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# 3      The Continuing Political Conflict over Control of Federal Employees and the Requirement for Further Institutional Change

## 3.1 Introduction

In 1884, slightly over 10 percent of the total federal civilian labor force of 131,208 were within the classified or competitive service (U.S. House of Representatives 1976, 305). By 1921, however, the federal labor force was much larger, with 562,252 employees, and 80 percent were in the classified civil service. In this chapter, we examine the extension of the merit service to most federal civilian employees, the granting of job tenure, and the adoption of requirements for political neutrality. We show that the expansion of the merit system was due principally to actions of the president, as authorized by the Pendleton Act (22 Stat. 403), although there was general support in Congress. The central role of the president is consistent with the arguments that we developed in chapter 2. Not only was the president the most national of all politicians and, thereby, the most likely to be identified by angry voters with patronage and poor performance by federal workers, but controlling the size of the patronage pool was necessary to allow the president to maximize the returns from trading patronage appointments with members of Congress for support on policy issues.

Additionally, we argue that provisions in the civil service system for job tenure and political neutrality, added gradually after the Pendleton Act was passed, were directed efforts by the president and the Congress to reduce costly competition over and manipulation of classified federal employees. Recall that, when the Pendleton Act was passed, the immediate concern of the president and the Congress was to weaken the authority of local party officials and to reduce the costs of ensuring that the growing federal labor force was responsive to the demands of influential constituents for government services. The structure of the new civil service that formally partitioned the labor force between patronage and merit employees responded to that initial concern. Once

the civil service was established, however, problems arose because members of Congress sought control over federal employees. Demands were made on classified workers to engage in partisan activities under threat of dismissal. Additionally, pressures were placed on the president to declassify merit positions, returning them to the spoils system and direct use by politicians. In order to maintain the benefits of the new institutional structure put into place by the Pendleton Act, job-tenure guarantees and requirements for political neutrality were incorporated into civil service rules.

Through the process of extending the merit system to nonclassified employees and incremental adjustments in the civil service system, the move away from patronage was made more and more complete. While patronage employees were assets who facilitated political exchange, under the emerging civil service system federal workers were removed gradually from the competitive, political arena. By 1940, as a result of this process of incremental institution building, the federal civilian workforce could not be hired or fired at the will of politicians, nor could it be used explicitly to promote political campaigns. In fewer than sixty years, the conversion from the old patronage system to an insulated, ostensibly politically neutral civil service was achieved.

As we discussed in chapter 2, the notion that the inauguration and extension of the civil service system were in the interest of vote-maximizing federal politicians contrasts with more standard views of the origins of the classified service.<sup>1</sup> In addition to stressing the role of reformists, these views emphasize immediate political considerations—the desire of Republicans, first, to placate reformers and to deny Democrats access to the spoils after the election of 1884 and, second, to “blanket in” the party faithful in their federal jobs, following the defeat of the incumbent president.<sup>2</sup> If these purely partisan goals had been the primary forces behind the Pendleton Act, then nothing much would have come of it. Had the subsequent expansion of patronage been of significant value to the president or to a substantial majority of the members of Congress, then repeal of the Pendleton Act or a general declassification of merit positions would have been likely, whenever either political party dominated both the White House and the Congress. But this did not happen. Efforts to repeal the Pendleton Act, especially in 1886, met with bipartisan resistance. Instead, the merit system was expanded and its provisions broadened. Hence, there was more at stake for federal politicians in extending the merit system than merely limiting the access of their political competitors to the spoils.

The president, in particular, had an interest in controlling the size of the patronage workforce. Not only did he suffer because of a lack of performance by patronage workers, but, as shown in appendix B, he also had an incentive to manage the number of patronage workers in order to enhance their value. In general, Congress was supportive. Even so, the position of members of Congress on the issue was more complex than that of the president. The preferences of members of the Congress on the optimal number of appointees could be expected to vary, sometimes substantially. For example, preferences were

likely to differ along party lines. The Constitution granted the president appointment power, and delegation of appointments by the president to members of Congress in exchange for support on legislation was usually restricted to members of the president's party. As Senator Pendleton stated during the debate over civil service reform, "The Republican party has at this time, in round numbers, 110,000 officers and employees under their control, and there are scarcely any Democrats. When I have presented at one of the Departments the name of a person from my State for appointment, the first question which I am most frequently met is, 'Is he a Democrat?' If so, that seals his fate of course" (*Congressional Record*, 47th Cong., 2d sess., 11 December 1882, p. 173).

Even as Congress in general desired limits on the growth of patronage after the Civil War, the phrase "to the victor go the spoils" suggests that support for restrictions on patronage at any point in time would vary between those whose party occupied the White House, the "ins," and those whose party did not, the "outs."<sup>3</sup> The House vote on the Pendleton Act, examined in chapter 2, shows the importance of the underlying pressures for civil service reform, with members whose districts had large customhouses or post offices voting in favor of the bill. Nevertheless, expecting to win congressional elections and the presidency in 1884, Democrats were more likely to have voted against the act than were Republicans.<sup>4</sup> After considering the effects of federal installations and other factors, it is likely that many Democrats did not want the limits on patronage authorized by the Pendleton Act until they had an opportunity to remove Republicans and to replace them with members of their own party. On the other hand, had Democrats not expected to win in the upcoming election, they might have desired even greater restrictions on patronage in order to limit the range of political appointments and assessments available to Republicans. Accordingly, controlling for expectations regarding success in future elections, it seems likely that congressional members from the president's party would be the demanders of patronage while those from the opposition would be more interested in restricting it. Moreover, within the president's party, it is likely that the majority of congressional members would prefer that a greater number of patronage positions be made available and the president fewer since he had to manage the overall patronage pool and therefore internalized more of the costs of patronage.

Although each member of Congress could be expected to compare the costs and benefits of expanding patronage, strict vote-maximizing behavior suggests that not all the costs of patronage would be internalized. Any scandal or inefficiency due to the actions of federal patronage workers would be more associated with the president than with individual members of Congress. As a consequence, we expect that the president would often be at odds with members of Congress from the same party over the size of the patronage pool and how coverage should be expanded in response to the growth of the federal labor force.

These issues were encountered as the president and the Congress grappled

with patronage in the post–Civil War period. Clearly, the Pendleton Act of 1883 provided some relief, as it outlined a framework for improving the performance of federal employees and for making them less attractive targets for political manipulation. The act also established a bipartisan Civil Service Commission, its three commissioners (only two could be from the same party) appointed by the president with the consent of the Senate. The commission was authorized to select a chief examiner and establish local boards for drafting and administering exams for the classified service. The boards were to forward the names of those who passed with the highest scores to agencies for selection. Under the “Rule of Three,” the three applicants who performed best were sent to the appointment officer for consideration.<sup>5</sup> The early exams tested basic practical knowledge, and 58 percent of those tested in 1884 achieved the required passing rate of 65 percent (U. S. Civil Service Commission, *Annual Report*, 1884, 67). With selection based more on merit than on base political considerations, members of the classified service could devote more time to providing government services than to performing duties for the party and political benefactors.

Despite these initial changes, the separation of classified employees from partisan activities was not complete. Classified employees remained free to participate in political campaigns and to make voluntary contributions. These employees were still of value to local politicians and members of Congress, and there remained ample ground for costly competition among politicians over their control and use. As before, those members of Congress who particularly valued the classified service could not withdraw unilaterally from the competition for federal workers. The positions would be secured by those who remained active in the spoils system, unless they were denied to all. In addition, as the size of the classified labor force grew relative to the number of patronage positions, the pressure on the president by party members to declassify merit employees increased. If the president had routinely caved in to such demands, the survival of the merit service would have been put into question. Moreover, the ability of the president to limit the number of patronage workers would have been weakened. To preserve the advantages offered by the merit service, both tenure provisions to reduce the use of threats of dismissal as a means of manipulation and requirements for political neutrality to reduce the value of federal employees for partisan purposes were gradually incorporated into civil service rules through actions of the president and the Congress.

Job tenure became a critical element for removing federal employees from the competitive political arena. Tenure had *not* been granted to members of the new classified service by the Pendleton Act: “This bill does not touch the questions of tenure of office, or removals from office, except that removals shall not be made for refusing to pay political assessments or to perform partisan service. It leaves both where it finds them” (U.S. Senate, “Report,” 1882, ix). In part, the absence of tenure provisions in the law was due to a desire of members of Congress to avoid the formation of an “elite” civil service. Past

government positions that had been filled through patronage had been temporary ones.<sup>6</sup> Hence, initially under the Pendleton Act, the employment of classified workers remained subject to the wishes of the president and their supervisors. An individual's position could be declassified, merit workers could be fired, and appeals were limited.

It soon became obvious to the president, however, that at least some tenure protections were necessary to reduce the pressures to expand patronage. Without provisions for limited job security, positions could be removed from the classified service by the president and returned to patronage. The ability to discharge employees so readily invited constant demands to declassify positions, especially following a change in the party controlling the White House. With newly acquired access to appointments, members of Congress with pent-up demand for patronage called for the removal of previous classified workers in order to respond to the claims of their constituents.

Congress also had another reason for providing some form of job security to classified employees. The president, cabinet members, and agency heads had more direct access to classified workers in the executive branch than did most members of Congress. As such, merit workers could be pressured by their supervisors to respond to the desires of the administration under penalty of removal, even if those actions were opposed by Congress. Hence, job security would also serve to limit manipulation of classified employees by the president. Once adopted, however, tenure provisions represented a marked change in the organization of the federal labor force from previous patronage practices.

An additional requirement for limiting costly competition over federal employees that represented another major change from patronage was political neutrality. To further reduce the incentive of politicians to compete for and manipulate classified federal workers and to allow them to focus on the provision of federal government services, political neutrality became a sought-after attribute for the civil service system. In 1907, civil service rules were explicitly expanded to prohibit classified employees from taking an active part in political campaigns.<sup>7</sup> With the passage of the first Hatch Act in 1939, this prohibition was extended to all rank-and-file federal workers, whether or not they were in the classified service. The broad coverage mandated by the Hatch Act was in response to problems that arose in controlling the political activities of patronage workers and their supervisors following a substantial expansion of patronage positions by the Roosevelt administration in the early 1930s. A directive that federal employees be neutral parties, impartial suppliers of federal services, and not directly involved in political campaigns was a notion that could not have been anticipated by Jacksonian politicians prior to the Civil War.

### **3.2 Efforts to Repeal the Pendleton Act**

If short-term partisan considerations had been dominant in the enactment of the Pendleton Act, the law could have been repealed at any time, especially

after a change in the party that controlled the presidency and the Congress, to allow for the expansion of patronage. When the Democrats won control of the House in 1886, there was considerable pressure on President Cleveland from party members to provide patronage jobs to reward their victory. As part of that movement, Senator Zebulon Vance, a Democrat from North Carolina, introduced a bill (S. 839) in January 1886 to repeal the Pendleton Act.<sup>8</sup> Vance charged that the Pendleton Act had been passed by Republicans to “perpetuate the official existence of [that party’s] friends” in their government jobs (*Congressional Record*, 49th Cong., 1st sess., 31 March 1886, p. 2945). Vance argued that the law restricted the prerogatives of the new administration and that it weakened the party that was the vehicle for promoting the popular will. Every citizen was qualified, according to Vance, to hold any office: “There are one million American citizens competent to fill it [a vacant office]. Each has the right to apply for it equal in law to the right of any other man. Each has the right to go directly, without hindrance, to the appointing power. But the civil-service law says, not so: no one shall be appointed, no one’s application shall be considered” (*Congressional Record*, 49th Cong., 1st sess., 31 March 1886, p. 2946).

Through repeal of the Pendleton Act, Vance wanted to return the federal civil service to patronage and hence open it to Democratic nominees. The repeal, however, was defeated on 18 June 1886 by a bipartisan vote of 33 to 6 (with thirty-seven abstentions) in the Senate. Thirty-one percent of the Democrats and 59 percent of the Republicans voted against the repeal; only 14 percent of the Republicans voted against the repeal; only 14 percent of the Democrats voted for it.<sup>9</sup> Even though Vance framed his bill as an effort to support Democrats in federal jobs, most of his Democratic colleagues failed to vote for the return of patronage. Republicans regained the White House and control of Congress in the elections of 1888, and the Democrats did so after the 1892 elections. Nevertheless, in these and other cases of one-party domination of both branches of government, when repeal of the Pendleton Act might have been possible, no serious efforts were initiated. While there were eight additional bills, sponsored by both Republicans and Democrats, introduced to repeal the Pendleton Act, none made it out of committee (Sageser 1935, 164). Most of the lingering opposition to the classified service came, not from federal politicians, but from low-level party officials, who were most affected by the loss of patronage (U.S. Civil Service Commission, *Annual Report*, 1886, 20, 60–61).

### **3.3 The President and the Extension of the Merit Service**

#### **3.3.1 Extension of the Classified Civil Service**

The failure of efforts to repeal the Pendleton Act is important evidence because it shows that, collectively, members of Congress supported the concept of placing a segment of the federal workforce outside the patronage system

and its narrow partisan uses. Yet, to varying degrees, each member had an incentive to continue to obtain and distribute patronage appointments while constraining similar actions by others. On the other hand, with the broadest national constituencies, with the most remote ties to local party machines, and as the most likely to be judged by voters for the overall performance of government, the president was in less of a position to free ride on the patronage system in the ways available to individual members of Congress. Accordingly, he should be the most avid supporter of the merit system and take a lead in extending it. The motives of the president in expanding the merit system to confine the size of the patronage pool are outlined in appendix B.

As a group, the Congress also had an incentive to expand the merit system in response to the growth of the federal labor force. For those who were members of the president's party, there was the continuing problem of managing the actions of patronage workers and local party officials in providing government services. Without at least a commensurate increase in the number of merit employees as the federal labor force grew, the patronage portion would have increased, intensifying the problems of control.

To extend the merit service, Congress would desire a relatively uncontroversial mechanism. One option was to grant the Civil Service Commission the authority to extend merit classifications to patronage positions. Another was to vote on the size of the merit service periodically. Neither of these options was adopted. Congress was reluctant to give the Civil Service Commission the authority to control the number of patronage positions. Disagreements between the commission and the Congress would have invited denials of funding and threatened the administration of the entire merit service. Periodic congressional votes on coverage had the risk of inviting pressure from local party officials to expand patronage. Moreover, if the opposition party controlled both houses of Congress, the outcome could have resulted in less patronage being made available than was desired by the president, inviting a veto. A third option, which avoided these conflicts, was to provide for the automatic expansion of the classified system as the federal labor force grew. Indeed, section 6 of the Pendleton Act required that positions in the customs and postal services be added to the classified service whenever a facility reached a staff size of fifty. In 1894, employees in customhouses and post offices with staffs of twenty or greater were added to the classified service, and the limit was further reduced to include customhouses with staffs of five in 1896 (U.S. Civil Service Commission, *Annual Reports*, 1894, 233, and 1897, 16–19).

Congress, however, through a provision of the Pendleton Act, relied on another method for extending the merit service. The primary solution adopted by Congress to the problem of determining the size of the patronage pool in the face of changing conditions was to assign authority to extend the merit system to the president.<sup>10</sup> Section 6 of the Pendleton Act gave the president the authority to classify positions within the executive department through executive orders and rules revisions drafted by department heads.



The granting of authority to expand the classified service to the president appears to have been a cost-effective measure. At any point in time, congressional action to extend merit classification to a particular class of positions was likely to have involved partisan debate and resistance. Although the merit system provided group benefits, individual members of Congress were under pressure to deliver patronage assignments to their supporters. Moreover, given expectations regarding winning the presidential election, some members of Congress would have incentives to resist new merit classifications in order to have access to patronage should their candidate be successful. Assigning authority to the president to extend the classified service avoided these contentious debates and allowed for controls on the number of patronage employees. Further, the delegation of classification authority served to preserve the implicit agreement in the Pendleton Act to limit congressional competition over obtaining patronage.<sup>11</sup> So long as the president's preferences were relatively close to that of the median member in Congress, the legislation would be preserved and conflict over the amount of patronage reduced.

The concern about potential congressional conflict over the expansion of merit classification was likely tied to the close balance that existed between the political parties at the time that the Pendleton Act was enacted in January 1883. The Senate was evenly divided between Republicans and Democrats, with the Republicans holding a slight advantage in the House.<sup>12</sup> Because of the results of the 1882 elections, it was known that the advantage in the House would shift to the Democrats in the next session of Congress and that the Republicans would have a two-seat advantage in the Senate. In the face of this balance in Congress and the uncertainty as to which party would occupy the White House after the elections of 1884, neither political party was interested in doing away with patronage entirely. After the presidential election, when it was clear as to who had won the White House, members of Congress from the in-coming president's party would most likely prefer an expansion of patronage. But the president, who had broader concerns, was likely to resist those demands.<sup>13</sup>

Once having given the president the authority to expand the merit system, members of Congress would be expected to act in their own self-interest and to seek selective increases in patronage. Because certain members of Congress benefited relatively more from patronage than did the president, the extension of the merit system through executive orders would not always go smoothly, and there would be demands on the president for declassification. Despite these pressures and the associated costs of bargaining with the Congress over the number of patronage workers, the president was motivated to take the lead in promoting the merit system and, thereby, limiting patronage. Indeed, it was not until 1935 that Congress passed legislation to add any significant number of positions to the classified service.<sup>14</sup> As shown in table 3.1, nearly 65 percent of the growth of the merit service between 1884 and 1903 was through executive orders by the president, with the remainder due to agency growth.<sup>15</sup>

In classifying positions, the president had to balance political benefits and costs. Patronage assignments, especially to the numerous fourth-class postmasterships (76,000 in 1896), remained valuable political assets (Skowronek 1982, 72). Fourth-class postmasterships were part-time positions in almost every town and village in the country, and giving them to political supporters throughout the politician's district was an effective way of rewarding those who had contributed to campaigns. Since the duties of fourth-class postmasters were limited, the risks of charges of scandal, ineptness, or lack of attention to which the postmasters' patrons would be exposed were slight. The control of these positions was therefore strongly desired by members of Congress.

The political pressures placed on each president by party officials for access to the spoils are illustrated by the experiences of the Cleveland, Harrison, McKinley, and Wilson administrations, which represented changes in the party controlling the White House. When Cleveland took office in 1885, it was the first time that the Democrats had captured the presidency in twenty-five years. With such a long dry spell, Democratic members of Congress and local party officials were naturally anxious to secure the patronage positions so long held by Republicans (Fowler 1943, 192). Since at that time the classified service was such a small portion of the overall federal labor force, it was little affected by the reallocation of the spoils. Nevertheless, Cleveland had to ward off demands from members of Congress to make some of the existing classified positions, as well as patronage appointments, available to Democrats. There was a near revolt among the Democratic ranks at Cleveland's refusal to dump Republican officeholders and replace them with Democratic stalwarts (Sageser 1935, 114–15).

The time costs for the president in reviewing the hoards of office seekers were great: "Secretary of State Thomas F. Bayard reported on March 13, 1885, that the crowds of office-seekers were greater than in 1881. . . . No President since the Civil War had ever given such close personal attention to the applications for appointments" (Sageser 1935, 84). Cleveland found these pressures a burden and a diversion from public affairs that needed consideration. He also assured the National Civil Service Reform League that the Pendleton Act would be enforced, that Republicans in the classified service would not be removed, and that Democrats would not be added to the ranks purely for partisan reasons (Sageser 1935, 79–83).

During Cleveland's first administration, the size of the classified service more than doubled through executive orders and the growth of facilities already covered by provisions of the Pendleton Act. The largest addition was the classification of the Railway Mail Service by executive order, which added 5,320 positions to the classified service. The Railway Mail Service was a hotbed of political scandal that embarrassed the president (Sageser 1935, 104–7). When the Republican Harrison took office in 1889, the party was ready to reassert control over appointments, but, as with Cleveland, Harrison resisted. He declared that he would review the recommendations and require that each

office seeker demonstrate efficiency in the discharge of official duties. He also stressed that he would enforce the Pendleton Act and extend its coverage (Sageser 1935, 130–31).

The demands on Congress also were severe: “Hordes of men streamed to the capital, and, seeking out their Senators or Representatives, they pressed for rewards. . . . Local pressure was strong. . . . Cabinet offices were so crowded with Senators, congressmen, and their secretaries that it was impossible to get anybody’s attention on a business matter” (Sageser 1935, 132–33). In response, Congress attempted to gain more control over the allocation of patronage by withholding appropriations for the Civil Service Commission from time to time. Even so, as indicated in table 3.1, the classified service grew by 39 percent during Harrison’s administration, and 82 percent of the growth was through executive orders in agencies, such as the Indian Service, the Fish Commission, and Weather Bureau, and 548 free delivery post offices with 7,610 positions (Sageser 1935, 158–62; Skowronek 1982, 70–71).

Similar pressures were exerted on President Cleveland during his second term in office. In the Congress, the Democrats demanded that the White House remove additions to the classified service made by the previous administration. Indeed, Cleveland commented that his party members were “heedless of the burdens and responsibilities of the incoming administration and of the duty our party owes to the people” (quoted in Sageser 1935, 185). Through executive orders between 1894 and 1896, Cleveland added 10,396 positions in the Indian Service, the Departments of Agriculture, the Interior, and the Post Office, the Internal Revenue Service, and the Government Printing Office as well as creating other merit positions. Moreover, through a revision of civil service rules approved by the president, 27,052 positions were added in the Treasury, Interior, and War Departments (Skowronek 1982, 70–71; Sageser 1935, 197–200). By the end of Cleveland’s second administration, the classified service covered over 45 percent of all federal civilian positions, reducing the available patronage slots. This meant that, when McKinley took office, there was to be more serious pressure from Republican politicians for declassification, and McKinley did remove 9,185 of the positions added by Cleveland (Skowronek 1982, 71; Sageser 1935, 217–20). Despite this, the overall number of classified positions actually grew by 10,361 during McKinley’s administration to 97,405, including 1,715 added through executive order. From McKinley’s assassination in 1901 to the end of his second term in 1903, the presidency was assumed by Theodore Roosevelt, under whom 8,391 positions were added in the Rural Free Delivery Service and other departments through executive orders and rules revisions. By the end of 1903, the classified service included 108,000 positions, out of a total civilian federal labor force of 301,000 (See U. S. House of Representatives 1976, 305; and table 3.1).

When Woodrow Wilson assumed the presidency in 1913, the Democrats had been without access to the spoils since 1897. Although the number of classified positions had grown by 225 percent from 87,044 in 1897 to 282,597

Table 3.1 Sources of Growth of the Classified Service, 1884–1913

President	Classified Service	Federal Civilian Employment
Arthur (R), 1881–85:		
Pendleton Act	13,924	
Executive order	1,449	
Agency growth	<u>200</u>	
Total	15,573	131,208
Cleveland (D), 1885–89:		
Executive order	7,259	
Agency growth	<u>4,498</u>	
Total	27,330	159,936
Harrison (R), 1889–93:		
Executive order	8,690	
Agency growth	<u>1,845</u>	
Total	37,865	176,000
Cleveland (D), 1893–97:		
Executive order	42,511	
Agency growth	<u>6,668</u>	
Total	87,044	192,000
McKinley (R), 1897–1901:		
Executive order	1,715	
Agency growth	17,831	
Declassification	<u>-9,185</u>	
Total	97,405	256,000
Roosevelt (R), 1901–3: <sup>a</sup>		
Executive order	8,391	
Agency growth	538	
Congressional act	<u>1,687</u>	
Total	108,021	301,000
Roosevelt (R), 1903–9:		
Executive order	21,583	
Agency growth	<u>105,336</u>	
Total	234,940	376,794
Taft (R), 1909–13:		
Executive order	40,236	
Agency growth	<u>7,421</u>	
Total	282,597	469,879

*Sources and notes:* Classified Service data for the Arthur, Cleveland, McKinley, and first Roosevelt administrations are from Sageser (1935, 68, 107, 162, 199, 231) and Skowronek (1982, 70–71). For the second Roosevelt and Taft administrations, the data are from U.S. House of Representatives (1976, 207, 213). The data through the first Roosevelt administration represent the size of the classified service due to executive orders, agency growth, and congressional acts as of March 1885, 1889, 1893, 1897, 1901, and 1903. The totals are the sums from each of the categories. Since these totals represent March data for the last year that the president was in office, they differ slightly from those provided for the end of the year in U.S. House of Representatives (1976, 305), which are as follows: 1885, 15, 590; 1889, 29,650; 1897, 85,886; 1901, 106,205; and 1903, 135,453. March totals for the classified service and agency growth data are not available for the second Roosevelt administration or for McKinley. For those two administrations, the totals are for the end of the year as provided by U.S. House of Representatives (1976, 305): 1909, 234,940;

**Table 3.1** (continued)

and 1913, 282,597. The contributions to the civil service due to agency growth were taken as the changes in the total classified service from 1903 and 1909 and from 1909 and 1913, less the additions due to executive orders, as documented in U.S. House of Representatives (1976, 207, 213). Agency growth includes the creation of some new agencies, such as the Food and Drug Administration. The additions to the classified service through executive orders include actions taken by department heads and civil service rules revisions to extend the classified service during the Arthur, Cleveland, and first Roosevelt administrations. These were initiated by the president. See, e.g., Sageser (1935, 62, 67, 103, 199) and U.S. House of Representatives (1976, 208–11). Total federal civilian employment is from U.S. House of Representatives (1976, 305) for 1884 (1885 is not available), 1897, 1901, 1903, 1909, 1913. Data for 1889 are from Sageser (1935, 107).

<sup>a</sup>The remainder of McKinley's term.

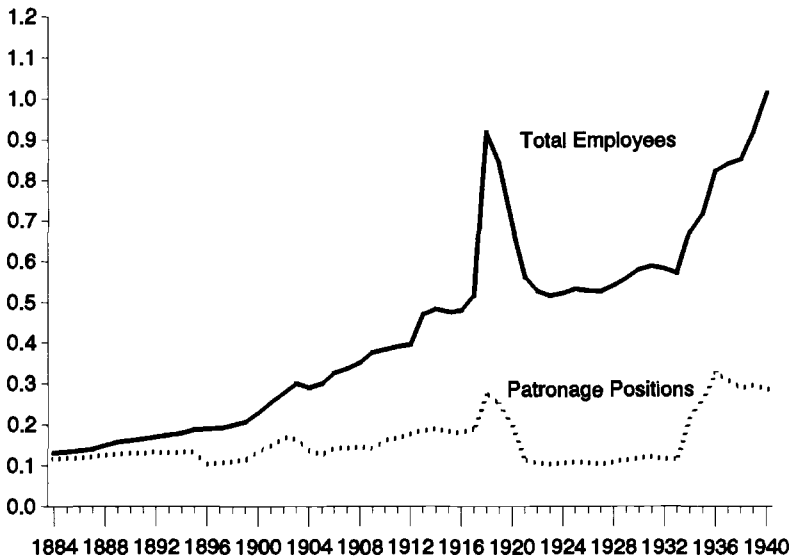
in 1913, the number of available patronage slots had grown by only 78 percent from 104,956 to 187,282.<sup>16</sup> Despite demands to reclassify some of the merit service to satisfy calls for patronage from Democrats, there were no major reclassifications of positions under Wilson, and the merit share of the federal labor force continued to increase. Wilson did, however, attempt tightly to control the assignment of the existing patronage slots by personally supervising the selection of applicants for each position. The task was too much, and Wilson was forced to delegate the responsibility of selecting and monitoring patronage assignments. This episode, like previous ones, illustrates the costs of managing an expanding patronage pool.<sup>17</sup>

Table 3.1 outlines the increase in the classified service by presidential administration between 1884 and 1913.<sup>18</sup> The table documents the important role of the president in expanding the size of the merit system after 1884. Figures 3.1 and 3.2 provide a longer-term perspective on the growth of the classified service. Figure 3.1 shows the expansion of the total federal labor force and patronage positions over the period 1884–1940. Notice that the absolute number of patronage employees (total civilian employment less merit employment) is relatively flat through 1917, suggesting that the president was comparatively successful in controlling the size of the patronage pool once the merit system was adopted. After the short blip that began in 1918, patronage levels remain steady and low through 1933, when they rise with the New Deal. Figure 3.2 describes the ratio of federal merit employment to total federal civilian employment from 1884 to 1940, and it reveals the incremental, although relatively steep, increase in the proportion of merit employment through 1921, where the proportion levels at approximately 80 percent. The proportion drops during the 1930s with the expansion of New Deal programs, which were often staffed by nonclassified employees. We consider this reversal when discussing the Hatch Act below.

### 3.3.2 Lame-Duck Additions and Party Dominance

Presidential executive orders to expand merit coverage could be used to accomplish a variety of objectives. The classification of positions in particular

Number of Employees (millions)



**Fig. 3.1 Growth of total federal employment and patronage positions, 1884–1940.**

*Sources:* The data on total federal civilian employment and the number of federal employees in the competitive service (classified) are from U.S. House of Representatives (1976, 305). However, data on total federal civilian employees for the years 1885–90, 1896, 1898, 1900, and 1902 were not reported. Estimates for these years were obtained using the *Annual Reports* of the U.S. Civil Service commission.

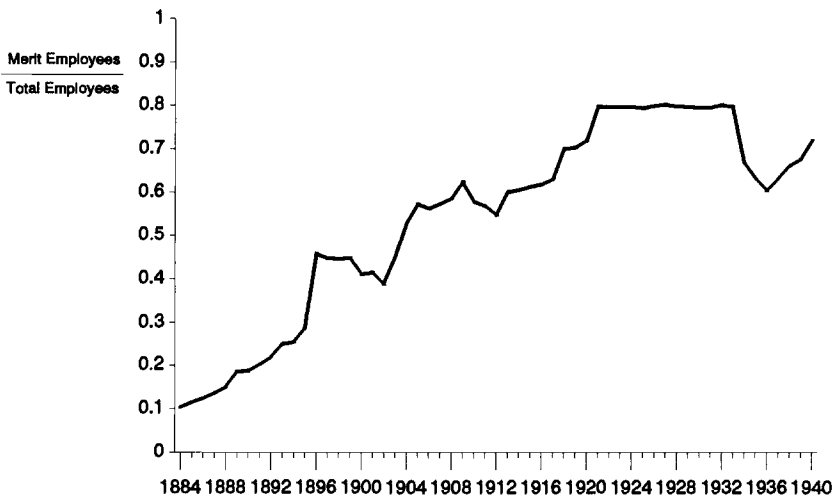
facilities or offices could improve productivity, and the qualitative evidence regarding the effects of the Pendleton Act presented in chapter 2 suggests that that was the case. Control of the number of patronage employees also gave the president greater power in negotiations with members of Congress over the exchange of appointments for support on policy issues.

A more commonly asserted goal of presidential extensions was to “blanket in” existing federal employees, not only to protect them under merit rules, but also to deny their patronage positions to political competitors.<sup>19</sup> Initially, this practice may have been relatively difficult because, under early Civil Service rules, incumbents in positions that had been recently classified could obtain merit status only if they passed a merit test and because promotion often required merit examinations.<sup>20</sup> President Cleveland, however, modified the rules in February 1888 to waive the requirement of merit testing of incumbents.<sup>21</sup> Accordingly, a president could classify positions in order to grant merit status to patronage appointees. Certainly, this procedure would allow a president to “blanket in” employees known to be loyal to the administration.

Although presidents did issue postelection executive orders to extend the

classified service, we do not believe that this practice accounted for most of the growth of the merit system. Nor do we believe that blanketing in deserves as much emphasis as has been given to it in the historical literature. The focus on narrow partisan goals in extending the merit service diverts analysis from the fundamental problems facing the president in managing a large patronage labor force. There were a few dramatic cases of blanketing in, and these have received undue attention. We have stressed the incentives of politicians, especially those of the president, for limiting patronage. The analysis of voting on the Pendleton Act and the bipartisan rejection of efforts to repeal it indicate that the origins and extension of the merit service were due to factors beyond narrow, short-term partisan concerns with protecting party stalwarts. It is also important to note that, as discussed in more detail below, classified employees did not receive tenure under the terms of the Pendleton Act. Their positions could be declassified, and they could be dismissed by the president. Substantial tenure protection did not come until after 1897. Hence, while postelection appointments might have provided some security to party workers, there was no long-term job guarantee once a new administration took office. At least at first, blanketing in certainly had the potential to be only temporary.

In addition, attempting to protect against future policy reversals by keeping the “right people” in the bureaucracy seemingly would have entailed merit protection from the president for high-level administrative positions. But merit status was not authorized by the Pendleton Act for the most senior officials in the bureaucracy. Finally, although the president was under intense pressure from party leaders to provide spoils, the White House typically resisted these



**Fig. 3.2** Proportion of merit to total federal civilian employees, 1884–1940.

Sources: See fig. 3.1.

demands whenever possible and delayed in responding to them. The president did not want to lose control of the administrative framework of his administration to the spoils system. Indeed, a major aim of the president was to construct an executive-centered government, by controlling the number of patronage workers (Skowronek 1982, 180).

The actions of President Cleveland are good examples of presidential interests that were separate from those of party officials at the local level and of resistance to pressure brought to bear by members of Congress. On gaining office in 1885, Cleveland moved slowly in responding to the demands of Democratic party leaders to increase the availability of patronage appointments, preferring to meet and screen as many applicants as possible and thereby to maintain some control over the system. Further, his classification of 5,320 positions in the Railway Mail Service on 31 December, 1888, as he was leaving office, was as much in response to past embarrassment to the presidency from corruption and mismanagement in the service as to demands from the party. Indeed, there were other demands to save more Democrats, but Cleveland did not react to them. As with President Arthur before him, Cleveland did not want to jeopardize the merit system with extensive postelection expansions (U.S. House of Representatives 1976, 197). Moreover, with his administration on its way out of office, he could classify the Railway Mail Service and remove those positions from patronage access by local postmasters and other party officials, Democratic as well as Republican.<sup>22</sup> This action would ultimately strengthen the hand of the president by allowing him more control over federal workers and the administrative structure of the government.

Similarly, in December 1908, when Roosevelt hit at the heart of the remaining local patronage plums, fourth-class postmasterships, by placing them in the merit service, he did so in ways that added to presidential authority. He classified 15,488 fourth-class postmasterships in fourteen states that had voted Republican in national contests in 1896, 1900, 1904, and 1908. These were in safe Republican areas, and their continuance as patronage served only to strengthen local party officials and the members of Congress tied to them. They did not serve the president, and they were removed from patronage. Postal patronage for the remaining fourth-class postmasterships in areas that could be successfully contested by Democrats were retained by Roosevelt for use by the incoming Republican president Taft. Taft classified 36,236 fourth-class postmasterships later in his administration (Skowronek 1982, 178–79; U.S. House of Representatives 1976, 207, 213).

Nevertheless, claims have been made that, during their last year in office, presidents responded to the demands of party leaders to classify the party faithful before the next administration took office and to reduce the ability of the incoming party to use those positions to generate political assessments (See Maranto and Schultz 1991, 62; Van Riper 1958, 117–20; U.S. House of Representatives 1976, 181–83). These have been referred to as “lame-duck” classifications.



Although postelection or lame-duck classifications were used from time to time in the first thirty years after the enactment of the Pendleton Act, the view that they were primarily a means by which presidents protected the party faithful ignores other, more critical factors in the growth of the merit system through executive orders. Generally, presidents appear to have used their authority to expand the classified service in order to enhance their authority and the effectiveness of the provision of government services to their national constituencies. In addition to being a response to more complex factors than is generally understood, lame-duck additions played a relatively smaller part in the overall development of the civil service system than is often believed. Consider the first thirty years of the merit service, when lame-duck classifications were most common. Table 3.2 describes the growth in the classified service by presidential administration from Arthur to Taft. As indicated in the table, lame-duck additions represented about 42 percent of all executive order classifications during the period, and they accounted for only about 20 percent of the total growth in the classified service. As the classified service continued to grow in numbers and as a proportion of the total federal labor force, lame-duck additions played an even smaller role.

The conclusion that lame-duck additions did not play a dominant role in the expansion of the classified service is further supported by regression analysis on the ratio of total classified to total federal civilian employees between 1884

**Table 3.2** Lame-Duck Additions to the Classified Service, 1884–1913

President	Change in Total Classified Service	Additions Due to Executive Orders	Lame-Duck Additions
Arthur (R), 1881–85:	15,573	1,449	1,200
Cleveland (D), 1885–89:	11,757	7,259	5,320
Harrison (R), 1889–93:	10,535	8,690	7,924
Cleveland (D), 1893–97:	49,179	42,511	5,063
McKinley (R), 1897–1901:	10,361	1,715	...
Roosevelt (R), 1901–3: <sup>a</sup>	10,616	8,391	...
Roosevelt (R), 1903–9:	126,919	21,583	15,780
Taft (R), 1909–13:	47,657	40,236	20,000
Total	282,597	131,834	55,287

*Sources and notes:* Column 1 is the change in total classified service from one administration to the next, taken from table 3.1. Column 2 shows additions to the classified service through executive orders, taken from table 3.1. Column 3 shows lame-duck additions, which are those additions to the classified service made by the president from November of his last full year in office until the next March, when the new president assumed office. Lame-duck data are from Sageser (1935, 69, 106, 162, and 199) for the Arthur, Cleveland, and Harrison administrations. Lame-duck appointments for the Roosevelt and Taft administrations are from U.S. House of Representatives (1976, 207, 213, respectively). The 20,000 lame-duck additions shown for Taft were not additions to the total classified service since they had been given limited coverage earlier by Roosevelt. Taft placed them within the competitive, merit service (U.S. House of Representatives 1976, 213).

<sup>a</sup>The remainder of McKinley's term.

and 1940, when the modern civil service system was basically put in place. Because the problems of monitoring and controlling patronage workers are hypothesized to be linked to the size of the federal labor force, we expect that the ratio of merit to total employment will increase as the federal labor force expands (see app. B). Indeed, the classified service grew from 13,208 in 1883 to 726,827 in 1940, and, as shown in fig. 3.2 above, the proportion of classified to total federal civilian employment increased rapidly. Table 3.3 describes regression results using the ratio of classified to total federal employees as the dependent variable. Since the ratio of merit to total employment cannot exceed unity, the specification is nonlinear, and we allow for a flexible functional form by including total employment, total employment squared, and total employment raised to the third power. The results reported for equation (1) reveal a close fit between the merit ratio and the total employment variables, with the merit proportion rising with increases in overall federal employment. While, given the plot in figure 3.2, this result is to be expected this specification makes it possible to do more to examine lame-duck appointments as an alternative explanation for the growth of the merit service.

Equations (2) and (3) in table 3.3 add variables to analyze the contribution of lame-duck additions to the growth of the classified service that are so emphasized in the literature. To test for the effects of these actions, we offer two additional specifications. In the first, three dummy variables that correspond to the first, second, and third years of each presidential term are included. The fourth year is the excluded category. If “blanketing-in frequently occurred near the end of an Administration” (U.S. House of Representatives 1976, 183), the three dummy variables should be significantly negative. The second specification focuses exclusively on the propensity of a lame-duck president about to be replaced by a member of the opposite party to blanket in patronage workers. Since presidential elections were held in the month of November and newly elected presidents took office the following year, a dummy variable was constructed that took the value of unity for both the year of the presidential election and the year immediately following a switch in the party controlling the White House. There were seven such switches in our data set.

Also included in these regression runs is a dummy variable to account for those situations when the majority party in the Senate and that in the House were the same as that of the president. If the shift to merit were strictly a partisan issue, as opposed to one involving the problems of labor management and control emphasized here, then, whenever a political party dominated both branches of government, there should be less incentive for the president and the Congress to give up patronage. This argument suggests that classifications would be more likely when political power was more evenly distributed or, alternatively, that when a party controlled both the presidency and the Congress, the use of patronage should increase.<sup>23</sup>

**Table 3.3** Extension of the Merit System, 1884–1940

Variable	Eq. (1)	Eq. (2)	Eq. (3)
Total employment	.395E-05 (7.05)	.359E-05 (6.00)	.378E-05 (6.61)
(Total employment) <sup>2</sup>	-.434E-11 (-5.50)	-.382E-11 (-4.51)	-.409E-11 (-5.11)
(Total employment) <sup>3</sup>	.144E-23 (4.03)	.122E-23 (3.18)	.133E-23 (3.69)
First year of presidential term	...	.002 (.19)	...
Second year of presidential term	...	-.014 (-1.14)	...
Third year of presidential term	...	-.008 (-.88)	...
Lame-duck president	...	...	.020 (1.86)
Party dominance	...	.014 (.92)	.010 (.86)
Constant	-.286 (-2.85)	-.239 (-2.26)	-.275 (-2.69)
R <sup>2</sup>	.9716	.9718	.9728
Log-likelihood function	107.94	110.34	110.30

*Sources and notes:* Data on total federal civilian employment and merit employment are taken from the sources listed for fig. 3.1. Party affiliation and election data are from U.S. Department of Commerce (1975, 1083). For discussion of the variables, see the text. The equations were estimated using a second-order autocorrelation error model and an iterative Cochrane-Orcutt procedure. Minus 2 times the log of the likelihood ratio for the restricted eq. (1) and the unrestricted eq. (2) is 4.79. With four restrictions, the critical value of the  $\chi^2$  distribution at the 90 percent level is 7.78. In contrast, minus 2 times the log of the likelihood ratio for eq. (1) and (3) is 4.72. With only two restrictions, the critical value of the  $\chi^2$  distribution is 4.6. *t*-ratios in parentheses.

The results reported for equation (2) of table 3.3 do not reveal any convincing evidence of a cycle in the growth of the ratio of merit to total employees. Moreover, the coefficient on the party dominance variable is not significantly different from zero. A likelihood ratio test, reported in the table, leads to a strong rejection of the hypothesis that these political variables are jointly significant and that they can explain the long-term shift to a merit system. The results reported for equation (3), however, suggest a tendency for lame-duck presidents to increase the proportion of merit to total federal employment following a victory by the opposing party. Although the coefficient on the variable representing the presence of a lame-duck president is statistically significant at the 10 percent level, the magnitude is relatively small, only .02. This coefficient can be interpreted as follows. Between 1884 and 1940, the ratio of merit to total federal employment went from .10 to .73. Assuming that blanketing in was permanent, then the seven incidents of lame-duck extensions accounted for no more than .14 ( $7 \times .02$ ) of the total increase in the ratio of .63, or about

22 percent of the growth of the merit portion of the labor force.<sup>24</sup> While lame-duck presidential appointments were made, the results presented here suggest that such actions played a smaller role in the shift from patronage to merit than has been emphasized in the historical literature. The lack of statistical significance for the party dominance variables in equations (2) and (3) also supports our general argument. The need to develop an institution to address the growing problems of controlling and managing the federal labor force, rather than short-term partisan interests, was the dominant force behind the adoption and extension of the merit service.

### 3.4 The Addition of Tenure Provisions

The Pendleton Act institutionalized the use of competitive examinations to improve the quality of the federal workforce in specific areas, and the gradual reduction in the relative number of patronage employees reduced the influence of local party officials over federal workers. Further, the exam requirement limited political discretion in placement, but the law did not provide for tenure for federal employees. The only explicit job-security protection granted classified employees under the Pendleton Act was that “no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so” (sec. 13). As Paul Van Riper pointed out, “Both the original civil service reformers and many subsequent American legislators have consistently fought against an overly absolute tenure as undesirable and unnecessary for civil service reform” (1958, 101). Accordingly, the president’s power to remove workers remained essentially intact for both the new classified service and the patronage positions.

Nevertheless, soon after the Pendleton Act was enacted, the president and the Congress, with a collective stake in the maintenance of the merit system, found that they could not just remove political considerations in hiring decisions but had to address removals as well. The political temptations would be great if the president could simply declassify positions, remove officeholders, and replace them with patronage employees. So long as it was easy to declassify positions, the president would be subject to demands from Congress and other party officials to expand patronage. The effectiveness of the merit service in limiting the number of patronage workers, then, depended on adjustments to the civil service system to provide protection against arbitrary removal.

#### 3.4.1 McKinley’s Executive Order

The first significant move toward tenure provisions was made by President McKinley in 1897. McKinley was under intense pressure from Republican party officials and some Republican members of Congress to reclassify the positions added by Democratic president Cleveland. Cleveland had added over 42,000 positions to the classified service through executive orders. Had McKin-

ley responded and declassified the positions, the merit system would have suffered a major setback, and efforts to control the number of patronage workers would have been compromised.

The merit system was especially valuable to the president, and wholesale declassifications of positions were resisted. Although McKinley did declassify approximately 9,000 positions in response to party demands, his action affected fewer than a fourth of Cleveland's additions to the classified service. Moreover, and more significant for the development of the federal civil service, McKinley issued an executive order on 27 July 1897, which became part of the Civil Service Rules, prohibiting removal from the classified service except for just cause, with written notification and an opportunity to respond: "No removal shall be made from any position subject to competitive examination except for just cause and upon written charges filed with the head of the Department or other appointing officer, and of which the accused shall have full notice and an opportunity to make defense" (U.S. Civil Service Commission, *Annual Report*, 1897, 19).

Enforcement was left to the president, and this was the beginning of tenure provisions for federal employees. Under the new rule, the originating department was required to forward copies of the charges behind a planned dismissal along with the employee's response to the Civil Service Commission for review and recording. The Civil Service Commission called the requirement one of the most important rules ever issued relating to the classified service. Its restrictions on removal, including requirements that the reasons for dismissal be made public, were upheld early in the courts. The commission stated that the rule "lessens the temptation to make improper removals, and affords a just degree of protection to the faithful and efficient employees" (U.S. Civil Service Commission, *Annual Report*, 1897, 20).

### 3.4.2 The Lloyd-LaFollette Act

Once a merit system for classified employees was established, there remained the problem of whether the president or the Congress were to have direct control over these employees. With the decline in the number of patronage positions relative to total federal civilian employment, conflict between the president and the Congress over the federal workforce and the associated administration of government services shifted from patronage to the classified service. This became most apparent after Roosevelt replaced McKinley as president in 1901, when the classified service accounted for over 40 percent of the federal civilian labor force. Roosevelt sought to gain control of the merit civil service by attempting to sever ties between classified employees and officials outside the executive branch. In 1901, he ordered the Treasury Department to withhold the salary of any classified employee whose appointment violated civil service rules as a patronage assignment. Such assignments were most likely made by or on behalf of members of Congress (Skowronek 1982, 179). In addition, beginning in 1902, Roosevelt, and later Taft, issued so-called

gag orders that forbade federal employees, “either directly or indirectly, individually or through association, to solicit an increase of pay or to influence in their own interest any other legislation whatever, either before Congress or its committees, or in any way save through the heads of the Departments in or under which they serve, on penalty of dismissal from the Government service” (Spero 1927, 96).

The enforcement of McKinley’s earlier executive order regarding arbitrary dismissals rested with the president, so the threat to remove those employees who maintained direct ties to Congress rather than going through their department heads was a real one. Under the gag orders, federal employees were to convey their desires only through department officials, who had been appointed by the president. Although the immediate issue involved efforts by federal employees to form unions to lobby for pay increases, the concern in Congress went beyond unionization or salaries for government workers. Congress saw the gag orders as an assertion of presidential control over federal employees, with noncompliance penalized by dismissal. In response, in 1912 Congress passed the Lloyd-LaFollette Act (37 Stat. 555), which allowed federal employees to petition individually or collectively to join labor organizations that did not authorize the use of strikes. Importantly, the act strengthened McKinley’s 1897 executive order by prohibiting the dismissal of classified employees for any reason, except efficiency, and by requiring that written notice of possible dismissal be issued and that the employee have the opportunity to respond (Spero 1927, 168).

### 3.4.3 Other Legislation Affecting Tenure

The Lloyd-LaFollette Act also demonstrates the rise of federal employees as an influential lobby group in molding civil service rules in their behalf through legislation. More ironclad tenure provisions were added in the Civil Service Retirement Act (41 Stat. 614) of 1920. Further tenure provisions, which raised the costs of dismissal by outlining elaborate grievance procedures, were added in the Classification Acts of 1923 and 1949 and the Civil Service Reform Act of 1978 (42 Stat. 1488, 63 Stat. 954, and 92 Stat. 1111, respectively).

Under current civil service provisions, career federal employees, particularly the rank and file, have tenured employment. Indeed, job tenure is a key characteristic of the federal civil service system. The degree of job tenure that now exists appears to go beyond that which would have been sought by the president and the Congress to maintain the integrity of the merit system. All that would have been necessary to reduce the temptation to fire and reclassify merit employees for patronage purposes was a provision to prevent arbitrary dismissal, along with a process for appeals and review. The tenure guarantees that exist, however, exceed these requirements. Under civil service rules, it is very costly for supervisors to remove employees, and even reductions in force (RIFs), such as those implemented in the early 1980s, do not lead to any significant numbers of involuntary separations from the federal service (Johnson

and Libecap 1989b). To understand the degree of tenure guarantees that exist today requires consideration of the role of federal employee groups in influencing legislation regarding the civil service system. This important phenomenon in the process of institutional change is addressed in more detail in the following chapters.

### 3.5 Political Neutrality

Three fundamental characteristics of the federal civil service are that it covers most federal civilian employees, that classified employees essentially have job tenure, and that classified employees are restricted in the types of political activities in which they may engage. We have argued that extension of the classified service and tenure protections were the outcome of conscious efforts by the president, and to a lesser degree the Congress, to control the number of patronage appointments, to provide government services for influential constituents, and to limit opportunistic manipulation of federal employees. In this section, we argue that requirements for political neutrality were also necessary to reduce the value of federal workers as pure political assets for which local politicians, the president, and Congress could compete.

Merit achievement in testing for hiring and promotion, as required by the Pendleton Act, in itself implied some measure of political neutrality. Knowledge and skill were to replace political loyalty as conditions for employment and advancement. Additionally, the Pendleton Act's prohibition of political assessments and subsequent restrictions on arbitrary removal for purely partisan reasons, granted by McKinley's executive order and by the Lloyd-LaFollette Act, provided further distance between classified federal workers and party demands. But classified employees remained free to engage in political activities on their own accord. As long as government workers could participate in campaigns, they remained potentially valuable political assets, encouraging competition among the president and members of Congress for their control and partisan use. Both the president and the Congress could attempt to elicit campaign support from federal employees by promising them promotions and other benefits. Detecting this sort of quid pro quo behavior would be costly, and, if extensive, it posed a threat to the basic separation between the classified service and patronage.<sup>25</sup> Restricting the types of political activities in which federal workers could engage, however, could sufficiently reduce their value as political assets and, hence, reduce the incentives to compete for control over them.

As was the case with the extension of the merit system, the early moves toward requiring political neutrality came from the president.<sup>26</sup> In an executive order on 14 July 1888, President Cleveland prohibited the use of government offices for political purposes that interfered with public duties (Van Riper 1958, 187). Recall that Cleveland was under pressure, not only from Republicans in Congress, but also from members of his own party, who sought control over federal employees, merit and unclassified alike. Cleveland's executive or-

der, however, could not be effectively enforced, in part because it made no distinction between the classified and the unclassified labor forces.

President Theodore Roosevelt again attempted to impose political neutrality on the federal labor force in his efforts to strengthen the president's authority relative to Congress. In 1902, he redefined political neutrality for unclassified employees by prohibiting the use of administrative offices for political purposes or to cause public scandal (Skowronek 1982, 179–80; Van Riper 1958, 187–203). Again, the president was concerned about the reputation of the administration. For classified employees, the neutrality requirement included the strict prohibition of all political activity. President Roosevelt's proscription against political activity became formally known as Civil Service Rule I and reads as follows:

No person in the executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. Persons who by the provision of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns. (U.S. Civil Service Commission, *Annual Report*, 1908, 104)

Although the president took the lead in advancing the merit system, the exchange of patronage employees with members of Congress remained a means of obtaining votes on various bills. The temptation to expand patronage appears to have been particularly strong during the administration of Franklin Roosevelt. Not only was there an extensive and often controversial New Deal legislative agenda that required congressional support, but the Depression was in full swing, bringing pressure from local constituents on members of Congress for government jobs.<sup>27</sup> A resurgence in the spoils system resulted in the early 1930s.

During the first Roosevelt administration, over sixty New Deal agencies were created and largely staffed outside the civil service system. Emphasis was placed on rapidly developing the agencies beyond the more cumbersome civil service procedures, and a premium was placed on obtaining employees who would be committed to the president's policy agenda. Many of the appointees were pure patronage workers, designed to build political support for the New Deal and the politicians who sponsored them. As figure 3.2 points out, during this time the proportion of merit workers within the overall federal civilian labor force declined from 80 percent in 1932 to a low of 60 percent in 1936. This change was the result of a 41 percent increase in total federal civilian employment, with only a modest increase in the number of employees within the classified service. By 1936, there were over 300,000 patronage positions available for distribution, more than at any other time in the nation's history (U.S. House of Representatives 1976, 305).

Congress was, at first, a willing partner in the expansion of patronage and



by 1935 had exempted most New Deal agencies from merit system regulations (U.S. House of Representatives 1976, 254). With the expansion of patronage, however, came efforts by the president to distribute and use federal employees to defeat unsupportive congressional politicians and governors. In 1938, Roosevelt campaigned for Senator Alben Barkely of Kentucky against Governor A. B. Happy Chandler. Further, in 1938, Roosevelt attempted to purge members of Congress who did not support his programs (Van Riper 1958, 340). Patronage allotments were a major tool for rewarding and punishing candidates. These actions reduced congressional support for an expanded patronage labor force that was primarily available for political use by the president.

Both the president and the Congress, however, had another and more fundamental reason for being concerned about the actions of patronage workers during the New Deal. As had occurred previously, the large number of patronage positions presented the president and the Congress with the problem of managing their appointees. Patronage workers were often under the influence of local party or agency officials, whose actions were only loosely controlled by national politicians. This created an environment for potential embarrassment for the president and the Congress if their appointees were involved in scandals or used in ways that harmed influential constituents.

The experience at the Works Progress Administration (WPA) is a case in point. Most WPA officials at the field level were far removed from supervision by elected officials in Washington, D.C. WPA workers, dependent on federal employment during the Depression, were vulnerable to political assessments and other forms of extortion, and such actions appear to have been widespread (See *Congressional Record*, 76th Cong., 1st sess., 20 July 1939, pp. 9594–9640). Workers were required to make contributions to their project supervisor, and there was little accounting as to the end use of the funds. This form of political extortion of those who could least afford to pay generated a considerable amount of bad publicity for both the Congress and the president.<sup>28</sup> The sense that there was a problem controlling the vast number of patronage workers created by New Deal programs may well have induced the president, following the election of 1936, to move positions and agencies into the merit system. The proportion of federal employees covered under the classified system began to increase after 1936. Once classified, former patronage employees were less likely to be of value to local party officials, and there were explicit civil service rules prohibiting political assessments and threats of dismissal for failure to engage in campaign activities. Hence, classification reduced the chances for the types of scandals that occurred within the WPA. Nevertheless, the episode demonstrates the problems encountered in controlling a large patronage workforce and indicates that further constraints on the behavior of the president and the Congress would be required if costly competition over the control and use of federal employees were to be avoided.

The Hatch Acts of 1939 and 1940 (53 Stat. 1147 and 54 Stat. 767, respectively), which formalized the requirement for political neutrality, were the out-

come of these concerns. The Hatch Acts restricted federal workers (both classified and unclassified) and state and local employees funded by federal grants from engaging in direct political activities.<sup>29</sup> Exemptions were made for persons paid from appropriations for the Office of the President and for those appointed by the president with the consent of the Senate who were to be engaged in determining policy. All other government employees covered by the sweeping provisions of the Hatch Acts were prohibited from taking an active part in political management or political campaigns. Violation would bring immediate dismissal. Previously, the Civil Service Commission had discretion in determining punishment for the violation of civil service rules, such as Rule I, which had restricted direct campaign efforts by classified employees. Under the new laws, the discretion for punishing violations of prohibitions against political activities was removed. The Hatch Acts represent the capstone in the movement from open patronage conditions that existed in the 1880s to an insulated and, ostensibly, politically neutral civil service.

### 3.6 Summary

This chapter has outlined how the incentives of the president and the Congress to control federal employees after 1883 led to conscious efforts by both parties to expand the merit system. Most of these extensions were through executive orders issued by the president or the revision of civil service rules to broaden coverage to new facilities. But extending the merit-testing framework adopted in 1883 under the Pendleton Act was not enough; the original act did not close important margins through which elected officials could still seek to manipulate federal workers for narrow partisan purposes. So long as government employees remained vulnerable to the threat of removal for failure to respond to these demands, and so long as classified positions could be declassified and returned to patronage, the merit system remained unstable. Under conditions of intense political pressure on the president from local party leaders and certain members of Congress, the system could have unraveled. The president, the most national of all politicians and the one with the most to gain from the retention of merit rules, was the first to act on the tenure issue. McKinley issued his executive order in 1897 outlining tenure conditions and appeals processes. McKinley's actions were taken to head off demands from Congress for greater partisan use of the growing classified service. Congress's turn on the issue came fifteen years later with the Lloyd-LaFollette Act. In this case, the Congress was responding to efforts by the president to obtain additional partisan control of the classified service. With job tenure and an elaborate appeals process established over time, the threat of dismissal was no longer a credible one to be used by politicians seeking to influence the behavior of federal employees.

Besides tenure, the requirement for political neutrality by federal employees was necessary to reduce the incentive to compete for control of federal employ-

ees. As with tenure, it is hard to imagine a greater shift from old patronage practices than the notion of ordering political neutrality for government workers. Yet this was what was required to reduce the value of federal workers as partisan assets, subject to competitive control by the president and the Congress. Again, the president was the first to act on the issue. Cleveland attempted to instill political neutrality as a condition for all government employees, classified and patronage alike, in 1888. At that time, Cleveland was in a fervent battle with members of his party and with Republicans in Congress over federal workers. Theodore Roosevelt followed with another executive order for political neutrality for federal employees in 1902, when he outlined separate requirements for merit and unclassified employees. Congress completed the process by placing all rank-and-file federal workers outside direct political campaigns with the Hatch Acts of 1939 and 1940.

With the extension of the civil service system to include most federal civilian employees, and with the additions of rules providing for job tenure and compelling political neutrality, the fundamental characteristics of the modern civil service institution were put into place. We argue that this process of institutional change was the outcome of actions taken by vote-maximizing politicians, the president and the Congress, to place federal employees off limits to costly competition for control. Neither party could unilaterally withdraw from the competitive fray for patronage. Hence, rule changes taken at the behest of both parties were necessary to create an institutional structure that would allow the president and the Congress jointly to withdraw from contention over the federal labor force and to allow federal workers to focus on the delivery of government services.

Although the actions taken by the president and the Congress account for the origins and much of the basic structure of the federal civil service system, a third party, federal employees, became an important factor in the further development of the system. We argue that, through their efforts, additional provisions were placed into the civil service system that went beyond those that would be strictly desired by the president or the Congress. This phenomenon became more pronounced as the twentieth century progressed, and it is the subject of the following chapter.

## Notes

1. Maranto and Schultz (1991, 44) make the argument that civil service reform had both a moral basis and an emphasis on short-term political gains (see also Van Riper 1958, 85).

2. The blanketing-in hypothesis continues to be advanced as the primary explanation for the growth of the civil service even in the more recent literature (see, e.g., Maranto and Schultz 1991, 51).

3. The traditional view is expressed by Hoogenboom: "Those who opposed spoils were usually out of power, but once these 'outs' were 'in' the evils of the system seemed to vanish" (1968, 7).

4. Recall that the coefficient on the variable Democrat shown in table 2.3 was negative and significant.

5. Sections 1, 2, and 3 of the Pendleton Act. Van Riper (1958, 104, 138) discusses the establishment of local boards, noting that, between 1884 and 1888, a "Rule of Four" was used.

6. See Van Riper (1958, 101). There was considerable discussion during the debate on the Pendleton Act in both the House and the Senate over whether the act would extend tenure to newly covered workers. This prompted Senator Pendleton to explain, "The bill does not touch the question of tenure of office or of removal from office. I see it stated by those who do not know that it provides for a seven years' tenure in office. There is nothing like it in the bill. I see it stated that it provides for removals from office. There is nothing like it in the bill. Whether or not it would be advisable to limit removals are questions about which men will differ; but the bill as it is and as we invoke the judgement of the Senate upon it contains no provision either as to tenure of office or removals from office. It leaves these questions exactly as the law now finds them" (*Congressional Record*, 47th Cong. 2d sess., 12 December 1882, 207).

7. For a discussion of the development of these rules and how they relate to the Hatch Acts of 1939 and 1940, see Eccles (1981, 20–30).

8. For the debate on repeal, see *Congressional Record*, 49th Cong., 1st sess., pp. 401, 2287, 2945–52, and for the vote on S. 839, which called for a repeal of the Pendleton Act, see p. 5852.

9. *Congressional Record*, 49th Cong., 1st sess., p. 5852. In the Senate, 56 percent of the Democrats abstained from the vote.

10. Some constitutional issues were raised by these and other provisions of the Pendleton Act. Since the law authorized the Civil Service Commission to select employees on the basis of competitive exams, there was some question as to whether that was an unconstitutional invasion of the powers of the president and the Congress. See the discussion in Van Riper (1958, 105–8).

11. Goldstein and Weingast (1991) also argue that the delegation of policy-making authority to the president reflects a desire on the part of the Congress to guard against later reversals.

12. For the Forty-seventh Congress, Republicans held 147 seats and Democrats 135 in the House, and each party held thirty-seven seats in the Senate (U.S. Department of Commerce 1975, 1083).

13. There are other instances in which the existence of significant externalities has led the Congress to delegate authority to the president. See, e.g., Lohmann and O'Halloran's (1992) explanation for why Congress delegated trade policy-making authority to the president.

14. Congress did make minor additions to the classified service starting in 1903 (see Sageser 1935, 231; and U.S. House of Representatives 1976, 310). It was not until 1935 that congressional legislation regarding the Soil Conservation Service added a significant number of positions to the classified service.

15. Through the longer period 1884–1913, approximately 47 percent of the growth of the merit service was through executive orders.

16. U.S. House of Representatives (1976, 305). Patronage positions were calculated as the difference between total federal civilian employment and the classified labor force for 1897 and 1913 as listed in table 3.1.

17. For a discussion of Wilson's effort to monitor the assignment of patronage, see Van Riper (1958, 232–35).

18. As indicated in the note to table 3.1, the data are collected from a variety of sources. Most reflect revisions of Sageser's data by Skowronek. These sources were used to decompose the contributions of agency growth and executive orders to the overall growth of the classified service. In our figures and statistical work, where longer-term time series are involved, we have used the data in U.S. House of Representatives (1976, 305), which cover 1884–1975. These data do not identify the sources of the growth of the classified service. Although the data generally agree, there are small differences between some of the figures reported in table 3.1 and those in the U.S. House report.

19. For a discussion of the “blanketing-in” process, see U.S. House of Representatives (1976, 182–83) and Hecló (1977, 41).

20. For the variety of rules regarding merit status, examination, and promotion that existed in the early civil service, see U.S. Civil Service Commission, *Annual Report* (1888, 73–92). Gradually, these were standardized so that examinations were required for merit status and promotion.

21. U.S. House of Representatives (1976, 182). Later, the examination requirement for merit status was reinstated.

22. Harrison followed a similar practice in late 1892, when he extended classification to rural free delivery post offices. These positions had been bastions of patronage for local postmasters, and, once classified, they were no longer available for later patronage assignment.

23. This has been a popular argument. See, e.g., the analysis offered by Geddes (1991). In addition to the results reported here, we also constructed and tested other measures of party dominance. For example, two variables, one measuring the percentage of members of the Senate who were of the same party as the president and a similar measure for the House, were constructed. The results, however, were qualitatively the same as those reported in the text. Party dominance does not appear to have had a measurable effect on the development of the merit system. See also the discussion in Johnson and Libecap (1994).

24. Assuming that blanketing in was permanent suggests an alternative specification. For each of the seven incidents of a lame-duck president, a variable was constructed that was set equal to unity starting with the president's final year in office and remaining so until the end of the sample period, 1940. Although most of the coefficients on these seven variables were not significantly different from zero, the sum of their values was .12, supporting the result reported in the text. Moreover, the magnitude and level of significance of total federal employment variables remained essentially the same.

25. The problems of detection and policing that this posed for the president and members of Congress are similar to that of controlling cheating within a cartel.

26. President Theodore Roosevelt, in particular, appears to have been concerned with the political activity of federal workers (see Eccles 1981, 26).

27. Van Riper (1958, 320). Within the context of the model presented in app. B, these pressures would manifest themselves as increases in the demand for patronage.

28. Congressman Taylor of Tennessee reported that WPA workers had often been requested to contribute \$5.00 per month when their entire monthly salary was only \$30.00. This prompted the *Knoxville News-Sentinel* to state, “The political racket in Tennessee is enough to sicken any decent human being, and it is doubly sickening when worked on helpless relief clients” (*Congressional Record*, 76th Cong., 1st sess., 20 July 1939, p. 9598; see also Van Riper 1958, 340).

29. For discussion of the Hatch Acts, see Eccles (1981).