Homeland Security and the U.S. Public Management Policy Agenda

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The U.S. has been described as an "uninteresting laggard" in comparative public management policy. The passage of the Homeland Security Act in 2002 demands a reevaluation of this label. The Act created the Department of Homeland Security, but also marked a dramatic shift toward greater public personnel flexibility, both for the new Department and the entire federal government. It is tempting to suggest that the Act is an effort to "catch up" with the New Public Management benchmark countries. However, such an argument is overly simplistic and misleading. This article argues that the Act represents a triumph of a preexisting management agenda that was successfully tied to the issue of security during a political window of opportunity. The management agenda of the Bush administration pursues many of the concerns of the Clinton era, but does so with a more top-down and centralized interpretation of flexibility, reflecting an executive-centered philosophy toward government and a willingness to tackle the dominant stakeholder in this area, public service unions.

INTRODUCTION

This article discusses the public management implications of the Homeland Security Act (HSA) signed into law by President George W. Bush on November 25, 2002. The Act created the Department of Homeland Security (DHS), and is significant for many reasons. It is the administrative response to the emergence of a new government function, the systemic threat of terrorists. The sheer size of the DHS is impressive—with over 200,000 employees it will be one of the three largest federal departments, a reorganization of the federal government unmatched since the creation of the Department of Defense in 1947.[1]

The HSA is also significant in terms of comparative public management policy, the focus of this article. The HSA is perhaps the most dramatic shift in the direction of management flexibility seen since the founding of the civil service system in the U.S., and could be "the prototype for the rest of government in the coming years" (Daalder, Destler, Lindsay, Light, Litan, O'Hanlon, Orszag, and Steinberg, 34). The legisla-

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tion not only provides extraordinary discretion for the Secretary of the DHS to design a personnel system, but also provides new and significant flexibilities in recruitment and downsizing for all federal agencies.

The creation of the DHS was a popular proposal, reflecting wide political support for the idea of coordinating homeland security, but President Bush threatened to veto any legislation that did not increase managerial flexibility. Following the passage of the HSA, other agencies have also argued for additional flexibilities, prompting one commentator to predict "the end of the civil service" in the U.S. (Light).

It is tempting therefore to suggest that the HSA represents a triumph of New Public Management (NPM) ideas, and the focus on managerial flexibility is parallel to patterns of reform in NPM benchmark countries such as New Zealand, the U.K., and Australia (Barzelay 2001). Is the U.S. "catching up" with the benchmarks? This article argues that such an interpretation is a misleading oversimplification. Instead, the HSA represents a major development on a path to reform that is distinct to the U.S., and a pursuit of flexibility that was already pursued under Bill Clinton, and as far back as the Jimmy Carter administration. During the Clinton era Congress had exempted the Internal Revenue Service and Federal Aviation from civil service requirements. The Bush administration had already developed a preexisting managerial agenda for reform before 9/11, which became the basis for the flexibility provisions in the HSA, albeit in a much more simplified and expanded version. The resulting policy changes move the U.S. further toward a highly fragmented personnel system, where agencies are provided flexibility consistent with their need and function, but continue to struggle to tie flexibility with a results framework.

The influence of the NPM, was indirect at most, contributing some ideas to the policy stream under Clinton. This conclusion underscores points made by Christopher Hood: that accounts of the NPM as an exogenous influence are overstated, and that reform outcomes owe more to domestic political considerations, opportunities, and past patterns of management change.

The HSA marks a further step in the evolution of the U.S. as an interesting comparative case in public management, not only because of the reform outcomes, but also for the manner in which the reforms were adopted. The dominance of the benchmark countries in the comparative public management literature is largely due to a perception that cases of equivalently interesting reforms simply do not exist. The HSA demands a reevaluation of the notion that the U.S. is an "uninteresting laggard" relative to the benchmark countries (Aucoin 1995; Ingraham and Moynihan). This article focuses on this policy adoption phase of the reform, rather than its ongoing implementation. To this end the antecedents of the HSA, the nature of the public management debate on this major new reform, and the type of argumentation employed are examined. Drawing on theories of agenda setting and policy evolution proposed by Frank

Baumgartner and Byran Jones, this article undertakes an analytic narrative of how the White House used the HSA as an opportunity to overcome a highly stable policy subsystem and achieve preexisting public management policy goals by linking public management policy to the issue image of security.

THE PUBLIC MANAGEMENT POLICY BACKGROUND

As discussion of the dramatic public management policy changes in the NPM benchmark countries spread, the reform efforts of the U.S. federal government appeared incremental and without a coherent underlying framework (Scott, Ball, and Dale, 374). An obvious institutional explanation is that presidential systems that divide power tend to produce incremental change, in contrast to the dramatic policy change feasible in the Westminster parliamentary systems of the NPM benchmark countries (Weaver and Rockman).

Dramatic policy change in presidential systems is possible, however. John Kingdon and Baumgartner and Jones describe conditions under which a dominant pattern of incremental change is punctuated by dramatic policy shifts, a pattern that fits the passage of the HSA. Incremental change is largely the result of the dominance of policy subsystems. Subsystems operate in a manner akin to Theodore Lowi's iron triangles: limited numbers of intensely interested actors—especially interest groups, bureaucrats, and congressional committees and subcommittees—dominate a particular policy area. Over time these groups will accommodate each other in the policy subsystem, resisting new ideas and outside pressures, and working to maintain the status quo in order to protect their mutual interest. As a result, subsystem politics produces equilibrium, with incremental change arising from the adjustments created by participant bargaining and mobilization, and marginal moves to respond to changing circumstances. Dramatic change can occur when stable policy subsystems are disrupted. Major focusing events, or simply moving a policy issue to the larger macropolitical arena, fosters dramatic change. Baumgartner and Jones describe macropolitics as the top, most high-profile part of the public policy agenda, involving oversight of the media, public opinion, and elected officials not normally involved in that policy area. Macropolitics will lead to the involvement of new actors, ideas, and opportunities. Members of the traditional policy subsystem lose their policy monopoly, becoming just one of many actors in the macropolitical arena. But given the competing claims of alternative issues, attention to a single issue in the macropolitical arena is rare and fleeting, meaning that opportunities for change—described as windows of opportunity by Kingdon, or periods of disequilibrium by Baumgartner and Jones—are limited and temporary.

The public management policy subsystem in the U.S. has been largely stable, successfully resisting an agenda of solutions to perceived problems. Since 1978 Congress has repeatedly rebuffed legislation that would change government-wide rules on personnel flexibility. While the Clinton-era National Performance Review (NPR) outlined an ambitious blueprint for reform, it struggled to turn these proposals into legislative changes, relying instead on more incremental internal executive branch reforms (Moynihan 2003). The most dramatic personnel reform of the Clinton period was the 1994 Workforce Restructuring Act, which allowed agencies to use fiscal incentives to downsize their workforce.

Public service unions play a critical role in the public management policy subsystem in the U.S. They represent the dominant interest group, and have proven to be effective advocates of maintaining stability in the civil service system, partly because of close relationships with relevant committees and subcommittees. Congressional committees that oversee government reform include disproportionately high numbers of representatives from areas with federal workers, and therefore tend to be more sympathetic to the federal workers than the general membership of Congress. Reform legislation that might enjoy broad support on the House and Senate floors rarely reaches that point if it offends the views of relevant governmental committees. Unions also gain policy influence as a critical constituency for the Democratic Party. While unions and many Democrats have disagreed in areas such as trade, they remain close on public personnel issues. It is notable that the most significant reform of the civil service system prior to the HSA, the Civil Service Reform Act of 1978, occurred in large part because the Carter administration was able to generate at least partial union support for its proposals (Moynihan 2004). Clinton-era efforts to undertake substantive civil service reform failed due to union opposition, opposition mirrored in government committees that failed to report White House proposals (Thompson 2001).

If the pattern of incrementalism in federal personnel policy continued under Clinton, other public management policies provided greater evidence of change. Procurement reform did increase managerial freedom in purchasing and contracting. The Government Performance and Results Act (GPRA) of 1993 was intended to promote a focus on results (Groszyk). The legislation called for all departments and agencies to create a five-year strategic plan to be updated every three years, to publish annual performance plans to outline how the strategic plan would be implemented in a given year, and provide annual performance reports that tracked the degree to which goals were met. GPRA had a long pilot process before being adopted by all agencies in 1997.

THE PRESIDENT'S MANAGEMENT AGENDA

The Bush administration's understanding of flexibility and other management priorities is treated in *The President's Management Agenda* (PMA), released in August 2001 (U.S. OMB 2001). The PMA features many of the arguments that the White House and its allies later made on the need for management flexibility during the passage of the HSA. Public management reform was not a major issue in the 2000 presidential campaign, but President Bush did discuss it. A July 9, 2000, campaign speech in Philadelphia foreshadowed the issues presented in the PMA, as did as the President's February 2001 budget plan.

The PMA outlined five proposals: increased competitive sourcing of commercial functions currently performed by government; improved financial performance by removing fraud and waste, and better financial reporting; expanding e-government, but with clear productivity dividends; and the integration of budget and performance information to facilitate performance budgeting.[2] The fifth government-wide proposal and the only one that covered new ground, at least for executive branch reformers, was the call to strategically manage human capital.

The Government Accountability Office (GAO, formerly the General Accounting Office) brought attention to the human capital issue by citing a looming retirement crisis and the need to rebuild and invest in the federal workforce (U.S. GAO 2000). The PMA expanded the definition of human capital to incorporate the concept of managerial flexibility. Calls for flexibility did not feature prominently in the Bush campaign, so its conclusion in the PMA and HSA cannot be explained simply as a response to the political stream. The Office of Management and Budget (OMB) articulated the flexibility concept, which crept onto the Bush public management policy agenda. While OMB staff involved in preparing the PMA supported the concept of flexibility and were familiar with NPM doctrine, they did not perceive their role as articulating NPM policies, but rather as fixing well-established managerial problems with solutions that were proposed during the Clinton administration.

The PMA claims that greater flexibility is required if the federal government is to keep up with a "managerial revolution" that has occurred in the private sector and will ultimately move the federal government toward accountability for results. The administration adopted these arguments, making them central to its public management goals.

The PMA promised government-wide legislative proposals to increase managerial flexibility in personnel, budgeting, and property disposal. In relation to personnel, the President proposed two pieces of legislation on November 1, 2001. The Freedom to Manage Act (S.1613) allowed agencies to identify and propose elimination of existing statutes that limited effective management, with Congress accepting or rejecting changes on a fast-track basis. These provisions became controversial. The head of the GAO testified that such provisions had "profound implications for the relative role the Congress plays in developing legislation and conducting oversight to enhance the performance and ensure the accountability of the executive branch" (U.S. GAO 2001, 2), and would reduce the ability of Congress to give careful deliberation of management changes. "The proposed bill, by design, would provide significant new power to the President to not only initiate changes, but also to affect the ultimate debate and outcome" (U.S. GAO 2001, 7).

The Managerial Flexibility Act (S.1612) was much more narrowly focused, making specific amendments to Title V of U.S. Code. Most were extensions of themes or specific policy proposals that occurred under Clinton. The Act proposed: greater agency ability to use buyout authority or early retirement incentives; agency freedom from civil service procedures in recruitment for positions that were difficult to fill, including removing the traditional "rule of three" that limited the number of eligible candidates that could be considered; increasing the ease of gaining demonstration authority exemptions from civil service rules, and making such authority permanent; allowing agencies to propose alternative personnel systems that exempted the agency from many aspects of civil service law; and, greater pay flexibility for senior employees to increase performance-based rewards.

The Act therefore envisioned a framework where agencies would have varying degrees of flexibility to design personnel systems to match their particular needs. The central Office of Personnel Management (OPM) would play a central role in maintaining merit values, preventing politicization, and providing permission for flexibility if justified by a mission-based need.

Neither piece of legislation emerged from the Senate Committee on Governmental Affairs. In part, this was because of union opposition and the traditional reluctance of governmental committees to adopt radical change. But there was also particular criticism of the Freedom to Manage Act. The early failure of these reforms suggests that the arrival of a new President with a clear policy agenda did not push the policy subsystem into disequilibrium. Despite a growing consensus that the traditional civil service rules were too slow and cumbersome, unions had successfully argued against any significant changes.

Despite their apparent failure, the above bills proved significant. During the preparation of DHS legislation, the White House wanted to include the essence of these proposals while keeping the legislative text as short and simple as possible. Instead of including specific legislative changes to Title V, as the Managerial Flexibility Act had done, the White House boiled down personnel language to a 68-word statement that essentially delegated personnel authority to the Secretary of the DHS, implying a vast increase in executive-branch discretion modeled on, but in excess of, these previous proposals.

The PMA and associated legislative proposals are a more telling precursor to the DHS than previous calls for such a department. Reports from Virginia Governor James Gilmore and former Senators Gary Hart and Warren Rudman, and even early legislative proposals for the DHS, were largely concerned with basic management issues of coordination and unity of command for homeland security, not managerial flexibility.[3] The flexibility sought by the White House proposal had more to do with preexisting public management policy goals for the entire federal government than specific security concerns. Commenting on the issue, Richard

Falkenrath, senior director for policy and plans in the White House Office of Homeland Security, acknowledged as much, saying: "this administration would like to do the government as a whole but must focus as its higher priority on this department" (Barr 2002b).

If the arrival of President Bush or the PMA failed to disrupt the public management policy subsystem, then the attacks of 9/11 did so. The White House grew more unwilling to be encumbered by checks from other branches (Bettelheim 2002a). The view of the White House was that the events of 9/11 created not only new challenges, but also new political opportunities. The attacks certainly qualify for what Baumgartner and Jones classify as the type of "major focusing event" that creates opportunity for change. Homeland security and defense issues dominated the macropolitical stage in the aftermath of the attacks, enabling the disruption of policy monopolies. If a policy had an issue image related to security, Congress proved willing to defer to White House suggestions, leading to the passage of the Patriot Act and approval of hostilities with Iraq.

The HSA was another such policy with the notable difference that it incorporated change to a preexisting policy area—public management. Baumgartner and Jones note that changing the venue and image of an issue can change the policy outcomes: "Policymakers use manipulation of the understandings of policies as purposive tools in their search for the policy venue that will be most favorable to their interests" (Baumgartner and Jones, 35). By connecting public management ideas to the security issue image, and debating it on a macropolitical level in a homeland security venue, the White House was able to achieve public management goals where it had previously failed and expand upon these goals to increase executive power. The following sections narrate how the White House pursued this process.

THE WHITE HOUSE PROPOSAL

President Bush announced his intention to create the DHS on June 6, 2002, although actual legislation would not be transmitted to Congress until June 18. The announcement was something of a surprise. The White House had previously displayed little enthusiasm for a Cabinet-level department, focusing attention on the Office of Homeland Security (OHS), led by former Pennsylvania Governor Tom Ridge, as the means to coordinate antiterrorist efforts.

Two factors made the White House amenable to creating the DHS. First, it became increasingly clear that Ridge was struggling to persuade Cabinet members that changes were necessary, and a perception grew that the powers of the OHS were inadequate. Ridge had pushed for intensive coordination of border responsibilities, but the OHS, created by an executive order, lacked statutory power to overcome bureaucratic resistance to these proposals (Bettelheim 2002b). Second, Congress was progressing with its own homeland security proposals. A bill proposed by Senator Joe Lieberman (D-CT) was gaining support, with a similar bill introduced in the House by Mac Thornberry (R-TX). This proposal essentially called for increased coordination and unity of command over homeland security issues. Had this original proposal passed basically intact, it would have reflected a resurgence of traditional U.S. reform instincts—typified by the 1937 Brownlow Committee and the Hoover Commissions of 1949 and 1955—to reorganize around a functional command. The key difference between these proposals and the subsequent White House version was the addition of the concept of flexibility. In tactical terms, the White House realized that if it failed to deliver its own proposal it risked being scooped by a congressional proposal that did not fully reflect its public management agenda (Allen and Miller), and risked losing the political credit for reform to Democrats and in particular to Senator Lieberman, a likely presidential opponent for Bush in 2004. The Senate Governmental Committee, chaired by Lieberman, had already voted along party lines to create a new department. Further, momentum for some sort of reform was boosted by reports of intelligence coordination failures that might have prevented 9/11.[4]

As a result, Bush instructed his chief of staff, Andrew Card, to come up with proposals for a DHS. Card came to agree with Ridge's assessment that the fragmentation of agencies was posing a major problem in implementing change. Card organized preparation of a DHS proposal in great secrecy and without explicit consultation with or advance notice to congressional leaders, cabinet secretaries, and agency heads (Bettelheim and Barshay). One reason for the secrecy was to limit potential opposition from those who would be affected, including bureaucracies and committee chairmen (Milibank). A more limited consolidation plan proposed by Ridge failed to generate momentum after being leaked to the press (Bettelheim 2002a). Each day for ten days, Card brought together a handful of senior figures and their aides in an underground meeting room in the White House.[5] The group was able to engage in limited consultations on policy options by gauging reaction to Lieberman's bill. By May 21, a proposal was completed and by May 31, President Bush had approved the plan.

In presenting his proposal, the President did not initially address the issue of management flexibility. The policy issue was framed as a matter of national safety. The new DHS would eliminate existing coordination barriers to this goal. The proposal rapidly gained bipartisan support, reflected by the call of House Minority Leader Richard Gephardt (D-MO) to pass the bill before the first anniversary of 9/11.

Managerial flexibility was not mentioned until the White House sent its proposed legislative language to Capitol Hill. Once the nature of the legislative language became apparent, public sector unions quickly opposed the proposal. Democrats also began voicing opposition. Unions argued that unchecked managerial flexibility would allow the administration to design whatever system it wished, and that managers already enjoyed adequate flexibilities (AFGE). Unions wanted to remove an existing presidential statutory power to revoke union membership in instances where it threatened national security. The union opposition arose from a deep distrust of the Administration. President Bush had revoked President Clinton's executive order encouraging Labor-Management Partnership Councils. Unions saw PMA goals to increase outsourcing as evidence of an effort to reduce union power (Barr 2002a). The White House had already removed union membership from five hundred Department of Justice officials in 2002, citing national security reasons, although unions claimed that many of these posts were clerical and without national security implications.

Once the managerial flexibility aspect of the DHS did emerge, the White House attempted to counter opponents by framing flexibility as a part of the broader security issue, claiming that without such flexibility, the ability of the executive branch to effectively protect the public was compromised. This marked an issue image redefinition, since flexibility had traditionally been argued on the basis of efficiency or responsiveness, as it had been in the PMA. Redefining the issue in the context of homeland security made it easier to generate broad political support for change and to undermine counterarguments in favor of employee protection. Baumgartner and Jones note that elected leaders can play a critical role in redefining an issue in the public's mind on the macropolitical stage, with the President being first among equals: "No other single actor can focus attention as clearly, or change the motivations of such a great number of other actors, as the Pesident" (Baumgartner and Jones, 241). During the five months of debate President Bush actively, publicly, and consistently linked management flexibility to security concerns. The implication, as spelled out by President Bush, was that anyone who opposed flexibility, such as Senate Democrats, was "more interested in special interests in Washington, and not interested in the security of the American people" (Pittsburgh Post-Gazette).

Legislative Progress in the House

The House quickly passed a bill that closely mirrored the White House proposal. On July 26, 2002, HR 5005 was passed with a vote of 295–132. The Republican leadership did not take their narrow majority for granted, taking additional steps to maintain control of a bill over which multiple committees claimed jurisdiction. At the suggestion of President Bush, a Select Committee on Homeland Security was created on June 13, led by Majority Leader Dick Armey (R-TX) and made up of five Republicans and four Democrats. The Select Committee formed an effective filter for the multiple versions of the homeland security bill that emerged from 11 different committees that claimed jurisdiction. Where the Select Committee believed that amendments from other committees improved the bill, they included these changes or made compromises that did not seriously impact the President's proposal.[6] However, the Select Committee jettisoned the majority of amendments that conflicted with the White House proposal, including those that limited managerial flexibility. The Government Reform Committee had passed an amendment to limit the President's ability to restrict collective bargaining rights of employees. The amendment was proposed by Constance Morella, a Republican. Morella's defiance of her party could be explained by constituency concerns, and illustrates why the public management policy subsystem has been able to resist changes that reduce worker protections. Her constituency in Maryland held a high number of federal workers and her seat was one that Democrats believed was vulnerable, pouring resources into what proved to be a successful bid to unseat her. Morella's stance also reflects the motivation of many governmental committee members, and explains in part why the Republican leadership was anxious not to have this committee take the lead in reporting the President's proposal. Lobbied by the White House, the Select Committee overturned the amendment and returned the flexibility provisions into the legislation on a 5–4 party-line vote. On July 19, the Select Committee voted 5–4 to send the White House's proposal almost intact for floor consideration.

On the House floor, despite union lobbying and the arguments of many Democrats against reducing employee protections, few wished to go on record as being against the bill in an election year (Firestone 2002a). As amendments were offered, Republican Party discipline held firm to deliver key victories and ensure passage.[7] One hundred and twenty of the 132 who voted against the bill were Democrats, including House Minority leader Dick Gephardt.

Legislative Progress in the Senate

In contrast to the decisive House victory, the Democrat-controlled Senate proved a more difficult battle for the President. Senator Lieberman convinced Majority Leader Tom Daschle (D-SD) that the Governmental Affairs Committee he chaired provided the best venue for analyzing the DHS, given its broad overview and that it had previously reported a homeland security bill. On July 25, the Committee voted 12–9 to pass a Lieberman substitute to the White House proposal, with three Republicans joining nine Democrats. The substitute removed the broad managerial flexibility sought by the President and narrowed his ability to restrict union activity.

President Bush reacted by issuing the first of several threats to veto any legislation that did not provide the flexibility he sought. "The new secretary must have the freedom to get the right people in the right job at the right time and to hold them accountable. He needs the ability to move money and resources quickly in response to new threats, without all kinds of bureaucratic rules and obstacles. And when we face unprecedented threats like we're facing, we cannot have business as usual" (Firestone 2002b).

While party divisions were clear in the House, the speed of the debate masked partisan tension from the public eye. In the Senate, as the debate stretched into months, partisanship became more evident and bitter. Democrats accused the President of being antiworker and exercising a power grab, while Republicans charged Democrats with delaying a vital piece of legislation at the behest of unions. Daschle responded by suggesting that the President was interested in homeland security and hostilities with Iraq primarily as campaign issues. Homeland security did become an issue in some campaigns. In particular, two Senate Democrats, Jean Carnahan (MO) and Max Cleland (GA), were damaged by campaign ads that accused them of opposing the creation of the DHS. Their losses meant that Republicans retook control of the Senate. Immediately after the election, President Bush placed homeland security at the top of an ambitious end-of-session agenda, saying: "The single most important piece of unfinished business on Capitol Hill is to create a unified Department of Homeland Security" (Koffler).

President Bush got his wish, as the White House won over three moderate Senators who had, prior to the election, championed a compromise between the White House and Lieberman positions by allowing an independent board to rule on union objections to any proposed changes. The White House held out for a statute that left final control on personnel decisions with the Secretary of the DHS. Conceding defeat, Daschle agreed to cooperate in preventing any filibuster. On November 13, by a vote of 299–121, the House passed a new version of the bill that reflected the Senate compromise. On November 18, the Senate voted 90–9 to pass the bill.

KEY ELEMENTS OF THE DHS LEGISLATION

The White House vision of homeland security ultimately prevailed in almost all respects, including personnel issues. The mission of the DHS is to prevent terrorist attacks, reduce the vulnerability of the U.S. to terrorism, respond to terror-driven emergencies, and break the links between illegal drug trafficking and terrorism. At the same time the DHS is charged with maintaining the traditional functions of the agencies transferred into the department and not damaging the overall "economic security" of the country. The DHS includes four main Directorates: Science and Technology, Border and Transportation Security, Information Analysis and Infrastructure Protection, and Emergency Preparedness and Response.

Workers transferred into the DHS were allowed to retain their benefits, pay, and protections for one year. After that point the Secretary of the DHS, in consultation with the Director of the OPM, has the authority to "establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security." The new system should be "flexible," "contemporary," and grounded in the public employment principles of merit and fitness. Unions have 30 days to respond to any proposed changes. If agreement cannot be reached, the Secretary of the DHS will inform Congress on the nature of the disagreement, initiating another 30-day delay to allow for mediation or congressional action. At the end of this period the Secretary can choose to overrule the objections of the unions and mediator suggestions, and implement the changes. The President retains the power to waive the rights of unions to organize if he judges that homeland security would be compromised, but must give 10 days' notice to Congress. The authority to set new personnel rules expires five years after the law took effect on November 25, 2002.

Largely without notice or debate, the HSA also delivered the most significant changes in government-wide personnel policy since the Civil Service Reform Act of 1978. Amendments made by Senators George V. Voinovich (R-OH) and Daniel K. Akaka (D-HI) in the Governmental Affairs Committee mirror the failed Managerial Flexibility Act, focusing on enhanced recruitment, retention, and downsizing for the entire government. Agency recruitment flexibility is enhanced in a number of ways. If the OPM determines there is a crucial need for talent, agencies have direct authority and discretion to hire to meet this need. For regular hiring, agencies can choose candidates from a categorical ranking system that creates a broader pool of recruits than the traditional "rule of three" choice. Agencies are given permanent buyout authority to encourage voluntary separations and early retirements, but without losing agency positions. Higher pay and performance bonuses are possible for senior managers, but only for agencies that prove to the OPM and OMB that their performance appraisal system actively distinguishes between employee performances. The overall profile of personnel issues is enhanced through the creation of the post of chief human capital officer for all agencies, incorporation of workforce planning into the agency strategic planning process, and requiring the OMB to develop tools to assess the human capital efforts of each agency.

In addition, the White House won significant new flexibilities in procurement, also consistent with the Managerial Flexibility Act. The DHS is exempt from government-wide procurement rules that would impair its mission, and has special freedoms for external contracting without competitive bidding. Unlike personnel reform, these changes do not threaten a specific constituency and met no objection. The White House proposed additional financial flexibility, allowing the Secretary to move up to 5 percent of the DHS budget between appropriations accounts. Appropriators in Congress saw this as usurping their role and denied permanent transfer power, but did allow authority to transfer up to $640 million for two years to ease the reorganization process.[8]

THE INFLUENCE OF THE PREEXISTING MANAGEMENT AGENDA

A description of the politics of the DHS provides only a limited picture of the arguments for managerial flexibility as it relates to the homeland security function. This section analyzes these arguments, and points out that the major justifications employed for managerial flexibility reflected the preexisting management agenda described in the PMA and associated legislative proposals, which in turn expanded upon Clinton-era proposals. The HSA provided an opportunity to enable managerial flexibility, but such changes were not particularly justified by security arguments. Instead, the arguments employed by the White House were largely generic flexibility arguments equally applicable to any core governmental department. The most plausible argument for more flexibility also did not relate directly to the security function: there existed a need for flexibility to create standardization across the many disparate parts of the DHS. Even accepting the plausibility of the standardization argument, it failed to justify the degree of discretion sought. Further, while the style of argumentation echoed NPM warrants, the HSA did little to address the continuing disconnect between flexibility and results that has been characteristic of U.S. government reform, but is contrary to NPM doctrine.

What were the arguments employed for increased flexibility? White House staff argued that flexibility was needed to get the right people in the right place at the right time; create a flexible and responsive system to attract and retain good people; pay employees market rates; and ensure accountability for individual performance (Friel). The Director of the OPM, Kay Cole-James, offered similar claims in House testimony on July 16. The merit of such goals for public organizations has been debated elsewhere (e.g., Terry). It is unnecessary to reargue this debate, but it is necessary to point out that such arguments are generic, were part of a preexisting public management agenda featured in the PMA and failed White House legislative proposals, and are no more suited to homeland security than other parts of government.

In fact, it could be argued that the assumption of a performance-driven organization that underpins the generic arguments works only with certain types of government organizations, and is particularly unsuited to the challenges facing the DHS. Wilson points out that in organizations where actions and outcomes are visible and can be easily connected, it makes sense to trade flexibility in exchange for visible performance. In organizations where these conditions are not in place, it is difficult to verify what more flexibility provides in terms of performance, and it becomes easier for flexibility to be used for reasons other than performance. Similarly, the NPM advocated that flexibility be exchanged for a focus on results, an aspect of NPM argumentation largely overlooked by advocates of the HSA. When the NPR nominated units of government to become Performance-Based Organizations—modeled on the U.K.'s Next

Step Agencies—it recognized this fact, and cited function-driven criteria as necessary precursors to reform, including a clear mission and measurable goals, a focus on external customers, and predictable sources of funding. The DHS does not meet such standards. It may have a clear, if broad, mission and desired outcome—a homeland free of terror—but it has to deal with a high degree of uncertainty in its managerial technology. Where are the threats coming from? How are the actions and outputs of the DHS relevant to the desired outcome?

Senator Fred Thompson (R-TN), who managed the Republican bill on the Senate floor, proposed that enhanced flexibility was given in exchange for accountability for results, but it remains unlikely that the DHS can develop such a link. First, a focus on results has not become a deeply ingrained structural feature of the U.S. government. While GPRA has enabled strategic planning and performance measurement, it has not created the type of connection between results and rewards, such as contracts where tenure and pay are linked to results called for by NPM doctrine. Second, the nature of the function of the DHS makes it difficult to create such a system. Like many public services, the DHS faces a negative form of accountability—it will face public wrath when it fails, indifference when it succeeds. But negative accountability precludes the comprehensive and fair approach implied by accountability for results. The NPM benchmark countries provide some useful instruction to the U.S. here. Both the case of prisoner escapes in the U.K. (Barker) and the New Zealand Cave Creek disaster that saw the death of 14 individuals after the collapse of a viewing platform (Gregory) provide clear examples of how the NPM model breaks down in conditions of negative accountability. In both cases highly visible failures overshadowed the successful achievement of contracted goals, becoming the dominant issue for not only the department responsible but also the entire government. In both cases the existence of an accountability for results contract framework did not serve to clarify where responsibility lay, as Ministers and their chief executives bickered over blame.

Negative accountability standards ignore positive work, berating agency failures even if the cause of failure is not within the agency's direct control, a likely scenario for the DHS. Negative accountability also lacks a clear decision rule—the implications for failure are frequently not elimination, firings or reduced budgets, but reorganization and increased budgets. A highly pertinent example was the perceived intelligence failures of the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA) prior to 9/11. Congress held hearings and criticized agency performance. However, neither agency was ever a serious candidate to be moved into the DHS, and both saw their budgets increase.

An alternative basis for justifying flexibility is that the nature of the homeland security function demands it. OMB Director Mitch Daniels argued that the nimble organizational characteristics of terrorist organizations demanded a similar response. More generally, White House staff and the President emphasized the unpredictable and catastrophic nature of the threat. The White House and OPM also argued that guarantee of union rights to organize could endanger security, an argument supported by the Senior Executive Association. Union objections to proposed employee transfers or new work processes would slow changes and make managers reluctant to propose change in the first place. However, evidence to support this claim has not been strong. The most cited evidence was a widely recycled hypothetical story of a drunken border guard who allowed a terrorist into the country, and yet could not be fired for 30 days.[9] Unions countered that past experience demonstrated the benefits of employee protections in ensuring competence in the security function. Title V also allows managers "to take whatever actions may be necessary to carry out the agency mission during emergencies," regardless of collective bargaining agreements.

The most convincing argument made by the White House was that flexibility would enable standardization of the human resources policies of the different organizational units in the DHS. This returned to the coordination rationale, itself a traditional principle of public administration. The principle of coordination was largely contrary to the NPM, which emphasized smaller agencies as a result of seeking to create specialization, competition, and a separation of policy and implementation (Moynihan and Roberts). But the White House argued that to enable coordination to occur, the Secretary had to have flexibility to integrate the peculiarities of the disparate parts of the new department. A Brookings Institution report estimated that over 80 different personnel systems were being brought together in the new DHS (Daalder et al.). Such fragmentation was the result of earlier efforts to promote flexibility, where agencies were given waivers from centralized rules to tailor systems to their needs.

While centralization of these systems may be necessary, the White House again failed to specify how and to what degree standardization would take place, and whether all of the rationales for previous fragmentation would be overturned. The White House did not lay out a framework for how flexibility would be used, asking Congress to trust that it would use flexibility wisely, without offering an outline of a plan or even an underlying logic to underpin the new human resource system. Would flexibility be used in a manner akin to the Department of Defense? Or would it be used to pursue policy control? Which employees would be subject to such flexibility? Such questions were not addressed.

Congress had a number of options to delegate authority while still overseeing the federal personnel system (Daalder et al.). It could have chosen to adopt provisions that fast-tracked proposed changes to up or down congressional votes, a process used for military base closures in 1988. Such was the approach of the Freedom to Management Act, which was previously rejected out of a concern for legislative prerogatives. Congress could have chosen to reconsider further legislative changes periodically after the DHS was created, as it had with the creation of the

Department of Defense. Congress could have opted to specify flexibilities as it did with the Internal Revenue Service and the Federal Aviation Administration, or at least define the parameters of the Secretary's power in a more specific manner. Congress chose not to adopt any of these alternatives, in large part because the White House threatened to veto any bill that did not provide the flexibility demanded.

THE EXPANDING CONCEPTION OF FLEXIBILITY

The HSA became a battle over managerial flexibility: who would exercise such flexibility, the extent of their power, and how to hold managers accountable, both in terms of performance and misuse of discretion. But how is the concept of flexibility actually understood? At the most general level, flexibility means that managers have greater freedom in the use of their human and financial resources in areas such as recruitment, pay, promotion, firing, procurement, contracting, and carryover of funds across financial years. Within this broad definition there is a variety of different interpretations of the concept of flexibility. This section examines the differing interpretations of the NPM and recent reform efforts in the U.S., including those of the Bush administration. The comparison suggests a much looser connection between the concepts of flexibility and results in U.S. reforms than is present in NPM doctrine, and that the Bush administration expanded the concept of flexibility to make it a more centralized and top-down interpretation relative to previous administrations.

Central to the NPM doctrine is the claim that the core public sector should become results-oriented through increased managerial flexibility (Aucoin 1990; Keating and Holmes). These virtues recommended themselves as the furthest contrast with the image of the traditional bureaucracy: process-focused, rules-based, and rigid (Barzelay with Aramajani). The NPM benchmark countries pursued these goals (Barzelay). A focus on results was developed via performance contracts, strategic planning, and performance measurement. Managers were responsible for achieving specific performance targets and demonstrating performance improvement. In return they were given increased control over their resources. In the area of personnel, increased managerial flexibility was enabled by moving from traditional civil service systems, characterized by rules on hiring, pay, promotion, and firing, to employer–employee relationships that mirrored the private sector. The key point is that NPM doctrine presents the concept of a focus on results and flexibility as interconnected, not as separate policy alternatives. Flexibility will enable higher performance, and is granted on the basis of results-based accountability explicitly laid out in contracts with top managers.

Reformers in the U.S. have also been concerned with the issues of flexibility and results, but have treated them largely as distinct and loosely connected policy choices rather than different aspects of the same reform. The 1978 Civil Service Reform Act challenged the traditional emphasis on the necessity of civil services protection, and marks the first effort to link flexibility with performance in U.S. civil service law (Moynihan 2004). The flexibility doctrine that emerged from 1978 gained support over the following decades, as reformers in the Clinton and current administrations shared the assumption that a moribund bureaucracy can be made to perform through the addition of flexibility. However, although President Carter argued for flexibility in the name of performance, only modest grants of flexibility were given, and the pay-for-performance provisions were deemed a failure, later abandoned for mid-level managers.

The NPR also argued for the concept of flexibility, understanding flexibility in terms of helping frontline employees to work around existing controls by offering waivers from rules, eliminating unnecessary internal regulations, and reducing the power of central management agencies (Gore; Thompson 1999). The NPR was highly influenced by David Osborne and Ted Gaebler's 1992 book *Reinventing Government*, which itself was influenced by the experience of NPM countries, as well as U.S. state and local governments. But the NPM version of flexibility calls for, as Graham Scott, Ian Ball, and Tony Dale point out, a top-down creation of new management systems dominated by senior managers, rather than bottom-up efforts to work around existing systems typified by the NPR. The NPR's interpretation of flexibility was shaped to a large degree by political possibility. Unions actively and successfully opposed civil service reforms that threatened to reduce the rights and job security of their members.[10] The NPR proposed a number of pieces of legislation that would have increased managerial discretion in personnel matters, in many ways similar to early Bush administration proposals. Had such legislation passed, the Clinton administration would have been credited with a broader interpretation of flexibility than simply empowering frontline workers. But union opposition reduced the willingness of the leader of the NPR, Vice President Al Gore, to actively promote civil service reforms (Turque, 281, 288), and prevented the NPR from forming a coalition in the responsible subcommittees to put a viable bill forward (Thompson 2001). The NPR also championed the idea of Performance-Based Organizations, but struggled to convince Congress to pass legislation exempting candidate agencies from civil service requirements (Roberts).

GPRA included flexibility provisions that allowed agencies to apply for waivers from administrative rules. But the OMB did not utilize this authority, arguing that the arrival of the NPR provided a more effective route to managerial flexibility, which could, in turn, be married to the results focus engendered by GPRA (U.S. OMB 1997). Privately, OMB officials also complained that agencies failed to identify meaningful proposals for how to link new flexibilities with performance. This criticism underlines the fact that neither the Clinton nor Bush administration figured out a way in which to marry GPRA-based goals with flexibility, beyond a benign assumption that greater freedom would enable results.

In proposing civil service reform, the NPR was reacting to internal dissatisfaction with the federal personnel system. Calls for dramatic change had been articulated by the report of the Volcker Commission in 1989, meetings with federal workers held by the NPR (Stone) and by academics and practitioners (Kettl, Ingraham, Sanders, and Horner). Legislative proposals that called for increased managerial freedom in classification and pay drew directly from demonstration project authority enabled by the Civil Service Reform Act. However, frustrated by failed legislative efforts, the NPR concentrated on increasing flexibility through more limited channels. Executive orders reduced rules emanating from the executive branch, particularly central agencies. Clinton expanded the use of demonstration authority, creating more than twice as many as had been created in the previous 14 years. Clinton also supported (but did not initiate) exempting the Federal Aviation Administration and Internal Revenue Service freedom from aspects of the civil service system (Moynihan 2003).

The failure of the Managerial Flexibility Act and the Freedom to Manage Act, and the continuing concern with the concept of flexibility suggests continuity in both policy substance and the "administrative ascendancy of Congress" across the Clinton and Bush administrations (Thompson 2001). The similarities mask differences between Clinton and Bush era experiences, differences that would become more telling during the passage of the HSA. Managerial flexibility is a higher presidential priority under President Bush, who was more willing to be closely identified and supportive of civil service reform than either Clinton or Gore. He communicated to the OMB that he regarded managerial flexibility as a presidential priority, and the two proposals were the first personally transmitted by the President to Congress.

Two other significant differences help explain the greater willingness of Bush to promote managerial change. First, while Gore had shied from actively supporting proposals that offended unions, Bush had little to lose in pursuing flexibility in a way that reduced union power. Second, President Bush and other members of his cabinet believe in the need to strengthen the office of the presidency. This is not unusual. A truism of political theory is that holders of executive power tend to demand a high degree of policy trust and autonomy for their actions, and tend to adopt a "managerial" approach to government that favors executive branch autonomy (Rosenbloom). Terry Moe has argued that in the modern politicized era the president must use all of the tools of the administrative presidency to achieve his objectives. However, the Bush administration is unusual in the zeal with which it sought to defend and expand the power of the executive branch, based on a belief that the strength of the office of the presidency has been in decline since President Richard Nixon. Joel Aberbach has labeled this tendency as "governing alone."

The Bush administration had already displayed such characteristics before 9/11, for example, its refusal to share details of energy policy meetings with the GAO. The fast-track provisions of the Freedom to Manage Act were indicative of this approach, reflecting a belief that many congressional statutory requirements impeded good management and should be removed. The PMA had declared that "all too often Congress is a part of the government's problems. Many members find it more rewarding to announce a new program rather than to fix (or terminate) an old one" (U.S. OMB 2001, 6). The President's 2003 budget proposal illustrated this point by including a cartoon of Gulliver tied down by Lilliputians, with the caption, "Many departments are tied-up in a morass of Lilliputian do's and don'ts." The Bush administration underestimated congressional reaction to the implications that legislative oversight was unhelpful and needed to be curbed.[11] Congress had jealously guarded this prerogative: delegations of authority are rare, and accompanied by guidelines. But in the DHS debate the separation of powers argument failed to impact the White House proposal.[12] The White House continued to justify flexibility on the grounds of better performance and security, and maintained that the new freedoms would be used sparingly and appropriately.

The HSA was distinct from previous interpretations of flexibility because it proposed both centralization of authority and additional flexibility at the same time. Traditional arguments for centralization of management systems rested on the idea of standardization of task to avoid duplication, improve efficiency, and prevent abuse of discretion, particularly political patronage. Such centralization is typically established by government-wide civil service rules. Generic arguments for management flexibility railed against this very standardization, portraying civil service systems as archaic controls that prevent managers from applying their ingenuity to improve effectiveness and efficiency. How did the Bush administration combine these seemingly contradictory positions, reflecting both an adherence to traditional management principles of coordination and unity of command, and the goal of flexibility? The comfort with which the Bush administration juggled the apparent contradictions further underlines tendencies toward "governing alone." The portrayal of managerial flexibility in relation to homeland security paints a markedly more top-down view of flexibility. Managers need freedom to move resources around rapidly, to overcome bureaucratic resistance, and to redesign management systems. In this image, the managers in question are not frontline heroes working around existing systems, but senior managers using flexibility to create new systems and issue direction to lower-level employees.

The homeland security understanding of flexibility is therefore characterized by the power of senior managers, rather than the freedom of frontline workers. The NPR pursued flexibility by offering waivers from rules to frontline employees, whereas the HSA determines that decisions about management controls will be reserved for senior political appointees. Such an interpretation of flexibility coexists comfortably with the idea of centralization, since centralization also strengthens the hand of a group of senior-level managers.

Public Management Implications of the HSA

While this article has focused on the process of policy change reflected by the HSA, it is possible to speculate on the implications of the Act for public management implementation. An early report by the GAO suggests that agencies are making limited use of the new government-wide hiring flexibilities provided by the HSA, and that more guidance from and collaboration with the OPM is necessary (U.S. GAO 2004). Of greater concern for critics is the potential politicization of the DHS. Unlike the NPM benchmarks, the U.S. has a deeply ingrained tradition of employing numerous political appointees to control the bureaucracy. This tradition conflicts with NPM doctrine by creating the potential that political suitability and loyalty become more important criteria in governing than performance and basic competence. For instance, while President Clinton had performance agreements with his department and agency heads on specific goals, such agreements had no impact on salary or tenure and were not taken seriously. If the political appointee tradition of the U.S. makes reaching new levels of performance unlikely, then it also poses the risk of an attack on the basic competence created by the merit-based civil service system. Public sector unions portray a scenario where the type of manipulation of the civil service system exemplified by Nixon appointees would simply be unnecessary for future appointees intent on increasing patronage and political control. A less drastic but similar scenario is a parallel outcome to the Civil Service Reform Act of 1978. There, ambiguities of legislation were sorted out in implementation. For the Ronald Reagan administration that succeeded Carter, this meant using flexibility to exert policy control and loyalty among employees (Ingraham and Ban).

Early indications are that the DHS will follow the pattern of the Federal Aviation Administration and Internal Revenue Service. This model assumes that demands for broad authority occur because the White House recognizes that a department needs freedom from existing restrictions, but cannot predict how that power is likely to be used. The details of the new personnel rules can be worked out after the legislative debate has concluded, at the discretion of the senior managers and in consultation with the relevant stakeholders. To work out the design of the DHS personnel systems, a design team was established including consultants, the multiple organizational units within the DHS, the OPM, and the major unions. The options were developed based on a fairly extensive outreach process that included town-hall meetings and focus groups (U.S. GAO 2003). Secretary Ridge proved willing to actively consult with unions, but to also consider more dramatic changes than adopted by the Federal

Aviation Administration and Internal Revenue Service, including limits on the scope of collective bargaining, greater flexibility in taking adverse actions against employees, and the introduction of a pay-for-performance system. The details of how such changes will be implemented remain unclear and will be central to future evaluations of the DHS.

More broadly, the passage of the HSA has emboldened other agencies to propose their own exemptions for civil service rules. The most notable example is the Department of Defense, which was given additional freedoms to rewrite the personnel rules for its 750,000 civilian employees in November of 2003. One consistent thread between the Clinton and Bush administrations is to change basic civil service statutes at the margins, but to encourage individual agencies to pursue broad flexibility from these statutes based on the needs of their particular function. As Naff and Newman (198) observe "the quest for HR [human resource] flexibility is not going to be satisfied by government-wide civil service reform legislation. Rather, it will take place through an unraveling of the Title V framework and its replacement by agency-unique systems." Agencies have been able to make more persuasive claims about the need for flexibility, overcome fragmented union opposition, and find greater support from functional oversight committees than would be the case for a generic flexibility argument made for the entire government. Cumulatively, this trend has given rise to "one of the most transformational changes to the civil service in half a century" (GAO 2004, 8). As this pattern of change continues it becomes difficult to argue that there is such a thing as a single civil service system or management model in the federal government. Instead, a patchwork of agency-specific systems emerges, with varying degrees of flexibility that are dictated by senior agency managers, but with reduced direct influence and oversight from the OPM and, especially, Congress. Across the patchwork, however, common challenges will continue: maintaining a balance between merit, political responsiveness, discretion, and performance.

CONCLUSION

This article has asked whether the HSA signaled a dramatic step for U.S. public management policy in "catching up" to NPM benchmark countries. To the extent the NPM had any influence on the HSA, it was indirect, based on NPM ideas of flexibility having partially influenced the NPR, which in turn shaped the PMA. But the doctrine of flexibility was on the public management policy agenda since at least the Civil Service Reform Act of 1978, and actors involved in the creation of the PMA were not attempting to mirror the experiences of NPM benchmarks. As this article has argued, the conception of flexibility reflected in the HSA is distinct from NPM doctrine, due to a much looser connection with a results framework. The Act also incorporates a more centralized interpretation of flexibility relative to Clinton-era reforms, the result of a willingness to take on unions, and the managerial philosophy of the Bush administration.

The ability of the Bush administration to implement its management agenda was limited until 9/11. The HSA provides an example of the public management policy change when public management is not the dominant policy issue. Change can occur by attaching to a popular piece of legislation policies that are plausibly connected but not essential to the main goal of the legislation. This approach to policy change could be best described as Trojan horse politics. The White House had to overcome a highly stable policy subsystem, characterized by the power of public service unions. In Westminster parliamentary systems it was possible for the executive branch to simply override these stakeholders. Countries with different institutional characteristics that tend toward more incremental policy making, for example, presidential or coalition-led governments, have struggled to overcome union objections to changes in public management and other policy areas (Weaver and Rockman). The case of the HSA demonstrates that Trojan horse politics, moving the issue to the macropolitical arena, and changing the issue image and policy venue, are methods to create disequilibrium in the public management policy subsystem. The ability to tie public management to policy issues of greater relevance to the public enables the move to macropolitics, and hence dramatic change. This lesson is not just limited to homeland security—although the Department of Defense also used this logic to gain the ability to change their personnel system—but applies to any larger issue that elected leaders can plausibly link to public management. The benchmark states themselves tied public management inefficiencies to macroeconomic woes (Barzelay 2001). While reformers may never be able to heave public management to the top of the policy agenda as its own issue, the ability to link it to more pressing policy issues is a potent political lever for change.

NOTES

1. The DHS has approximately 155,000 civilian positions and 54,000 military positions in the U.S. Coast Guard, for a total of just over 209,000 (U.S. GAO 2003, 10).
2. Since the plan was published, the U.S. Office of Management and Budget (OMB) has directed attention to agency implementation of the proposals by issuing agencies a green (fully compliant), amber (partially compliant), or red (not compliant) rating. The simplistic nature of the scoring has drawn criticism, but has gone some way toward achieving the intended effect of directing agency attention to implementation issues in a way the NPR struggled to do. The OMB has also run into conflict with Congress on the issue of having a target percentage of government services to be subject to managed competition (Barr 2002a).
3. The third Hart–Rudman report (2001) did make a series of recommendations relevant to the human resources of the federal government, but in the context of the continuing challenge, the future posed for the national secu-

rity element of the U.S. government, and the human capital problems it faced, rather than the specific needs of a DHS. The report recommended easing the burden for new political appointees, and reducing the number of appointees. It also called for eliminating recruitment hurdles, making it faster and easier, and devoting more attention and markedly more financial resources to retention, especially for in-demand skills such as IT.

4. The White House proposal was unveiled the same day as a high-profile Senate hearing on intelligence failures, leading some Democrats to view the timing of the announcement as a deliberate effort to draw attention away from executive branch problems (Bettelheim and Barshay).
5. Those involved included Tom Ridge; Mitch Daniels, director of the OMB; White House Counsel Alberto R. Gonzales, later national security adviser Condoleeza Rice, and Vice-President Dick Cheney.
6. For instance, the Judiciary Committee's recommendation to split the Immigration and Naturalization Service was accepted, as was a call from the International Relations Committee to leave visa authority with the State Department. An example of compromise was in overcoming resistance from the House Transportation and Infrastructure Committee to transfer the Coast Guard and the Federal Emergency Management Agency to the DHS. The Committee's Chair, Robert Young (R-AK), had argued that the agencies did a more than fight terrorism, and inclusion in the DHS could compromise these alternative missions. The panel sought to assuage his concerns by including provisions that the nonsecurity elements of the Coast Guard would maintain existing budget levels.
7. A proposal from Martin Frost (D-TX) and Henry Waxman (D-CA) to prevent the new Secretary from cutting employee pay was defeated. Morella offered her amendment on the House floor, but was defeated 222–208. Instead, the House voted 229–201 to support Christopher Shays' (R-CT) amendment that the President could exempt employees from traditional labor laws if he determined that those protections would have "a substantial adverse impact on the department's ability to protect homeland security," echoing the White House's initial proposal.
8. The Bush administration has had greater success in other defense and security areas in convincing Congress to allow its discretion in the spending of funds, particularly in supplemental funding (Schatz).
9. The anecdote was repeated by Director of the OPM Jay Cole James, White House Press Secretary, Ari Fleischer, and Senate Democrat Zell Miller when pressing for managerial flexibility. Senator Lieberman responded by saying: "This is simply wrong. And I regret that this myth is being stated as fact occasionally by one or another representative of the administration. The truth is, under current law, such an employee can be removed from duty immediately, without hesitation or red tape. And the employee can be taken immediately off the payroll if the Secretary determines that he or she might endanger national security." (Congressional Record, S8741).
10. Public service unions unsuccessfully opposed downsizing. Downsizing was championed by the Clinton administration and enjoyed broad bipartisan support. Union opposition was somewhat muted by the promise that job reductions would target mid-level managers, less likely to be union members, and President Clinton called for the use of firing as a last resort. In addition, the White House rewarded unions by encouraging agencies to bargain through labor–management partnership councils on issues that previously were left to the discretion of managers.
11. Then Chairman of the Senate Appropriations Committee Robert Byrd (D-WV) took issue with the cartoon in a hearing with Treasury Secretary Paul O'Neill, leading to a heated exchange. The Senator reminded O'Neill that

members of Congress were in place before he arrived, that O'Neill had not faced the electorate as members of Congress had, and that he might benefit from a course in American history, before noting that "With all respect to you, you are not Alexander Hamilton." A visibly upset O'Neill argued that he had dedicated his life to eliminating rules that limited human potential, and noted that he had come from a modest background: "Senator I started my life in a house without water or electricity, so I don't cede to you the high moral ground of not knowing what life is like in a ditch." Byrd responded that he had come from similarly humble circumstances, and concluded that the "ordinary people" who O'Neill had discussed as creating such rules were Senators, who would not "let you get away with it."

12. The issue received scant attention in the House. In the Senate, leading Democrats such as Lieberman and Daschle, made it an issue, but the case was most forcefully made by Robert Byrd (D-WV), a Senate veteran who views himself as defender of legislative prerogatives. As it became clear that the bill would pass, Byrd remained an active, if isolated, figure claiming—in a de facto filibuster—that Congress was abrogating its duties and endangering constitutional checks and balances in public administration.

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