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JIMMY CARTER AND CIVIL SERVICE REFORM

BY STUART E. EIZENSTAT

After Jimmy Carter left a promising career as an officer in Navy Admiral Hyman Rickover's nuclear submarine force to return home to Plains, Georgia to salvage his dying father's peanut warehouse business, his early plunge into elected politics shaped his views on the need for honesty and integrity in government, which he carried into the White House following his improbable 1976 victory over President Gerald Ford. His narrow loss by 60 votes in his maiden race for the Georgia state senate was corrupted by ballot stuffing organized by the Quitman County political boss, Joe Hurst, who wanted Carter's more pliable opponent to win. Hurst and his crowd watched as voters put their paper ballots into an Old Crow liquor box. Carter hired a prominent Atlanta lawyer, Charles Kirbo, who later became one of his closest friends and advisers, to muster the evidence to challenge the results, despite a frightening warning to Jimmy's wife Rosalynn at the family warehouse, that the last time anyone had crossed Joe Hurst, his business had burned down. Kirbo found out through a drunken local ne'er-do-well that 123 blank ballots had been taken home and filled-in by a supporter of Carter's opponent. That was the giveaway: The ballots added up to more than the number of registered voters. A judge overturned the result and Carter won the race.

Jimmy Carter drew national attention, and a place on the cover of *Time Magazine* as the epitome of the New South, when he boldly stated in his 1971 inaugural address to the citizens of a heavily segregated state at the State Capitol in Atlanta: "I say to you quite frankly that the time for racial discrimination is over. Never again shall a black child be deprived of equal rights to education, health or social services." As governor of Georgia he appointed record numbers of women and blacks and reformed the criminal justice and mental health systems, which were heavily biased against blacks.

But also striking and less obvious was another centerpiece of his one term as Georgia Governor from 1971-1975, and an enduring and unappreciated accomplishment as the 39th president of the United States was his passion for government reform. In Georgia, Governor Carter took on the entrenched bureaucracy and their lobbyists to make government more effective, efficient and responsive by abolishing and combining three hundred state agencies, boards and commissions into twenty-two; and a record of basing appointments, like judges, on merit, not politics.

He was further vaulted into national attention by his May 4, 1974 Law Day populist, pro-consumer speech at the University of Georgia Law School before the state's legal establishment, captured by Hunter Thompson, then a journalist at *Rolling Stone Magazine.* The legal elites listened in astonishment as Governor Carter laced into lawyers and the legal system, in which "the powerful and the influential have carved out for themselves or have inherited a privileged position in society, or wealth or social prominence for higher education or opportunity for the future." He cited his policy of appointing judges on merit, not political connections (which he continued as president, appointing federal judges on a recommended list of district court panels made up of impartial legal experts); his creation of a state commission to hear citizen complaints about judicial performance; and he spoke about the shockingly inequitable sentences for the indigent. Within the lifetime of many lawyers in the audience, Georgia

chain gangs had been a notorious feature of incarceration. Carter called the state's prison a disgrace and reminded the audience of his reforms to return 95 percent of the state's prisoners to their homes. He chastised the Georgia bar for failing to honor native son Martin Luther King, Jr. with "approbation and accolades" when he won a Nobel Prize for demanding equal treatment for black and white citizens. And he also reminded them that the first speech he gave as a state senator "representing the most conservative district in Georgia," called for reforms of procedures that kept black citizens from voting.

And in his Law Day speech, he did not only call lawyers to task for failing to promote the rule of law, he remarked that individual lawyers, doctors, teachers and even his fellow peanut warehousemen were deeply committed to their clients, patients, students, and customers, but that something pernicious happened when they organized into pressure groups that reversed their priorities.

I was his policy adviser for his long two-year race for president, and realized up close as we shaped the dimensions of his message and policies, his deep commitment to government reform. Unlike his more liberal Democratic opponents for his party's nomination, from his announcement speech on December 12, 1974 he focused less on promises for higher government spending after eight lean Republican years under presidents Nixon and Ford, than on honesty in government, delivering government services more efficiently, and empowering government civil services to do their jobs with less political interference. Building on a scandal-free governorship and an effective reformer of Georgia's profusion of departments and boards, he pledged in his announcement speech to limit the size of campaign contributions; to issue a Code of Ethics during the campaign; and to "completely revise" the structure of government to streamline it, eliminating or consolidating a number of agencies, as he had done in Georgia.

The breadth and depth of his campaign commitments during the two year marathon presidential campaign to efficient, open, honest government, even in retrospect, is impressive—and was followed up by presidential action. He pledged to merge the functions of some nine different departments into one Cabinet-level Department of Energy (Energy Reorganization Statement of September 21, 1976); to reduce the number of federal agencies from about 1900 to no more than 200 (Democratic Platform Presentation, June 18, 1976); to take strong steps against the proliferation of new agencies and to weed out obsolescent ones (Public Citizen Forum Address, August 9, 1976); to consolidate the overlapping cabinet committees dealing with drug abuse into one (Speech in Detroit, October 25, 1976); to place Medicaid, Medicare and quality review under one management (APHA Speech, October 19, 1976); and to reduce the size of the White House Staff. He repeatedly pledged: "I will never lie to you," and wanted a government "as good as are the American people." He even went so far as to sell the presidential yacht, a mistake because it was such an effective lobbying tool for night trips with Members of Congress on the Potomac River.

He supported an inclusive Sunshine Law to open up meetings of federal boards, commissions and regulatory agencies (Consumer Affairs Statement, Pre-Convention, No. 62); to immediately reveal errors and malfeasance in the conduct of government as part of a sweeping Code of Ethics (Code of Ethics, Pre-Convention, No. 71); to minimize government secrecy and maximize citizen's privacy (ABA Speech, August 31, 1976); and to hold news conferences every two weeks (TV Guide Interview, October 9, 1976).

To reduce the influence of money in campaigns and in government decision-making, he urged financial disclosure, with quarterly reports of expenditures by all lobbyists who spend more than $250 in lobbying in any three-month period (Code of Ethics, Pre-Convention No. 71); mandatory, detailed financial disclosure for the President, Vice President, and all those appointed to major policy-making positions in the Administration (Code of Ethics, Pre-Convention, No. 71); reporting of all minor personal gifts to public officials and prohibiting gifts of value to public officials (Announcement Speech, December 12, 1974); public financing of congressional campaigns (Announcement Speech, December 12, 1974); fines for illegal campaign contributions (Code of Ethics, Pre-Convention, No. 71); and universal voter registration by postcards. He ran his general campaign on public funding through tax-payer checkoffs, which limited his expenditures to around $20 million.

He also wanted to abolish government regulations that barred price competition and new entrants to the detriment of consumers in areas like airline, truck, rail, and bus transportation, telecommunications, banking, and even the beer industry, where Prohibition-era restrictions barred the flow of local craft beers. His populist-tinged government reform message dovetailed perfectly with the public revulsion at the Watergate scandal, which involved far more than covering-up a break-in at Democratic Party headquarters at the Watergate building, but included President Nixon's misuse of the Internal Revenue Service to target political opponents and the FBI and CIA for illegal operations on American citizens without court order; for assassinations of elected officials abroad, as in Chile; and expanding the Vietnam War into Cambodia without congressional approval.

As President, Jimmy Carter demonstrated that his promises about reforming government were not simply campaign rhetoric. All of the major ethics legislation in force in an ethically challenged Washington today was championed by and enacted in the Carter Administration. The *1978 Ethics Act,* which for the first time required disclosure of assets and potential conflicts of interest by incoming senior officials, imposed strict limits on gifts in office, and restricted lobbying the agencies in which officials served. This was designed to elevate the level of public trust in government officials in the wake of Watergate. *The Inspector General Act of 1978* appointed independent inspectors general to root-out fraud, waste and abuse in federal agencies, and has saved American taxpayers tens of billions of dollars, while holding federal officials accountable. *The Office of Special Counsel* (the precursor of the Robert Mueller position) provided a mechanism to investigate potential wrongdoing by high government officials, including the president. *The Foreign Intelligence Surveillance Act of 1978* helped curb FBI and CIA excesses by creating special FISA courts to oversee requests for surveillance by law enforcement and intelligence agencies. *The 1977 Foreign Corrupt Practices Act (FCPA)* to this day prohibits and penalizes the extension of bribes by private U.S. corporations to foreign government officials; as does the *Civil Service Act of 1978.*

One of President Carter's first major legislative proposals was for reorganization authority, similar to what he had gotten in Georgia, for fast-track congressional review of government reform initiatives. To obtain support for granting him reorganization authority, Carter agreed with Congressman Jack Brooks to the creation of Inspectors General in executive branch departments, to root out waste, fraud and abuse—which operate fearlessly and independently to this day.

Among other things, President Carter used this reorganization authority to consolidate disparate natural disaster relief efforts into FEMA, the Federal Emergency Management Administration created in 1978 under President Carter's Reorganization Plan No. 3; and to jump-start civil service and other government reforms. During his four years in office, he secured congressional approval of 14 reorganization initiatives, improving the efficiency of key sectors of the government, from energy and education (with new Cabinet-level departments) to civil rights. More than 300 federal advisory boards were abolished, along with other agencies, boards and commissions which were obsolete or inefficient. Business-like cash management and debt collection initiatives saved over $1 billion by streamlining the processing of receipts, more carefully controlling disbursements, and reducing idle cash balances.

Carter appointed Alan "Scotty" Campbell, Dean of the Maxwell School of Citizenship and Public Affairs at Syracuse University, one of the nation's most respected and knowledgeable experts on government, and one of the most engaging and inspiring officials with whom I worked in four years as President Carter's Chief Domestic Policy Adviser, to lead an effort to reform the federal civil service system, as head of the newly created President's Personnel Management Project (PMP). This was a presidentially backed government-wide effort with nine task forces, an assistant secretaries advisory group, and public hearings. Out of this massive effort, in December 1977, the PMP issued a report with over 100 specific recommendations for reform. From that report, my White House Domestic Policy Staff, especially Simon Lazarus, worked with Scotty Campbell and an interagency task force to draft legislation.

To demonstrate the importance he attached to the initiative, he stressed it in his first State of the Union Address on January 19, 1978, calling it "absolutely vital" to create a "government that that is efficient, open and truly worthy… of understanding and support"-- the first time in American history a president made reform of the civil service a major priority. President Carter submitted the Civil Service Reform Act to Congress in March, 1978, and he signed it into law on October 13, 1978, calling it "one of the most important laws enacted by this Congress." Importantly, and so at odds with today's hyper-partisanship, President Carter applauded the leadership of Republican and Democratic Members of the House and Senate. In summarizing it, he said that "civil service reform and reorganization would be the centerpiece of my efforts to bring efficiency and accountability to the Federal Government. It will be the key to better performance in all Federal agencies." He noted that "Our aim is to build a new system of excellence and accountability." He explained his rationale in compelling terms: "This historic bill goes to the very heart of what the American people are asking for: a government and civil service that work. That was my campaign promise to the American people, and it gives me great personal pleasure to sign the bill that keeps that promise."

There were two parts of President Carter's reforms. The first was embodied in Reorganization Plan No. 2, abolishing the Civil Service Commission and replacing it with *Office of Personnel Management (OPM),* which functions to this day to oversee the human resource management authorities of the federal government *Merit System Protection Board,* to protect the merit system and to serve as an body before whom federal employees could air complaints; and the *Labor Relations Authority*, to manage labor relations between federal government managers and employees.

The second was legislation, the *Civil Service Reform Act of 1978*. With the enthusiastic backing of President Carter, Scotty Campbell lobbied into law what became the most thorough reform of the federal civil service since its founding in the 1883 Pendleton Act during the administration of president Chester Arthur, who based appointments on merit not politics, in reaction to the spoils system that had politicized the federal service. The 1883 Act created a system that was intended to protect federal employees from the excesses of partisan politics, and develop a competent and politically neutral workforce to deliver government services. But it only covered a small fraction of the federal workforce.

As President Carter summarized his *1978 Civil Service Act:* "It puts merit principles into statute and defines prohibited personnel practices. It establishes a Senior Executive Service (SES) and bases the pay of executives and senior managers on the quality of their performance." He noted that the SES "provided incentives for the most able and ambitious managers to be able to participate in policy decisions, not only management services, to be paid performance bonuses for outstanding performance, in return for the loss of some job protection." One test was that 98 percent of eligible top-level managers joined in the first year. The SES strengthened the link between senior career managers and politically appointed executives. As Carter noted in signing the bill, "It gives managers more flexibility and more authority to hire, motivate, reward, and discipline employees to ensure that the public's work gets done." The Act required the establishment of a performance appraisal system within each agency to adequately evaluate the performance of those in the SES. The pay system for the SES employees was based on pay for performance, with special awards up to $20,000 and bonuses for excellent performance. Merit-based pay was also instituted for middle-level managers, with new performance set by the agencies for their employees. This provided more accountability, as well. Dismissals for inadequate job performance increased by 1500 percent during his term, since the Act was enacted. An independent *Merit Systems Protection Board* protected the rights of whistle-blowers and other federal employees faced with threats to their rights. A Carter put it, "The act ensures that whistleblowers will be heard and that they will be protected from reprisal."

It must be admitted that the lofty goals of the *Civil Service Act of 1978* did not always match the performance. At least part of this was the antipathy by the Reagan Administration to the federal civil service, and the lax implementation of the reforms. But one study in the 1980s found tension between the concept of "neutral competence" at the heart of the reforms and pay for performance; tension between the promise of pay for performance and the reality of the federal record; and tension between inadequate resources and pay for performance. Nonetheless, the SES, OPM, the Merit Systems Protection Board and much more survive, even in hostile administrations.

During the 2016-17 Donald Trump transition, President Carter's 1978 Ethics in Government Act was invoked by Walter Schaub, Jr., the nonpartisan head of the Office of Government Ethics, created by the 1978 Act, when a Trump transition team requested the names of those government employees who had been engaged in climate change work during the Obama Administration. He resigned over what he saw as the Trump Administration's repeated flouting of Carter-era ethics and standards, including the President's own potential conflict of interest in retaining ownership of his Trump empire, which he entrusted one of his sons to manage.

Beyond that Carter achieved his goal of transforming the American transportation system through deregulation, for example, democratizing air travel by bringing competition and lower fares to the middle class by ending federal regulations that limited new entrants like Southwest and Jet Blue to fully compete.

The other part of President Carter's government reform program dealt with regulations governing health, safety, environment and welfare. He helped develop a management program to cut costs without sacrificing the goals of the regulation. Under his *Executive Order 12044,* agencies were required to analyze the costs of new regulations and to consider less costly, more flexible approaches, like performance standards and voluntary codes. One example was the "bubble" concept pioneered by Carter's Environmental Protection Agency, to allow corporations to comply with environment standards if all of their plants collectively met standards, even if some were above the required limit.

President Carter also created the *Regulatory Analysis Review Group (RARG)* in the White House to analyze the most costly regulations and propose new rules to improve them. A Regulatory Council was established to provide the first government-wide listing of upcoming regulations, to give prior notice to the public and effected companies. Agencies began to launch "sunset" programs to weed-out outmoded old regulations that had long-since served their purpose.

The *1980 Paperwork Reduction Act* strengthened the hand of the Office of Management and Budget (OMB) to reduce the number of needless forms which impose a huge paperwork burden on small and medium enterprises. The paperwork burden was reduced by 15 percent during his administration and a new "paperwork budget process" was established by a presidential executive order to force federal agencies to scrutinize all the forms imposed each year.

Jimmy Carter did not seek all of these efforts as ends in themselves. Jimmy Carter did not come into office to bring a wrecking ball to government, but to try to build more public trust in government programs, and in the presidency itself. He was the first "New Democrat," fiscally prudent, insisting on reducing unnecessary regulations that actually hurt consumers; seeking to empower and protect federal workers; but socially progressive; and a liberal internationalist who believed in strengthening alliances with our allies to achieve major successes abroad.

In fact, he had many progressive accomplishments: appointing record numbers of women and minorities to senior administration positions and federal judgeships compared to all 38 presidents before him combined and supporting affirmative action for university admissions and minority set-asides for government contracts; the most thorough reform and opening of the Food Stamp program in 50 years; vastly increasing education funding at all levels for low-income Americans, from Head Start to elementary and secondary education and Pell Grants for higher education; saving New York City and Chrysler from bankruptcy; increasing support for public and private job and job-training initiatives; transforming our transportation system; proposing a major national health insurance bill that is a model for today's Affordable Care Act; and creating the foundation in three comprehensive energy bills for the lack of American dependence on imported OPEC oil. His appointment of Paul Volcker as chairman of the

Federal Reserve Board was crucial to breaking the back of a decade of high inflation, although the results came too late to help his reelection.

Abroad, the Camp David Accords and Egypt-Israel Peace Treaty are lasting examples of perhaps the greatest act of personal presidential diplomacy in American history. He put human rights at the center of his foreign policy and applied it to the military dictatorships in Latin America and the Soviet Union. Along with the Panama Canal Treaty, Carter established a new era in U.S.-Latin American relations and activated the democratic movements there. He normalized relations with the People's Republic of China and applied "hard power" to the Soviet Union during the Cold War with a military buildup and a tough stand against their invasion of Afghanistan.

Because he insisted on government accountability, there was broader support for his progressive legislation. Independent surveys by the respected CQ Almanac and the Miller Center of Public Affairs at the University of Virginia rate the Carter Administration's success rate in passing his major legislative proposals as one of the highest of any modern president beginning with Dwight Eisenhower, and by one estimate, with a success rate of some 70 percent, not far below that of the storied master of the Congress, Lyndon Johnson (on whose White House Staff I served immediately after graduation from Harvard Law School). I believe, even with the double-digit inflation and humiliating Iran hostage crisis, a divisive Democratic primary fight from an unreconciled Senator Ted Kennedy, and a landslide defeat in 1980 to Ronald Reagan, he was one of the most consequential and successful one-term presidents in American history. And his government reform efforts are one of the reasons.