It hopes to illustrate how the implementation of the ideas of the “merit principle” for public workers in the Philippines and Hawai‘i was undermined by opposing forces within the governing American colonial governing apparatus.

I will first describe the history of the development of the merit principle in the civil service in the United States. I will then turn to the Philippines to describe how American colonial officials attempted to develop a merit-based civil service while at the same time undermining those goals by fostering patronage-styled relationships between civil servants and political leaders. In contrast, American colonial officials

did not attempt to develop a merit-based civil service in Hawai'i initially. Only when the power of the minority-white sugar plantation oligarchy appeared to be having its power slip from its grasp because of an organized native and Asian working class did the need for a "merit" based system become important. This organized working class, however, extended and rationalized the merit principle while also further strengthening public workers' collective power through the adoption of the constitutional right to collectively bargain.

In describing and analyzing the Philippine civil service, this study attempts to marry two branches of scholarship within Philippine studies. One branch is represented by works like those of Jose N. Endriga and others who analyzed the civil service from a public administration perspective (Endriga 1985, 2001; Reyes 2011; Mangahas and Sonco 2011). The other branch is represented by works of historians and others on the American colonial period such as Patricio Abinales, Michael Cullinane and Alfred McCoy (Abinales and Amoroso 2005; Cullinane 2003; McCoy and Scarano 2010). Similarly, these two branches of scholarship in Hawai'i are even more insular and discrete (Pratt and Smith 2000; Johnson and Miller 1986). There are no published studies which compare this aspect of legal history of the two countries even though both came under the formal control of the United States in 1898.

This study seeks to address why a colonial principle applied to an occupied colonial territory had such seemingly different expressions historically—to provide context for how an idea for uniform legislation can so radically diverge within differing local conditions. The study will also look at the consequences of those differences as they are articulated presently.

American civil service system

The federal civil service in the United States during the first five presidential administrations was characterized by a relatively moderate turnover of employees from administration to administration. George Washington and his successors believed that people must be fit for the jobs they were candidates for and refused family and former soldiers

who lacked fitness in his estimation for the jobs they were seeking. While Jefferson did remove a small number of Federalists from their positions, his administration continued the concept of appointing people fit for office. Washington sought individual Congressmen's and Senators' advice on local appointments and this developed into the customary expectation that Congressmen and Senators decided who would be appointed. There was one push to eliminate Congressional encroachment into appointments by constitutional amendment which failed. Instead, Congress passed a Tenure of Office Act which limited officeholders to four years (Bertelli and Lynn 2006).

The election of Andrew Jackson altered some of the restraints presidential tradition had put on the Congressional expansion of spoils. Jackson had been elected not with the support of the older New England aristocracy but rather by new voters freed from property qualifications in voting and the emerging industrial class (Howe 2007).

Jackson promised a reform of government service but institutionalized the spoils system. Federal employees were selected based upon political support during a campaign or to encourage future support. As US Senator William L. Marcy described it, "to the victor belongs the spoils." Business leaders secured the power of political parties in the electoral process by entangling it with the government jobs process (Howe 2007).

The federal civil service was characterized for the next 50-year period as being exclusively dominated by the patronage system. Jackson's view was that the patronage system was an expression of democratic governance. The pre-Jacksonian order was characterized as an insular and elitist form of governance that restricted the participation of the "common man." The patronage system purported to open up the system (Howe 2007).

By the late 1870s, however, political loyalty was seen as not being a meaningful indicator of competence in public service. Competence was not the only problem. The spoils system lent itself to widespread and systemic corruption. With the major expansion of the federal civil service during and after the Civil War, the lack of competence gave the impression that the civil service was merely a way to reward loyal political supporters and not to perform the tasks of the civil service

itself. This was underscored with the assassination of President James Garfield by a disappointed office seeker (Rohr 1986).

The merit principle is forward looking but it is focused on expectations about future performance based upon an assessment of one's relative merit—typically through competitive examination. The spoils system is also forward looking but it is focused on expectations of political loyalty in future elections not on future job performance.

The merit principle uses competitive examinations (or other forms of merit based evaluations) to determine competence and relies upon those examinations to predict how well potential civil servants will carry out their tasks and responsibilities. The criticism of the merit principle is that it does not address justice and it is not necessarily democratic.

Mechanics of the merit based service in the United States

The merit principle's operation in the American civil service has been subject to a number of attacks that primarily assert that merit principles infringe the powers of the executive to appoint or to terminate. If a constitutional provision requires an officer to make an appointment, the imposition of the merit principle was generally held to interfere with that power. However, all states with the merit principle have constitutional provisions permitting it. At the federal level, the long custom has been that the power to establish an office includes the power to determine its qualifications but that is separate from the power to appoint. William Howard Taft held in *Myers v. United States*, 272 US 52 (1926) that creating qualifications is a valid exercise of legislative power "provided ... that the qualifications do not so limit selection and so trench upon executive choice as to be, in effect, legislative designation."

Classification has two distinctive meanings. The first refers to the dividing of the entire civil service into those subject to the merit principle and those that are not subject to the merit principle. The second refers to the dividing of those jobs subject to the merit principle into those jobs subject to competitive examination and those that are not.

Some civil service systems have a so-called "exempt" class. The exemption may refer to competitive examination, classification or the

entire merit principle altogether. There are several groups that are consistently excluded from the civil service based upon the merit principle: elected officials, legislative officers and employees, department heads, deputies of department heads and confidential employees. Many states traditionally excluded unskilled labor positions from the merit principle. However, this is generally no longer the case.

Civil service systems generally provide an application process in order to determine minimum qualifications such as age, citizenship and other qualities, before a candidate can sit for an examination. Once qualified, most candidates take an examination. An examination is supposed to be practical and relate to the duties of the position which the candidate is seeking. Additional tests are given for the testing of special skills. In order for an examination to be considered competitive, it “must employ an objective standard or measure. Where the standard or measure is wholly subjective to the examiners, it differs in effect in no respect from an uncontrolled opinion of the examiners and cannot be termed competitive.” *Matter of Kink v. Finegan*, 1 N.E.2d 462 (New York, 1936).

When the examination has been completed and the papers graded, the candidates are ranked and their names are put on an eligible list. The eligible list is significant because once someone is ranked and placed upon a list, that person must remain on that list for the term of the list’s validity. Preferences can alter the ranking of the list. Many systems have preferences for veterans while other preferences are also included to correct for distortions in testing methods. When an appointing authority has a vacancy that it seeks to fill, it will request certification of eligible candidates. The appointing authority must select a candidate from the certified list of those eligible.

In the merit based civil service, a promotion is when a person in an existing position moves to an existing higher position. This process may or may not involve competitive examination and may or may not involve seniority. The examining authority still has to certify those eligible for a promotional appointment. Promotion can also occur based upon rank alone or upon efficiency ratings.

There are different types of separation from service. Demotion refers

to the process by which a civil servant is moved to a position of lower rank and typically a lower rate of compensation. A reduction of salary can occur without a demotion particularly when the government lacks the funding to pay a salary.

An officer entitled to abolish a position may do so in good faith for the purposes of economy or efficiency. In other words, a position cannot be abolished only to have the duties of the position reappear under a different name. The difference between a layoff and removal is that removal signifies the incompetency of the worker while layoff signifies the work of the position is complete or there is a lack of funding to complete the work. A person typically cannot be removed from office unless for just cause and given notice of the reasons and opportunity to respond. Decisions on removal are subject to judicial review.

The Philippine civil service system

The expansion of effective Spanish control over most parts of the Philippines followed the effective control the Spanish clergy was able to exert over a given population within a particular territory. For most Filipinos there was little direct secular government presence and instead the Spanish clergy represented the authority of the king in all matters involving the power of the crown. The upper classes primarily in urban areas did have limited access to secular institutions of Spanish rule, although these institutions were structured by the domination of the clergy. During the final decade of Spanish rule, an attempt was made to devolve powers to local tribunals although the system was a failure and the Spanish clergy together with local elite continued to dominate.

Spaniards were appointed to the few higher positions within the bureaucracy while the lower positions were filled by loyal followers of the local elite. The entire bureaucracy was highly inefficient and revenue rarely covered salaries and expenses. Several provincial governments on Luzon had civilian governments but the rest as well as those of the Visayas were under the command of military officers. All of whom were Spaniards.

After the Treaty of Paris was ratified, the Schurman Commission was commissioned to study the conditions of the Philippines and propose a

governance system. The Commission painted the Spanish civil service system as, generally, irrational and inefficient and made it self-evident that “[o]f course the merit or business system must be adopted and lived up to; the patronage or spoils system would prove absolutely fatal to good government” (Philippine Commission, 1900: 112).

The basic philosophy of developing civil service was thus:

The business or merit system of civil service is economical of officials for it aims only at the public good. The patronage system, on the other hand, creating offices for favorites irrespective of the needs of the country, implies an exorbitant number of officials. Good government being the result of the former system, the people are contented and only a small military force is necessary. The patronage system, on the other hand, necessarily involving incapacity and extravagance and issuing in misgovernment and corruption, alienates and embitters the governed and necessitates, in consequence, large armies to keep them in subjection. (Ibid: 115)

It envisioned a civil service structure similar to the state systems of merit based competitive examination. “The competitive examination will secure the selection of the fittest candidate, while it offers equal opportunity to all; and though it will be a novelty to the Filipinos, who have been accustomed only to the patronage or spoils system of appointment, it cannot fail to commend to them a republican form of government whose civil service is regulated by justice to all applicants for admission and directed solely to the welfare of the community” (Ibid: 113).

The Commission saw the civil service directed into four groups: 1. the entirely exempt group composed of the governor, secretary, attorney-general, certain judges and other high officers; 2. the heads of the departments from the federal civil service; 3. middle managers subject to the merit principle; and 4. the great body of civil servants subjected to the merit principle. The Commission envisioned that the first three groups would be composed entirely of Americans “offered salaries large enough to induce the most capable of their class not only

to enter and remain in the service, but to give an honest, effective, and economical administration, free from any taint of corruption” (Ibid: 114). It also recommended that Americans in the regular Philippine civil service should learn the language of the people where they live and that knowing the language should be a condition of all promotion. Taft sought a civil service system based solely on merit and competence and asserted that the law was “more rigorous than those found in America to fulfill the promise of the McKinley administration that it would give the Filipinos honest and efficient public servants” (Escalante 2007: 96).

The Americans developed and deployed a narrative theme of progress that mystified their imperial designs. The Spanish period was painted as a decadent, failed form of governance. In describing the primary education system, native informants told them that the only education they got was in Christian doctrine, imparted in the local language. “It is further and persistently charged that the instruction in Spanish was in very many cases purely imaginary, because the local friars ... not only prohibited it but took active measures to enforce their dictum” (Philippine Commission 1900: 31). “The only history ever taught was that of Spain and that under conventional censorship. The history of other nations was a closed volume to the average Filipino. Vocal music was not taught and the instruction in practical agriculture, where given, was a sorry farce” (Ibid: 32).

Yet, while this was described, an objective civil service system would be built with “equal opportunity to all” really was equal opportunity for all of those who got an education beyond the universal failed education of the Spanish period since “[a] very small number have learned to read and write [Spanish] intelligently” (Ibid: 33).

The only people with access to more than the universal primary education in the Christian doctrine were the ruling class of natives and mestizos during the Spanish period, identified as the “*principalia*” (Ibid: 45). It was this class of people for which Taft and the American colonial administrators sought to obtain cooperation and it was this class of people who would be among the first to join the civil service.

Nevertheless, American colonial governance was a patronage system for most government positions above the municipal level and civil service for all lower positions. However, “[m]embers of the provincial

elites with less impressive credentials sought a wide variety of clerical positions in insular and provincial offices [which were] rapidly coming under the civil service act” (Culinane 2003: 69). Those were of the positions that went to Filipinos while many positions went to Americans.

While Taft professed to protect the Philippines from “the most marked evil of American politics, the spoils system” (Hayden 1942: 91), as Benedict Anderson noted, “civil servants frequently owed their employment to legislator patrons, and up to the end of the American period the civilian machinery of state remained weak and divided” (Anderson 1988: 11).

By 1935, we see that the implementation of the merit principle was anything but. Promotions were not made in accordance with the merit principle. Promotions and salary increases were often “in response to personal or political influences” (Constitutional Convention 1935, 2: 53: 316). In other words, the positions were not standardized or treated uniformly, giving equal pay for equal work. Artemio Abaya, Ilocos Sur delegate to the Constitutional Convention, advocated that

[i]t should be applied to many positions commonly held to be political, but which, in fact are not political or policy determining in character. Action must be taken by placing practically all the actions of the Executive branch of the Government, except those of a bona fide policy determining character, in the so-called ‘classified’ service... It should limit the number of ‘exemptions’ to the lowest figure possible. (Ibid: 315)

This was confirmed by the Committee in the 1935 Constitution: “La intencion del Comite es que todos los funcionarios del Gobierno, excepto aquellos que se mencionan en esta Constitucion, caigan bajo las reglas del Servicio Civil.” [The intention of the Committee is that all the functions of government, except those actually mentioned in the Constitution, fall within the rules of the Civil Service.] (Philippine Constitutional Convention 1935, 8: 115, 240)

The proposal included Abaya’s recommendation that “policy determining” positions be exempt. Delegate Perez asked whether “policy-determining” “has no fixed and determined meaning and that ... under this phrase the very purpose of promotion through merit in the civil

service may be defeated” (Ibid: 241).

Delegate Pelayo noted what the practice of government service in 1935 was: “Is it not a fact that the practice of employing private secretaries not subject to Civil Service rules has been abused in that these private secretaries sometimes go to office only to collect their salaries and practically do not do any work? Sometimes the person employing them draws their salary and gives them only a part” (Ibid: 242).

Delegate Buslon stated: “If you go to the Civil Service Bureau, you will find that a great majority of those who have qualified in the Civil Service examinations have not been appointed. If you investigate all the departments and bureaux and offices in the Philippine Government, you will find that the great majority of those holding important positions therein are not qualified under the Civil Service Law. The provision here excepting those positions which are policy-determining or personal and confidential in nature gives the excuse for any office head, any department head, to give favors to his political adherents” (Ibid: 245).

Delegate Ventura offered an amendment regarding pay based upon the merit principle. Favoritism had been expressed by granting certain government employees “additional or double or extra compensation in any form” (Ibid: 252). He went on to read from a committee report commissioned by the governor-general regarding additional compensation. Many prominent, full time, government officials simply had ghost staffs of political loyalists whose job it appears was to get paid.

Hawai‘i civil service system

The civil service of the Kingdom of Hawai‘i was originally characterized along traditional lines. Various persons through kinship and descent had social and political roles assisting and advising decision-making chiefs. This continued into the Kingdom period although certain foreigners were added to this. Selection and retention of most Kingdom officials followed traditional lines although certain trusted foreign advisers were appointed to various positions by the King in his judgment. Lower level employees were selected by their superiors. Traditional methods of

selecting particular people limited the type of turnover that characterized the spoils system in the United States however the underlying legal basis for the system provided no safe-guards to prevent a spoils-type system.

The Philippine Commission was established by the U.S. President as an act related to both his war powers and foreign relations power. The task of the Commission was to “facilitate the most humane, pacific and effective extension of authority throughout these islands, and to secure, with the least possible delay, the benefits of a wise and generous protection of life and property to the inhabitants” (Philippine Commission 1900: 185). They were to “ascertain what amelioration in the condition of the inhabitants and what improvements in public order may be practicable and for this purpose they will study attentively the existing social and political state of the various populations” (Ibid: 186).

The Hawaiian Commission was established by the same joint resolution of Congress that purported to annex the Hawaiian Islands to the United States. The Hawaiian Commission was not given a lengthy task. It was to “recommend to Congress such legislation concerning the Hawaiian Islands as they shall deem necessary and proper” (Hawaiian Commission 1898: 2).

In addition to recommending the elimination of certain government officers related to powers no longer to be vested in the Hawai‘i government, the Commission recommended three tiers of government official appointments. The first tier of officers including the governor, Supreme court justices and circuit court judges were to be appointed by the U.S. president on the advice and with the consent of the US Senate. The second tier of officers included all other high ranking department heads and their deputies as well as members of public boards who were to be appointed by the governor on the advice and with the consent of the territorial senate. All remaining officers “shall be as provided by law” as appointed and removed by the governor (Organic Act 1900, Section 80).

In short, the Commission proposed and the Hawai‘i government was organized so that the US-appointed governor would have absolute control over the civil service. The kind of civil service recommended for the Philippines with “equal opportunity for all” would threaten control of the Hawai‘i government by the sugar plantation oligarchy. As the Hawaiian Commission reported:

The present public-school system of Hawaii is very satisfactory and efficient. The conduct of the public schools and the tendency of the entire educational establishment of Hawaii is in the highest degree advantageous to the United States. . . . The effect of these two enactments is the most beneficial and far-reaching in unifying the inhabitants which could be adopted. It operates to break up the racial antagonisms otherwise certain to increase, and to unite in the schoolroom the children of the Anglo-Saxons, the Hawaiians, the Latins, and the Mongolians in the rivalry for obtaining an education. No system could be adopted which would tend to Americanize the people more thoroughly than this. (Hawaiian Commission 1898, 10)

The sugar oligarchy was aligned with the business-oriented Republican Party in the United States. When Woodrow Wilson took office as U.S. President, although Democrats were appointed governor, there was little real challenge to the power of the sugar plantation oligarchy. The Republican Party represented the political party of hegemony between the ruling white elite and the vote numerous Hawaiians. After 1924, Hawaiians became a numerical minority of voters in Hawai'i. Additionally, at this time, children of Asians who had been excluded from citizenship began to come of age. Within a decade, the Republican share of the electorate began a slow and permanent decline. Mixed race labor organizing and the election of Franklin Delano Roosevelt as U.S. President created a series of democratic threats to the long standing hegemony.

The solution to this threat was the merit principle or, as it was characterized by the governmental research bureau, "a substantial contribution toward the completion of a modern personnel administration system in the territory, which will be to the benefit of the taxpayers, the government and the employees in public service" (Honolulu Star-Bulletin, November 25, 1936: 1).

While local Democrats did obtain control of the Honolulu municipal government (most well-known was native Hawaiian, Mayor Johnny Wilson), it was the irreversible decline in the Republican share of the electorate together with the popularity of Roosevelt and the Democratic Party that motivated the long but declining hegemony of the oligarchy to protect

against the threat of its informal competence based hiring. As the bureau report stated, “The recent political upheaval and change of administration in the territorial and county governments has done more than anything else to focus local public attention on the evils of ousting public employees at each change of administration” (Ibid: 3) Such turnover was “responsible to a large extent for the increasing cost of our government.”

At the same time that the merit principle was being discussed, the establishment criticized the formation of a government employees’ association claim that its secret but true purpose would be to lobby: “higher salaries, exemption from taxes, and numerous little favors here and there, including occasional plums and melons of delicious flavor” (Honolulu Star-Bulletin, March 1, 1937: 14).

The Hawai‘i Government Employees’ Association repudiated that view by stressing that the adoption of the merit principle was its main object.

Economy and efficiency cannot fail to result when governmental positions are filled by men trained to work, and not merely holding office because they happened to vote for the ‘right’ candidate at the last election.... Territorial and City & County employees are entitled to fair working hours, protection by an adequate retirement system and to a fair and equitable salary schedule... the public that pays for the support of the various agencies of ... government is entitled to a fair return for the money it spends... [and] can best be accomplished by the establishment of the merit system. (Honolulu Star-Bulletin, March 4, 1937: 16)

As the bill made its way through the territorial legislature, the municipal police force was exempted from its provisions as well as private secretaries and deputy attorneys general (Honolulu Star-Bulletin, April 16, 1937: 2). But the Senate amended the bill to have the police included within the provisions, it was argued for the purpose of killing the bill (Honolulu Star-Bulletin, April 29, 1937: 1, 5). The final bill was mandatory for the territorial government and the municipal government in Honolulu and optional for the three other counties (Honolulu Star-Bulletin, May 17, 1937: 8).

Governor Poindexter vetoed the bill and sought to appoint a non-

partisan group to study a more comprehensive system that also included the reformation of the classification system. Poindexter also expressed concern that the inclusion was too extensive, not including police and firemen but also deputy directors of departments, professionals and other confidential employees (Honolulu Star-Bulletin, May 19, 1937: 1, 6).

However, the Republicans who criticized the governor's veto claimed that the main objection was that

the Democratic party would be deprived of some juicy patronage in the nature of many new positions created by the legislature and that the governor had not discharged a sufficient number of the old employees of the territory and employed in their places deserving Democrats and that further time should be given to eliminate from the payroll old employees and put members of the Democratic party in their places[.] (Honolulu Star-Bulletin, May 22, 1937: 6)

This is against the backdrop of Roosevelt's January 12, 1937 message to Congress on government reorganization where he called upon Congress to "extend the merit system upward, outward and downward to cover practically all non-policy-determining posts."

During 1938, the Honolulu City charter was undergoing review and there appeared to be uniform support to apply the merit principle to city positions including the classification process where "employees are rated according to the difficulties and responsibilities of their jobs [and] pay is based primarily on this rating" (Honolulu Star-Bulletin, January 14, 1938: 3, 8). The governor's civil service study group was urged to review the materials and work of the city charter review committee.

Also during 1938, the Honolulu City Engineer Ben Rush was a lightning-rod against patronage personnel management. He dismissed a lighting superintendent who then claimed politics was at the root of the termination. It was widely believed that the application of the merit principle would have entirely avoided the situation. This was followed a few months later with his annual report to the mayor that criticized the garbage division for an increase in the cost of operations "beyond

all proportions.” He had previously recommended cutting personnel but the opposite had occurred. He stated:

I cannot too strongly urge that something be done to cure this cry for patronage. This is the one thing that causes misunderstandings and bad feelings between department heads and elected officials, as well as between the elected officials themselves.

As things now stand, all division heads in this department waste from 30 to 50 per cent of their time listening to hard luck stories of men seeking employment. This continues further to the mayor and board members. (Honolulu Star-Bulletin, May 18, 1938: 1)

Both the Democratic and Republican parties advocated the merit principle and classification system. The Democrats saw their advocacy as expanding the merit principle while Republicans believed it was the creation of a new system (Honolulu Star-Bulletin, August 1, 1938: 3). However, on the radio, Johnny Wilson, the patriarch of the Hawai‘i Democratic Party, criticized the demand for the merit principle as being advocated mostly by politicians and not demanded by the “honest citizen familiar with the workings of government, who wants a dollar of value for every tax dollar he pays” (Honolulu Star-Bulletin, October 29, 1938: 2)

Wilson’s criticism went further:

Civil service gives to the employee assurance of a life job, which is not conducive to better service or greater efficiency. The tendency is for the employee, after receiving assurance of a life job, to slow up and do not more than the law allows. He becomes a part of a big machine where no part moves faster than another, and the chain becomes no stronger than its weakest link. All initiative and push is gone.

Fred Ohrt, manager of the Board of Water Supply, countered that,

under modern merit systems, employees are selected, retained and promoted because of merit and not because “they’re absolutely dependent on political patronage” (Honolulu Star-Bulletin, October 29, 1938: 2).

Nevertheless, Democrats running for political office campaigned supporting the adoption of the merit principle and a uniform classification of positions and salary. Big Island senate candidates campaigned on passing civil service laws to include the Big Island police department.

The 1939 legislative session produced three bills: Vitousek’s Republican version, Poindexter’s Democratic version and the Big Island senators’ version. By mid-session, three main problems remained: 1. whether the department head or civil service commission would have the final decision over reinstatement; 2. whether the police would be included; and 3. how the political activity of employees would be regulated.

In the end, the compromise bill passed included the Honolulu police department, exempted the Kauai police department and phased inclusion of the Maui and Big Island police departments. Attorneys, elected officials, legislative employees, judges and board/commission members were excluded from the law. Department heads would have the final decision over reinstatement and political activity of employees was specified.

Governor Poindexter waited until the very last minute to decide whether to sign the civil service bill, remaining non-committal until the end. He had little comment but did say that “it was the best the territory could get under the circumstances” (Honolulu Star-Bulletin, May 8, 1939: 4).

Following World War II and Hawai‘i’s admission as a state, Hawai‘i’s system of public employment went through a major transformation that included the addition of a constitutional right of public workers to collectively bargain, a law to enable collective bargaining by public workers and finally, collective bargaining by public workers. This historical process reached its peak when the Supreme Court of Hawai‘i held that the efforts of a local government unit to privatize trash collection—a traditional government service—circumvented and violated the constitutional requirement of the merit principle.

Conclusion

Abstract legal concepts can and do take radically opposite paths in history as they are embodied in institutional forms that, after the passage of time, appear to have no relationship to one another at all. Public works and public employment easily convert government resources into political capital for those with effective control over contracts and appointments. This power will not easily yield to a system based upon the abstraction of the merit principle.

In the Philippines, the American colonial officials imposed an entire juridical and political system that professed to democratize the Philippines. The concept of a merit-based civil service was a method of fairly distributing government employment based upon merit. However, until the Filipinization of the civil service upon the election of Woodrow Wilson as U.S. President, “equal opportunity” to pass an American civil service examination was strictly limited to the upper classes. This process then obtained the consent of the upper classes both by providing employment and by mystifying class privilege as “merit.” Broad exemptions and exceptions to civil services rules meanwhile allowed these same few upper class civil servants and other upper class political bosses to follow the example of their American colonial masters to use government employment to maintain the support of their followers.

Hawai‘i, on the other hand, had developed a hybrid legal system during the Kingdom period followed by an organized and concerted effort after the U.S. military-led overthrow to fully “Americanize” the legal system. The sugar-plantation-dominated social and political system solidified its control leading to annexation and so, upon formal American control of the Hawaiian Islands, American colonial officials had little “work” to do—the commission charged with proposing Hawai‘i’s organic act merely proposed minor modifications to the governing system and removing government offices that pertained to an independent country. In other words, the system of compliance that anchored the American government to Hawai‘i was not reinvented. The absence of a legally enforceable merit-based civil service system was another method by which the American elite exerted control over the population. Unlike the Philippines, there was no special or new need to buy

the cooperation of local elites or to mystify their privilege as “merit.” Merit-based civil service in Hawai‘i was only implemented when the American sugar plantation elite were beginning to lose control over the political system. Implementing merit-based selection became a way of restraining the ascending power of the opposition political party and to minimize or remove public employment as a tool of control or power. Both the Philippines and Hawai‘i have constitutional provisions mandating merit-based classified civil services. Yet, since World War II, the experience of employment in the public service continued to diverge. The successful labor organizing of dock workers and agricultural workers in Hawai‘i broke the control of the sugar plantations and eventually led to a constitutional right of both public and private employees to collectively bargain. There were no such similar developments regarding labor organizing in the Philippines and public employees still are still strongly subject to the whims of elected officials who are generally from the upper class elite.

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