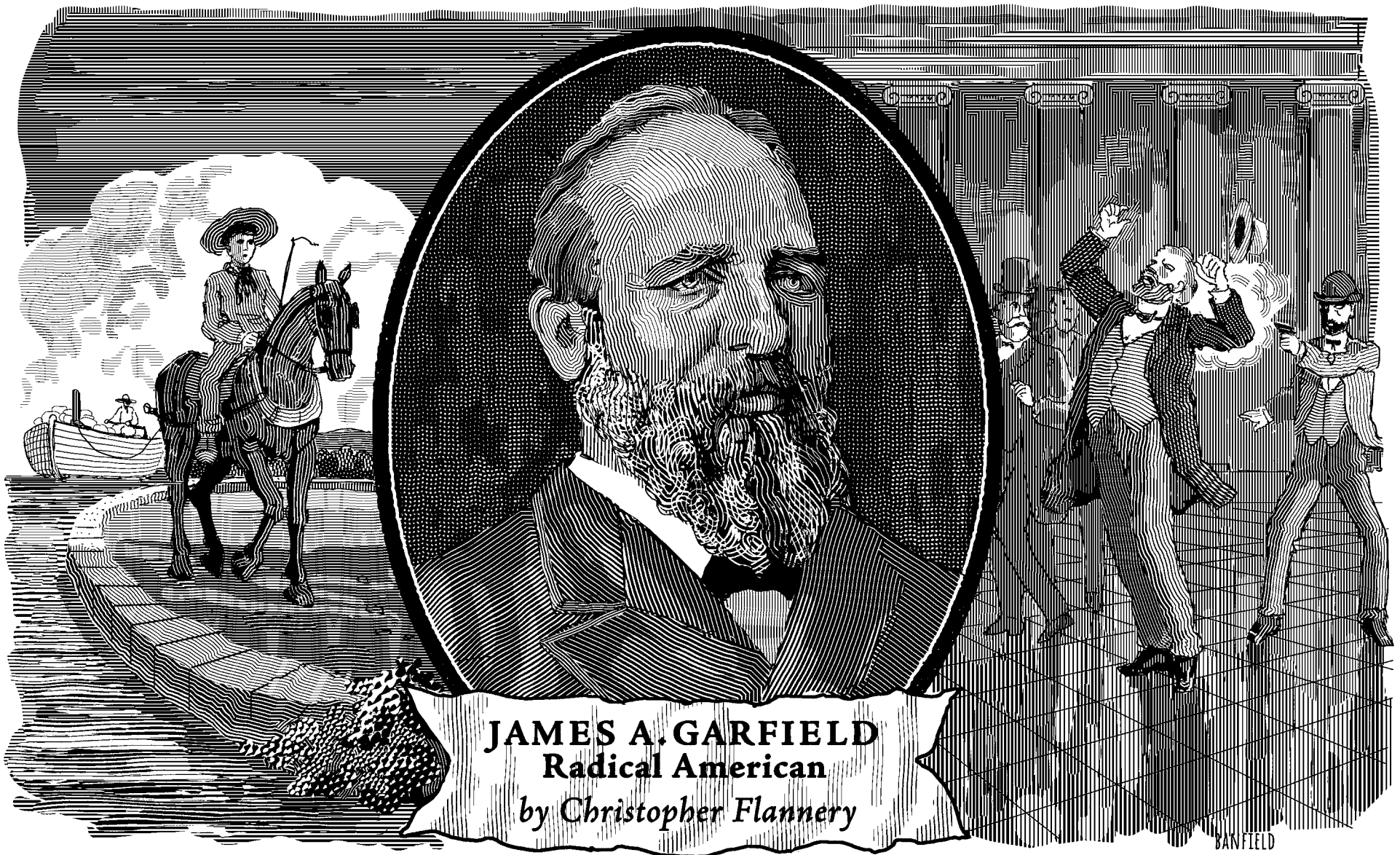


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# CLAREMONT

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*A Journal of Political Thought and Statesmanship*



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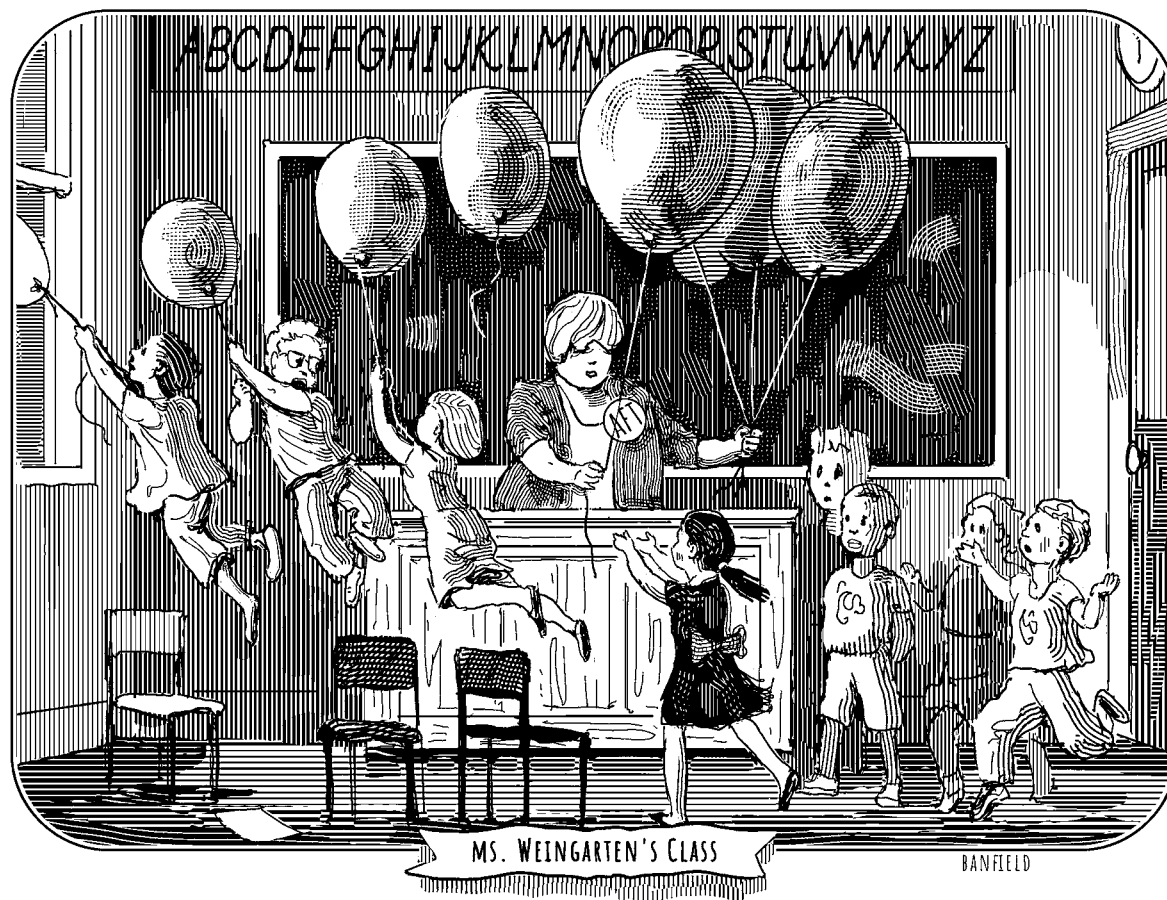
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Book Review by Michael T. Hartney

## UNCIVIL SERVICE

*Not Accountable: Rethinking the Constitutionality of Public Employee Unions*, by Philip K. Howard.  
Rodin Books, 160 pages, \$21.99



**G**ORE VIDAL ONCE OBSERVED THAT the four loveliest words in the English language are “I told you so.” Unlike Vidal, attorney and bestselling author Philip K. Howard takes no pleasure in delivering a well-deserved comeuppance to government employees’ labor unions. Early on, readers are reminded that even liberal icons like George Meany and Franklin Roosevelt considered public-sector unionism inimical to good government.

The author’s timing is impeccable. Coming on the heels of the COVID-19 pandemic and a societal reckoning over police misconduct, *Not Accountable* examines consequences of public-sector unionism that are too complex or boring for most voters to follow in ordinary times. Rules that protect incompetent workers, red tape that stifles managerial discretion, pension benefits that lead to deficits—all reside beyond the public’s radar, in what the political scientists refer to as voters’ “electoral blind spot.”

In the summer of 2020, however, Americans who had never thought much about po-

lice unions soon connected the wider problem of excessive force to obscure labor contracts and job protections that would be considered outrageous in any other workplace. A similar dynamic unfolded in the context of education. Millions of parents who had no idea that their public schools engage in collective bargaining were treated to a crash course on union power. They soon discovered that teachers unions’ rights to bargain collectively over “working conditions” somehow superseded “following the science,” no matter how much evidence showed that schools could safely reopen during the pandemic.

Howard uses this one-two punch effectively, making labor law seem compelling rather than turning it into a homework assignment. This tidy, well-organized monograph eschews jargon that would distract from its central argument: beginning in the 1960s governments ceded power to public-sector unions, making these private entities equal partners in democratic governance. Elected officials gave public employee unions special privileges to pursue

private gains at public expense, rendering public administration an illusion.

**E**XPLAINING HOW WE GOT HERE, HOWARD shows that New York, the first large state to experiment with public employee unions, ignored its own independent commission’s advice to avoid giving legislative powers to arbitrators. The commission also urged that the state legislature be required to approve each collective bargaining agreement. By ignoring these warnings, Empire State lawmakers handicapped future elected officials in every dispute with the unions.

New York’s failures have spread nationwide. Public-sector unions, Howard explains, make government: 1) unaccountable to voters, 2) unmanageable for supervisors, 3) unaffordable for taxpayers, 4) inattentive to the common good, and 5) permanently resistant to reform. These contentions have been advanced before, but never so robustly. *Not Accountable* gives significant attention to supervisors whose managerial discretion is essential for



delivering effective government services in street-level bureaucracies. A healthy framework for public employment should, the book argues, “embrace the human authority needed to implement a merit system,” which requires rejecting the current tendency of unions to litigate every judgment call that a supervisor makes when he attempts to manage the public workforce.

Consider teacher evaluations. An infinitesimal number of teachers lose their jobs each year for poor performance. As one superintendent told Howard, “Dismissing a tenured teacher is not a process.... It’s a career.” Little wonder that education reformers in the mid-2000s abandoned using principals’ subjective judgments to force low-performing teachers out of the classroom. Instead, they invested heavily in sophisticated statistical models that specify each teacher’s level of “value-added” effectiveness. Yet even after these more “objective” evaluation measures became available, unions found them wanting as well. Howard makes clear that unions oppose *any* meaningful accountability that would result in a significant number of low performers being shown the door.

**A**S TO COMPENSATION, HOWARD RELIABLY states the case that unions increase governmental costs by refusing to reform unsustainable post-retirement benefits. He documents that many public employees are loath to give up their expensive union-negotiated post-retirement benefits, even as several teachers’ unions have used high-profile strike campaigns to demand enacting the progressive agenda, including “Medicare for all.” Nationalized health insurance is good enough for thee, but not for me.

Howard thoughtfully argues that we need meaningful compensation reform to reward superior public employees. Good teachers

should be paid more, and poor performers terminated, so that government can create a professional work culture that encourages the best to stay in their profession. “An overhaul of public employment should be accompanied by a reset of compensation levels aimed at attracting good candidates,” he explains.

*Not Accountable* also shows that the thorny issue of “working conditions” in collective bargaining is central. The term has come to encompass all policies over which unions seek to restrict managerial control. As a result, supervisors confront phonebook-thick collective bargaining agreements. If bargaining were only about wages, political scientist Daniel DiSalvo tells Howard, contracts would be ten pages or fewer. A former deputy mayor in New York City was chastised for soliciting the opinions of the city’s employees during an impromptu visit to some department offices early in his tenure. His crime? Circumventing the union’s sole right to weigh in at the bargaining table on any managerial ideas. Unfortunately, union power makes public administration even more difficult during times of crisis. According to Howard, the regulatory body that oversees public employee relations in New York has made it clear that financial exigency is no excuse for failing to bargain with unions on nearly any topic.

**H**OWARD CONCLUDES THAT OUR democratic institutions are incapable of dismantling union power. Instead, political executives should challenge the constitutionality of public-sector bargaining. In short, when governments abrogate decision-making to private parties, they are unconstitutionally delegating legislative powers to private actors and circumventing our republican form of government. For example, unelected arbitrators end up making

decisions that directly shape policy, rather than elected legislators who are accountable to the public.

Though the odds appear to be stacked against Howard, how many activists (on either side) ever believed *Roe v. Wade* would fall? Or racial preferences be struck down? In fact, the possibility that a majority would rule against public-sector bargaining has never been higher. Over the past two decades, and often at the behest of Justice Samuel Alito, the Supreme Court has ruled against government unions on a variety of issues ranging from paycheck protection to political spending and, most recently, agency fees.

On the other hand, in 2019 the Justices declined an invitation to undo “exclusivity” in public labor law: the practice of giving a single union the exclusive right to represent all workers—including those who oppose the union. The court’s unwillingness to take this modest step suggests that Howard’s far bolder constitutional argument faces daunting prospects.

Philip K. Howard has written a courageous book that respects no sacred cows. *Not Accountable* treats public-sector unions that retain political support from conservatives (police, corrections officers) and liberals (teachers, feds) with equal severity. Despite Howard’s even-handedness, however, many readers—particularly those whose children were subjected to a year of virtual learning at the behest of union leaders like Randi Weingarten of the American Federation of Teachers—will draw a less-nuanced conclusion. Gore Vidal notwithstanding, the four most satisfying words in the English language have become, “Never again, Randi Weingarten!”

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