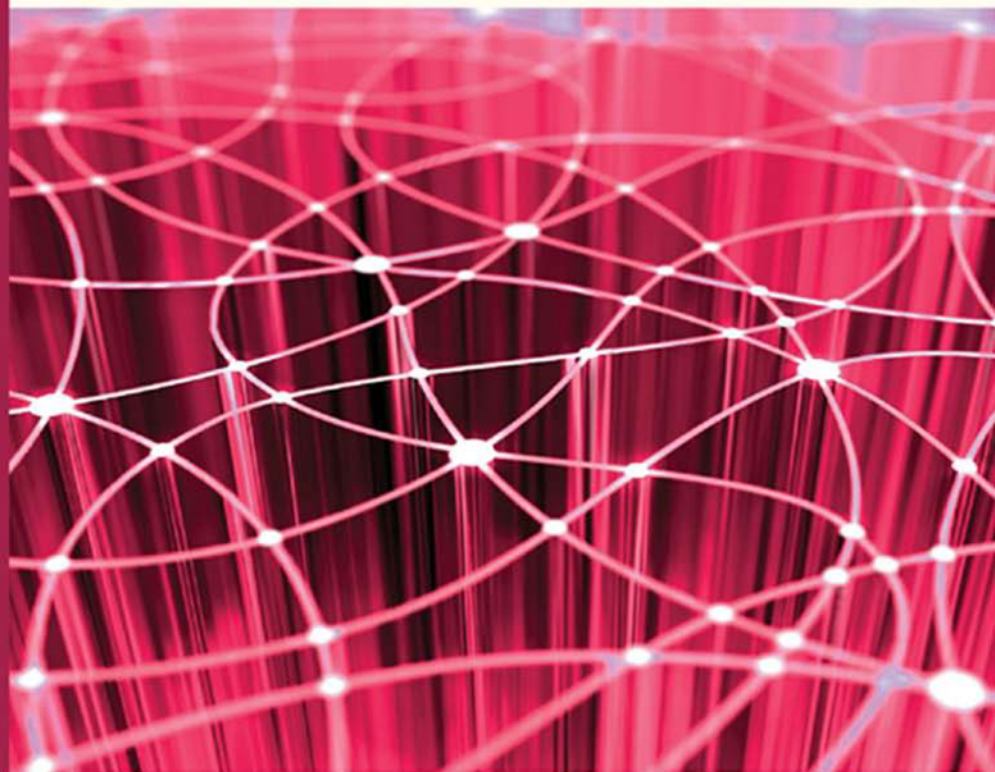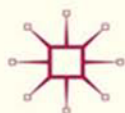# CIVIL SERVANTS AND POLITICS

A Delicate Balance

Edited by Christine Neuhold, Sophie Vanhoonacker and Luc Verhey

Public Sector Organizations

Editors: **B. Guy Peters**, Maurice Falk Professor of Government, Pittsburgh University, USA, and **Geert Bouckaert**, Professor at the Public Management Institute, Katholieke Universiteit Leuven, Belgium

Organizations are the building blocks of governments. The role of organizations, formal and informal, is most readily apparent in public bureaucracy, but all the institutions of the public sector are composed of organizations, or have some organizational characteristics that affect their performance. Therefore, if scholars want to understand how governments work, a very good place to start is at the level of the organizations involved in delivering services. Likewise, if practitioners want to understand how to be effective in the public sector, they would be well-advised to consider examining the role of organizations and how to make the organizations more effective.

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Civil Servants and Politics

A Delicate Balance

Edited by

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Preface

The idea to examine the relationship between politicians and civil servants in more detail was triggered by several motives. In their regular contacts with practitioners both in The Hague and Brussels, the editors of this volume had observed that the interference of the political level into the working-sphere of civil servants had become an important issue of debate. Although tensions between politicians and the civil service are inherent to their mutual interdependence, the question that arose was whether the above-mentioned concerns of 'politicisation' were merely incidental or the result of more structural changes in the interaction between the two groups.

Secondly, when browsing through some of the key literature, it soon became clear that the term 'politicisation' was used with very different implications. One could therefore wonder to which extent the different voices were actually talking about the same phenomenon. A final factor motivating this project was the realisation by the editors that their different national backgrounds and administrative cultures heavily affected their views about how to best divide the tasks between politicians and the public service. Apparently the benchmarks for measuring politicisation were far from clear and there did not necessarily exist an ideal pattern of behaviour.

Subsequent to bringing together academics and practitioners in Maastricht it was decided to embark on a comparative study based on a common conceptual framework. Prof. Guy B. Peters, one of the most prominent political scientists on politics and the civil service, kindly agreed to develop an analytical framework consisting of alternative conceptualisations of the term. The case studies discussed were further expanded, covering a wide range of countries along the spectrum of politicisation. Contrary to earlier studies, the volume also pays attention to politicisation in European institutions such as the Commission and the European Parliament. For each of the country studies, we worked with specialists on the administrative systems of the country in question. For the editorial work we received the assistance of Tom Theuns, University College Maastricht. As a native speaker he scrutinised the different chapters with meticulous care. Furthermore we are also grateful to Sophie Behrmann, Charlotte Depondt, Ana Mingo and Johan Rotomski who helped us with the bibliographical references and the index.

While we leave it up to the reader to judge the quality of this volume, for the editors this project has been rewarding from several perspectives. It allowed us to bring together scholars with different disciplinary backgrounds including law, political science and public administration and to reflect about the strengths and weaknesses of the different models applied across Europe. Being a joint project of the Faculties of Law and Arts and Social Sciences of Maastricht University, it proved a stimulating experiment in cross-faculty cooperation and an immersion in different perspectives and working methods.

Notes on Contributors

Frank Baron works as a clerk at the French National Assembly. He is Head of the Protocol unit and he was the representative of the French National Assembly to the European Union between 2007 and 2011. He also worked as a policy officer for the European Affairs Committee of the German Bundestag (2006–2007). Prior to that, he was one of the policy officers of the Foreign Affairs Committee (2002–2006) and the Law Committee (1997–2002) of the French National Assembly. He has taught Public Law and Parliamentary Law at Sciences Po Paris (Institut d'Etudes politiques de Paris) since 1995.

Ulrich Battis is Emeritus Professor of Public and Administrative Law at Humboldt-Universität zu Berlin and former director of the Institute of the Legal Profession at the same university. In September 2009 he joined the law firm Gleiss Lutz. In 2001 he received an honorary doctorate from the Law Faculty at Panteion University in Athens. His fields of specialisation include planning and construction law, environmental law, law of the sciences, public administrative law and administrative reform, with a special focus on issues of organisation and personnel.

Michael W. Bauer holds a chair in Politics and Administration at the German University of Administrative Sciences Speyer. He was a professor at Humboldt-Universität zu Berlin (2009–2012) and at the University of Konstanz (2004–2009). His research focuses on EU administration and multilevel governance, European integration, and comparative public administration and policy analysis. His collaborations include *Dismantling Public Policy: Preferences, Strategies, Effects* (with A. Jordan, S. Green-Pedersen and A. Heritier, 2012) and *The European Commission of the Twenty-First Century* (with H. Kassim, J. Peterson, S. Connolly, R. Dehousse, L. Hooghe and A. Thompson, 2013). He has worked extensively on the European Commission.

Jörn Ege is a research fellow at the Chair of Politics and Public Administration at the Humboldt-Universität zu Berlin and an associate researcher at the Berlin Graduate School of Social Sciences. He studied in Durham and Konstanz, receiving a BA in Political and Administrative Science (2008) and a Master's in Politics and Management/Public Administration (2010). He has a particular interest in the European

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Gyorgy Gajduschek is an associate professor of Public Policy and Administration at the Budapest Corvinus University and a senior research fellow at the Research Centre for Social Sciences of the Hungarian Academy of Sciences. He is also the president of the Public Policy Section of the Hungarian Political Science Association. He has published several papers on the Hungarian civil service system. He is the author of *Közszolgálat* (2008) [civil service], a study analysing the Hungarian civil service system and examining the socio-demographic composition of civil servants in a comparative and historical perspective.

Geoffrey Hunt is Professor of Philosophy and Society at St Mary's University College, Twickenham, UK, where he is also Director of the Centre for Bioethics and Emerging Technologies (CBET). He is also currently the chair of a hospice ethics committee. He was the founder of the whistle-blower support organisation 'Freedom to Care'. He founded the International Centre for Nursing Ethics (University of Surrey, UK) and was co-founder of the academic journal *Nursing Ethics*. Among his books are *Whistleblowing in the Health Service* (1995) and *Whistleblowing in the Social Services* (1998).

Christine Neuhold is an associate professor of European Governance in the Department of Political Science, Faculty of Arts and Social Sciences, Maastricht University. Currently she is co-coordinator of an Initial Training Network on Dynamics of Inter-institutional Cooperation in the EU, financed by the EU and a member of a research project on National Parliaments after the Lisbon Treaty. Before joining Maastricht University, she has held positions at the European Institute of Public Administration (EIPA) in Maastricht (1997–2000) and at the Institute of Advanced Studies in Vienna (2000–2002). She is a political scientist by training and has received her doctoral degree from the University of Vienna (awarded in 2000). Her fields of interest include the role of legislatures and non-elected officials in multi-level systems.

B. Guy Peters is Maurice Falk Professor of Government at the University of Pittsburgh and Professor of Comparative Governance at Zeppelin University. He is founding co-editor of the *European Political Science Review*. His recent publications include *Institutional Theory in Political Science* (2005), *The Handbook of Public Administration* (edited with Jon Pierre, 2007) and *Interactive Governance: Advancing the Paradigm* (with Jon Pierre, Eva Sorensen and Jacob Torfing, 2012).

Iulian Romanyshyn is a PhD candidate in Institutions, Politics and Policies at the IMT (Institutions, Markets, Technologies) Institute for Advanced Studies in Lucca, Italy. He holds an MA in Analysing Europe from Maastricht University. His main research interests include EU administrative governance, inter-institutional relations, EU foreign policy.

Katarina Staroňová is a lecturer at the Institute of Public Policy and Economics at Comenius University Bratislava, Slovakia. Her areas of specialisation include policy-making processes (legislative process, transposition, impact assessment) and the capacity of central European governments, with a specific focus on politico-administrative relations, civil service and public involvement in decision making.

Sandra van Thiel is Professor of Public Management at the Radboud University, Nijmegen, The Netherlands. Her research interests revolve around arms' length agencies, public management and the application of research methods. Publications on these topics have appeared in books such as *New Public Management in Europe* (edited with Christopher Pollitt and Vincent Homburg, 2007) and *Government Agencies: Practices and Lessons from 30 Countries* (edited with Koen Verhoest, Geert Bouckaert and Per Laegreid, 2012) and in several journals including *Public Management Review, Journal of Public Administration Research and Theory, Governance* and *Journal of Public Policy*.

Sophie Vanhoonacker is Professor of Administrative Governance and has a chair in Administrative Governance at the Faculty of Arts and Social Sciences, Maastricht University, where she is Head of the Politics Department. Since September 2011, she is also co-director of the new Maastricht Centre for European Governance (MCEG), an EU-funded 'Jean Monnet Centre of Excellence'. Her main field of research is in the area of the Common Foreign and Security Policy with a particular focus on the role and influence of non-elected administrative actors on the European foreign policy process. Recent publications have dealt with the emerging system of an EU level system of diplomacy and its processes of institutionalisation.

Luc Verhey is a member of the Advisory Division of the Dutch Council of State and Professor of Constitutional and Administrative Law (Kirchheiner Chair) at the Faculty of Law, Leiden University. Until April 2012 he was Professor of Constitutional and Administrative Law and Director of the Montesquieu Institute at Maastricht University. His main field of research is in the area of constitutional law with a particular

focus on the role of political, administrative and judicial institutions, human rights and data protection. Recent publications have dealt with judicial review on human rights, the principle of proportionality and the horizontal effect of the right to privacy.

Diana Woodhouse is Emeritus Professor at Oxford Brookes University. Related activities include advising the UK parliamentary Public Administration Select Committee on its investigation into the use of inquiries and co-authoring its report ('Government by Inquiry', 2005, HC51); reviewing the standards of conduct regime of the National Assembly for Wales and making recommendations (2002); and authoring the Society of Legal Scholars response to government consultation papers on the establishment of a Supreme Court (CP11/03); and the abolition of the Office of Lord Chancellor (CP13/03). In 2012 she received the Order of the British Empire (OBE) for services to legal scholarship and higher education. Her research straddles the boundaries between law and politics. Particular foci include the requirements of accountability and the relationships between the various arms of government, namely ministers, officials, the legislature and the judiciary. These topics are explored in her numerous publications, including books such as *Ministers and Parliament: The Theory and Practice of Accountability* (1994), *In Pursuit of Good Administration: Ministers, Civil Servants and Judges* (1997) and *The Office of Lord Chancellor* (2001).

List of Abbreviations

ABD	The Senior Civil Service (Dutch: Algemene bestuursdienst)
APA	Agricultural Paying Agency
BZK	Home Office (Dutch: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties)
CC	Conciliation Committee
CCA	Consultative Committee of Appointments
CDA	Christian Democratic Appeal (Dutch: Christen-Democratisch Appèl)
CEE	Central Eastern Europe
CODE	Codecision and Conciliation Secretariat
CSC	Civil Service Commissioners
CSO	Civil Service Office
DG	Directorate General
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
ENA	National School of Administration (French: Ecole nationale d'administration)
EP	European Parliament
EPP	European People's Party
EUCIQ	European Commission in Question
FOI	Freedom of Information Act
FtC	Freedom to Care
GCHQ	Government Communications Headquarters
GDR	German Democratic Republic
HR	human resources
HRA	Human Rights Act
HRM	human resource management
MEP	Member of the European Parliament
MS	Member State(s)
NHS	National Health Service
NPM	New Public Management
NSDAP	National Socialist German Workers' Party (German: Nationalsozialistische Deutsche Arbeiterpartei)
OLAF	European Anti-Fraud Office
OLP	ordinary legislative procedure
OSA	Official Secrets Act
OSCE	Organisation for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PASC	Public Administration Select Committee
PIDA	The Public Interest Disclosure Act

PvdA	The Labour Party (Dutch: Partij van de Arbeid)
SG	Secretary General
SNE	Seconded National Expert
SPP	strategic planning and programming
TFEU	Treaty on the Functioning of the European Union

Part I
Civil Servants and Politics: Setting the Scene

1
Introduction

Christine Neuhold and Sophie Vanhoonacker

The rationale for this book

The relationship between civil servants and politics is a delicate one (Weber 1922), and it is well known that the formal dichotomy between the political and administrative branch is to a certain extent artificial. While some early thinkers about bureaucracy – such as Wilson in the late 1880s – departed from the assumption that 'politics' could be clearly distinguished from 'administration' (Wilson 1887), later scholars argued that reality was more complex. They emphasised that in day-to-day policymaking civil servants are under continuous political pressure and that politics also plays an important role at the administrative level (Long 1949; Simon et al 1950). In the early 1970s scholars of bureaucratic politics developed an explicit 'bureaucratic' politics interpretation of policymaking (Allison 1971).[1]

More recently the 'New Public Management turn' in public administration has again put the debate on politico-administrative relations in the centre of the scholarly debate. The managerialist approach was triggered by the expectation that a more strict separation of politics and administration would give rise to more effective policymaking. From the academic literature we however know that this did not always happen (Peters and Pierre 2004; Van Thiel, Chapter 6, in this volume). The increased autonomy of administrations under the guidance of public managers has been countered by new attempts and strategies of political leaders to intervene in bureaucratic appointments and day-to-day public policymaking more broadly, triggering renewed concern about politicisation.

Today's society brings further challenges to this complex relationship between bureaucrats and political players. On the one hand the

growing role of knowledge and expertise in the policymaking process has strengthened the position of the civil service and increased their potential to exert influence on the content, scope and execution of policies formally decided upon by democratically elected politicians (Huber 2000). At the same time there is the above-mentioned tendency of increased involvement of politicians with the civil service, also in countries that traditionally have attached high importance to the neutrality of policy experts (Peters and Pierre 2004; van der Meer and Dijkstra 2011). Furthermore the emergence of supranational and international bureaucracies as key players in processes of governance raises new challenges for the interaction between civil servants and politicians and our understanding of this intricate relationship (Curtin and Egeberg 2008).

Against this background, this edited volume examines the changing relations between civil servants in the political arena in Europe in the last two decades, with a special focus on politicisation. It opts for a broad definition of politicisation, defining it as 'the substitution of political criteria for merit-based criteria in the selection, retention promotion and disciplining of members of the public service' (see Peters, Chapter 2 in this volume). Although this does not include political patronage systems in which elected politicians distribute public jobs to loyal supporters, it is sufficiently broad to encompass many different forms and guises of politicisation in various European countries. In order to get a better understanding of the particular characteristics of politico-administrative relations, Peters, further disaggregates this broad definition into six different categories as to how the interaction between the two levels is implemented (see Table 1.1). Amongst other processes he refers to direct political intervention in the nomination of civil servants, the nomination of highly professional loyalists, the use of additional controlling structures such as cabinets and even the influence of the social sector on the nomination of career civil servants. The categories both encompass forms where politicisation is a conscious choice by politicians as well where it results from structural features of the political system. He furthermore emphasises the need to look beyond formal rules and relations to also examine the daily practice of interaction between civil servants and their political masters (Chapter 2, in this volume).

Starting from the above categorisation, the central question guiding the contributions in this volume is the extent to which politicisation of the public service plays a role in today's political process of policymaking and which formal and informal patterns of political

Table 1.1   Different categories of politicisation (Peters 2013)

Direct politicisation	This relates to the direct attempts to have political loyalists occupy positions.
Professional politicisation	This concerns public officials who are political loyalists but at the same time are also professionals and are the products of a professional career system.
Redundant politicisation	This refers to redundant structures created by a government to monitor the actions of the career employees. Examples include ministerial *cabinets* and special advisors.
Anticipatory politicisation	This refers to a situation whereby civil servants on their own initiative choose to leave their positions when there is a change of government.
Dual politicisation	This refers to a situation where besides the political executive the President or parliament also attempts to control the bureaucracy by placing their own nominees in positions of power with the aim to exercise control over policy.
Social politicisation	This alludes to the (indirect) influence of social actors (such as industry and trade unions) over the career path of civil servants.

involvement can be distinguished across countries. The question is raised, whether there is – as many practitioners have claimed – a growing tendency of political leaders to intervene in the realm of the public administration and to steer the work of civil servants in their preferred direction (Verhey, Chapter 3 in this volume). If so, has the delicate balance between the two levels been put under pressure as a result? The question is of interest not only because it may shed a light on the efficiency and effectiveness of political systems but also on their democratic legitimacy.

In this context Member States of the European Union have been selected as case studies. While all chapters pay attention to the historical roots and long-term national traditions with regard to political-administrative relations, the main focus is on the period going from the late 1980s to today. This is the period in which New Public Management (NPM), with its emphasis on greater cost-efficiency and good governance, has been prevalent as a model for administration in many European countries and concurrently a period in which major administrative reorganisations have been taking place. It is also the

time where the roles of European supranational bureaucracies have been considerably strengthened as a result of new integration initiatives in the frame of the Single European Act (1987) and the Maastricht, Amsterdam, Nice and Lisbon Treaties (1993–2010).

The choice for particular countries has been motivated by their different degrees of politicisation, with the UK and Germany at the opposite side of the spectrum. Other selected countries ranging between these extremes are the Netherlands, France, Hungary and Slovakia. The country studies also go beyond the traditional typologies in order to see whether the past classifications actually hold true in the practical political process or have been subject to transformation and change. The above-mentioned typology of six forms of politicisation developed by Peters (ranging from direct politicisation to social politicisation) guided the respective authors as a conceptual framework in the quest to identify the specific characteristics of their cases and allowed for a comparative approach (see Chapter 2). In addition to the country studies, the volume pays special attention to the supranational bureaucracies of the European Union itself playing a key role in the EU's day-to-day decision-making process. The focus is on the European Commission 'as a new distinctive executive centre at the European level' (Curtin and Egeberg 2008) and the European Parliament, who since the 1990s has developed into a fully fledged co-legislator in a wide range of policy fields. The emergence of these European-level bureaucracies raises new analytical challenges for the study of politico-administrative relations. A central question in this context is the extent to which concepts stemming from the analysis of national bureaucratic systems are applicable to the EU (Hooghe 2001).

Organisation of this volume

Taking into account the above-mentioned research focus, the volume is divided into three parts. Part I, the more general part, presents a definition of politicisation and cross-cutting themes related to the relations between civil servants and politicians. The second one presents a number of case studies on political-administrative relations in a selected number of EU Member States, illustrating how different forms of politicisation play out in the practical political process. In the third part special attention is given to the emergence of supranational bureaucracies and the challenges this poses for politico-administrative relations.

Guy B. Peters opens the first section by discussing alternative conceptualisations of the term *politicisation*. He relates these to the

different political settings in which they occur and thus provides the conceptual framework for the volume. Chapter 2 moreover considers the empirical and normative consequences of politicisation. It does not only point to the risks of politicisation for undermining the professionalism of the civil service but also to possible benefits through its creation of increased links between the state and society. Luc Verhey follows by examining how the relationship between civil servants and politicians has been subject to transformation and how this has given rise to tensions. Verhey then goes into their possible causes and how they can be reduced. He pleads for a further clarification of the fundamentally different roles of civil servants and politicians and advocates that both groups give each other enough room that they can effectively fulfil their responsibilities. While emphasising the desirability of the political neutrality of civil servants, he also sees it as imperative that they are sufficiently sensitive to the political environment in which they operate. Geoffrey Hunt in turn focuses on how politicisation affects mechanisms for civil servants to report corruption and misconduct. Following a general exposition of whistle-blowing in the public sector, the author examines in more detail the role of recent legislation in the UK as it impinges on the disclosure of government-held information. It is argued that whistle-blowing is an essential feature of democracy and is intimately connected with democratic issues of human rights, freedom of information, and freedom of expression. Specific cases of whistle-blowing civil servants are used as illustrations.

Diana Woodhouse opens the section of case studies on political-bureaucratic relations by probing into this phenomenon in the UK, a country with a long history of the political neutrality of the civil service but recently heavily influenced by the ideas of New Public Management (NPM). She looks into how NPM and other reforms have impacted upon two key constitutional principles of individual ministerial responsibility and core civil service values such as integrity, honesty, objectivity and impartiality. She shows an emerging difference between political and public accountability: while today civil servants are still not directly accountable to parliament, they are increasingly expected to be so to the public. She illustrates how the lack of consensus about whom is accountable for what has given rise to increased tensions in politico-administrative relations. She furthermore examines the core civil service values and comes to the conclusion that as a result of the introduction of new Codes, these values have been preserved and – at least on paper – have even been strengthened. This however does not

exclude that over time the way the core values are concretely implemented may change.

Frank Baron presents a 'double' case study on political-administrative relations in France by respectively studying the French executive and the parliament. He shows how, due to distinctive requirements and roles, the relationship between politicians and civil servants is organised differently in these two bodies. In the case of the government, there is the need to reconcile the responsiveness to changing political demands with the principles of neutrality and continuity of the public service. This has led to an important role of ministerial cabinets in French government. By appointing experienced senior civil servants who are politically loyal, a minister ensures that his political priorities are translated into new initiatives and laws. At the same time the cabinets allow the underlying civil service to remain neutral and detached from the mayhem of the day.

In the case of the parliament, the administration fulfils an important role as provider of expertise both in parliamentary committees as well as in plenary sessions. This requires an independent position which is guaranteed by the fact that French parliamentary officials accede to the parliamentary public service through an anonymous exam, the so-called '*concours*' and through the semi-automatic character of their promotion, meaning that the influence of the political level on their career is limited.

Sandra van Thiel focuses on the impact of NPM on the Dutch civil service. Traditionally the Dutch civil service had to operate in a system that expected bureaucrats to be neutral: there was no spoils system, ministers had very few (personal) political advisors, there was no administrative elite and appointments were said to be based solely on merit. The consensualist nature of the Dutch political system furthermore implied that civil servants had to work with politicians from different party backgrounds at the same time (because of coalition cabinets) leaving no room for their personal opinions. The rise of managerialism (NPM) in the 1980s meant that there were even more incentives to encourage neutrality. Senior civil servants became public managers who 'ran' the government in a business-like manner. As a result, managerial skills became the dominant criterion in appointments. Moreover, appointment procedures were professionalised and made more transparent, leaving less room for politicisation. According to the (scarce) literature on this topic, political motives for appointments of top civil servants are therefore non-existent in the Netherlands. In fact, examples are given of ministers who – purposively – appoint civil servants with a different

party background, fitting with the consensualist tradition. Van Thiel explores to which extent these claims and expectations are indeed true. Based on more than 50 elite interviews, data are presented that support parts of the claims illustrated but also show that politicisation of the top civil service is a well-known feature. The contribution of the rise of managerialism to a more neutral civil service is contested; while senior civil servants are expected to behave more like public managers, there are also indications that they have become more political.

Katarína Staroňová and Gyorgy Gajduschek then go on to examine civil service reforms in Slovakia and Hungary. Following the collapse of Communism, it is illustrated how civil service reforms in Central Eastern European countries have brought in various tools aimed to increase professionalisation and depoliticise civil service. The two countries have undertaken different trajectories of reforms: an incremental change of regime in Hungary and a more radical and abrupt approach – mainly under pressure from the EU – in Slovakia. While there have been some policy successes and institutional improvements, these achievements have proven to be *ad hoc*, depending on individuals rather than on a solidly performing system. Thus, the overall reform outcome, an unpoliticised professional civil service recruited and remunerated on merit system, has not been achieved satisfactorily. The authors illustrate that regardless of the particular reform modus chosen, politicisation of the civil service still remains due to the dynamics of transition.

Ulrich Battis examines politico–administrative relations in Germany. The chapter starts by reviewing the political rights and activities of civil servants in different eras of German history, among them the Weimar Republic, Nazi Germany and the German Democratic Republic, emphasising how changes of the German state had different impacts on officialdom and how some of these features still linger on in today's bureaucratic system. It furthermore gives an overview of the most relevant principles of German civil servants law; including the neutrality of the civil service system, the civil servants' duty of loyalty to the constitution and the duty of moderation and restraint when expressing political opinions. Battis shows how despite the constitutional principle of neutrality, Germany has a long tradition of patronage as well as of political bureaucracy. While patronage is seen as problematic, because of unfair preferences, the appointment of political loyalists who are at the same time products of the career system is considered to be positive. Sensitive to the political priorities of the government, they fulfil an important bridging function between the neutral civil service and society at large.

Michael Bauer and Jörn Ege start off the section on supranational bureaucracies by looking into the European Commission after the 'Kinnock reforms'. The authors analyse the relationship between the Commission's bureaucrats and European-level politicians – i.e. the college of Commissioners and European Parliament – by taking into due consideration the particularities of the EU system in general and of the Commission as a supranational administration in particular. Data about role perceptions of Commission officials from the EUCIQ (European Commission in Question) project as well as data about Commission's new personnel policy after the Kinnock reforms serve as the empirical basis for their observations. While political ideology and nationality does not seem to play an important role in the daily work of Commission civil servants, this does not mean that they are not responsive to the political requirements of their job.

Christine Neuhold and Iulian Romanyshyn shift the focus of the interplay of bureaucrats and their political masters to the European Parliament (EP). Even if, according to staff regulations, officials are supposed to be politically neutral and remain independent from any national influence, it is inevitable that in a multi-national Parliament where various categories of staff, with different lines of reporting and different loyalties, working together on a daily basis, political influence is bound to play a role. This is in part illustrated by the role administrative staff play in the Conciliation Committee, which is a forum that is convened in order to resolve legislative disputes between the EP and the Council of Ministers.

The concluding chapter brings together the main insights from the cases; it confronts the findings from the various chapters and examines whether there is indeed sufficient evidence to support the often heard claim of general politicisation in today's public policymaking. It furthermore identifies some of the principal external and internal factors that impact upon politico-administrative relations and probes into the consequences for more normative questions such as accountability.

Note

1. For an overview of the debate of issues of delegation of civil servants in parliamentary democracies (see Huber 2000).

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2
Politicisation: What Is It and Why Should We Care?

B. Guy Peters

The relationship between civil servants and their political masters, and the relative powers of these two sets of officials, is one of the central issues in contemporary governance. In political theory both group of actors in government can claim a legitimate role in policymaking. In democratic terms the claims of the political leaders are the stronger. These officials have a popular mandate through elections and therefore can claim to represent the will of the people. Although Richard Rose (1976) and others (Royed 2009) have pointed out that the connection between elections and policy choice is tenuous at best, there are still normative claims that they have the right to control policy.

The normative claims from the public bureaucracy are somewhat less powerful, and also less clear. One part of the claim for involvement in making policy is the expertise of the bureaucracy. Many, if not most, executive politicians – ministers and their colleagues – are amateurs in the policy areas for which they have responsibility. On the other hand, civil servants often are policy experts who have been working in the policy area for some years.[1] Therefore, ministers might well depend upon the advice of their civil servants in order to make the best possible decisions. Likewise, civil servants are in most cases permanent employees of government, while the politicians may be birds of passage.[2] Thus, the civil servants represent the organisational memory of a department and can advise their ministers not only on the basis of substantive expertise but also on the basis of past success and failure.

Because they are meant to be permanent functionaries within the public sector, the political neutrality of civil servants has been an important value, and source of legitimacy, in most democratic systems. 'Neutral competence' has been a standard criterion for evaluating the quality of administrative systems (Aberbach and Rockman 1994).

Questions of expertise and the neutrality of policy advice are important for justifying the political neutrality of the upper echelons of the public service, but at lower echelons the issue is if anything more important. At the lower levels of the government the public servants are in direct contact with the public and need to be able to treat the public in an impartial and professional manner. These 'street level bureaucrats' (Meyer and Vorsanger 2004) may be especially important in defining the public image of government, so that any hint of political or ethnic or gender bias will be especially damaging.

Although political neutrality has been an important value for most democratic systems, in all systems there is some level of political appointment at the top of the administrative hierarchy. At one extreme permanent civil servants go virtually to the apex of ministerial hierarchies in the United Kingdom and in several other Westminster systems.[3] At the other extreme in the United States, the President and his cabinet secretaries can appoint over four thousand employees at the top of federal organisations, and similar levels of appointment exist in most state governments.[4] In between those extremes are a variety of approaches to the permanence of public servants, and the capacity of political leaders to appoint their own administrators.

The relationship between political and administrative officials is to a large extent based on national traditions (Painter and Peters 2010) and on path dependence (Peters et al. 2005). The strongest tradition of separating politics and administration is found in the Anglo-American democracies, and especially in the Wilsonian tradition in the United States (Kettl 2002). Although it appears paradoxical, the large number of political appointments in the United States reflects that norm of separation and the perceived need of politicians to ensure that their policy choices are indeed implemented through the bureaucracy. Further, below the highly politicised level of appointments, the civil service in the United States has strong norms of, and strong legal mandates for, political neutrality.

Other traditions permit a closer connection between politics and administration. One of the clearest cases is Germany in which the senior civil service is highly professional, but it is also political. The upper echelons of the civil service have worked their way upward through the professional career structure but when they approach the very top positions they tend to declare a partisan affiliation. While this level of political involvement would be unacceptable in many administrative systems like in Germany, and to some extent in Southern European countries, the level of political involvement is widely accepted.

I could provide extensive descriptions of patterns of political involvement in any number of countries, but the conceptual issues about these relationships are more important. These formal patterns of relationships are important but it is perhaps more important to understand the basic issues and to understand the various ways in which formal patterns of interaction and relative powers of the two sets of actors function in practice. As will be discussed below, in many cases formal patterns have been unchanged while the degree of political involvement with the civil service, and hence attempts at political control over public policy, has been increased dramatically.

The development of politicisation

Scholars and practitioners of public administration have tended to denigrate politicisation of the public service (see for example, Peters and Pierre 2004). The literature on the relationship between these actors has tended to assume that although politicians should control public policy for democratic reasons still the civil service should have its autonomy and capacity to use their neutral competence within the policy process. This 'Shafferian bargain' (Hood and Lodge 2006) between civil servants and their political masters has come under increasing pressure in most industrial democracies.

Despite the general acceptance among scholars and among most practitioners of the desirability of maintaining some autonomous, neutral role for civil servants in governance, there has been a general trend toward greater politicisation of the civil service over the past several decades (see Rouban 2003). This tendency toward greater politicisation has been apparent in any number of industrialised democracies, despite political traditions (see above) that delegitimate this style of managing the public service. The process of politicisation has proceeded through several stages, producing the high levels of political involvement in administration reported in this volume.

The first act in the drama of increasing political involvement in the nominal role of civil servants occurred during the period of domination by neo-liberals, at least in many Westminster democracies and the United States (Savoie 1994). When these parties from the political right, or in the case of New Zealand from the left with neo-liberal leanings (Gregory 1991), came to power one of their numerous targets was to reduce the power of the permanent civil service whom they considered to be entrenched and unresponsive, especially to politicians from the ideological right. 'De-privileging' the existing civil service (Hood 1994)

and supplementing them with numerous political appointees were the dominant strategies for attempting to restore political control within public sector.

Somewhat paradoxically, given that their advocates had tended to denigrate civil servants, the New Public Management ideas favoured by many of the neo-liberals, although they were designed to enhance the efficiency of the public sector, also tended to enhance the autonomy of public managers.[5] Administrative reforms such as agencies (see Yesilkagit and Van Thiel 2008) and the general ethos of managerialism tended to denigrate the role of political leaders and to exalt the role of the individuals who ran programs. At the extreme the assumption was that the public sector might be better run were it left largely to the public managers with the politicians largely setting broad patterns of policy.

The third act in this drama has involved political leaders attempting to restore some of their control over public policy, and over the public sector more broadly. This perceived need for control has been manifested for several reasons. One is largely for democratic reasons, with presidents and prime ministers believing that they were indeed elected to make and implement policy. Further, the disaggregation of the public sector into agencies and other autonomous organisations has created the need for more central steering (see Bouckaert et al. 2009). And beyond simple coordination the need to impose some greater strategic sense on the public sector has tended to drive power upward toward the centre of government (Dahlstrom et al. 2011).

The shift of policy control to some extent must be considered in the context of the apparent 'presidentialisation' of politics in many parliamentary democracies (Poguntke and Webb 2005; Bevir and Rhodes 2006). Although this term is highly contested, the basic argument has been that parliaments and even cabinets have been losing power to prime ministers. This loss of control, however, often is political rather than over policy, so that prime ministers may be placed in a very awkward position. They are increasingly seen as being personally responsible for what happens in government, and their media position makes that apparent to the public. Despite that public perception of power, these officials may in reality be relatively powerless over a public sector that has been decentralised, deconcentrated and disaggregated.

This drama within the public sector over the past 30 years has produced increased perceptions of politicisation in the public sector. While the role of the civil service in many ways has altered little, in many ways it has changed dramatically (for an interesting discussion of

these changes, see Verhey, Chapter 3 in this volume). These changes are often referred to generically as politicisation, but that term is itself rather broad and is interpreted in a number of different ways. The next section of this chapter will discuss some of the alternative meanings of the term as well as the means through which it has been implemented.

Concepts and definitions

Despite the general concern about politicisation, the term has been interpreted in a number of different ways. This chapter will discuss alternative conceptualisations of the term and relate those to the different political settings in which they occur. Finally, the chapter will consider the possible consequences of politicisation, including possible contributions that politicisation can make to the capacity of elected officials to govern more effectively.

In our comparative study of politicisation we argued (Peters and Pierre 2004) that politicisation should be defined as:

> …the substitution of political criteria for merit-based criteria in the selection, retention, promotion, rewards and disciplining of members of the public service

That definition has been used widely and still appears to capture the central meaning of the concept (Eichbaum and Shaw 2008). As well as capturing the essence of politicisation, this definition also excludes some mechanisms through which governments may shape public employment but which are not politicisation in any meaningful sense of the term. Perhaps most importantly our definition of politicisation does not include strictly patronage systems in which public jobs are distributed not to control public policy but simply to provide jobs for loyalists. This strategy may maintain the political party, but it may not be successful in shaping policy. At times it may be difficult to distinguish the two patterns, but wide-scale distributions of public jobs, as opposed to more strategic choices, tend to represent the patronage option.

That said, this definition of politicisation is rather broad, and it appears useful to attempt to disaggregate the definition and to examine some of the alternative forms of politicisation that have been implemented. (See also Mulgan 1998.) All of these formats for organising the State and utilising public servants in governance have some general aspects of politicisation in common but also have some important differences

that may influence the manner in which the politicians and public administrators actually work together.

Further, in some cases politicisation results from structural features within the public sector, while in others it occurs more as a conscious choice by political leaders. For example, the US government is organised in a way that makes political appointments a natural part of the structure. In others, such as the Westminster cases, there have been very conscious political choices by prime ministers to attempt to enhance their control over the civil service without changing the formal structures of government. Others, such as Germany to some extent come between those two extremes, involving some structural elements and some elements of choice.

1) *Direct politicisation*

The most obvious form of politicisation is very direct attempts to have political loyalists occupy positions that might otherwise be career. This type of direct intervention and replacement of career officials is relatively rare in the contemporary world, but still occurs. For example, in several of the post-communist systems in Central Europe, the initial adoption of merit-based civil service system has been followed by overt politicisation (see Meyer-Sahling 2006). At the top of the civil service pyramid and then increasingly far down those pyramids, political appointments have been replaced by political loyalists and this pattern has been perpetuated through several electoral cycles.

2) *Professional politicisation*

Some public officials may be political but they are also professional. The clearest example of this pattern is Germany, in which the upper echelons of the public sector are filled by political loyalists, but these loyalists are also the products of a career system that is highly professionalised. When there is a change in partisan control over the government, the incumbent civil servants are replaced with another team who are equally professional but simply have different partisan loyalties.

To some extent the change of numerous officials in the federal government of the United States had come to approximate this pattern of professional politicisation. Although the appointed officials were clearly political, increasingly they were also experts in the policy areas for which they were responsible and were members of stable policy communities. The process of professionalising the spoils system in the United States had progressed substantially, but the positive process was

curtailed during the administration of George W. Bush, who returned to appointing officials almost entirely on the basis of partisan loyalty.[6]

3) *Redundant politicisation*

Rather than replacing career civil servants when they come into office, or when they want to exercise control over a policy, a government may create redundant structures that monitor the actions of the career employees. These additional structures may be used to create policy choices desired by the government in office.[7] The use of ministerial *cabinets* is one example of building this redundancy into the management system, with personal appointees from the minister monitoring civil servants (Pelgrims 2002). The capacity of these *cabinets* to actually control the career service may vary, but the monitoring and flow of information may in itself be a crucial control mechanism.

In other cases, especially in Westminister systems, ministers appoint special advisors that help them to manage their departments and to make policy (see Richards 2007). This practice began in earnest during the days of Thatcher and Mulroney, but has been expanded substantially since that time in most Westminister systems. For example, Eichbaum and Shaw (2010) point to the widespread use of special advisors in the New Zealand government, and similar patterns can be observed in other systems that have had a strong tradition of neutrality in the public service.

The presidentialisation of politics in many parliamentary regimes has tended to emphasise the redundant version of politicisation. Offices of presidents and prime ministers have been increasing in size and in influences, giving those chief executives substantial influence over policy. Even in presidential regimes some of the same processes have been occurring, as American presidents such a George W. Bush and Barack Obama have moved even more policy functions into the White House, including the use of large numbers of officials referred to as 'czars', who have personal influence over policy in the name of the president.

4) *Anticipatory politicisation*

A fourth version of politicisation is somewhat less easy to document but may be important in shaping behaviour in some cases. Even in instances in which the government of the day may not attempt to intervene, overtly civil servants may perceive that their capacity to be effective will be diminished with a new government. Therefore, they may choose to leave their positions when there is a change of government

(see Christensen 2004). The net effect of these autonomous decisions by civil servants may be virtually the same as for the more overt forms of politicisation although the political leaders may be able to deny culpability.

At the extreme, anticipatory politicisation may dissuade individuals from joining the civil service, believing that the system is biased in certain directions or is likely to be controlled by a particular party. For example, although a country such as Sweden may in general have a very well functioning merit system (see Pierre 2004), the domination of the Social Democratic party for most of the period since the 1930s may have limited the willingness of adherents of the bourgeois parties to begin careers in the public sector. In another version of anticipatory politicisation, French civil servants may adopt political stances in the hope of generating political opportunities in the future (Rouban 2004).

5) *Dual politicisation*

The large majority of the discussion of politicisation assumes that the political executive is the major or sole player in the process. In presidential regimes, and in some cases in parliamentary styled regimes, the legislature may also play some role in attempting to control the bureaucracy. In the extreme both political institutions may be attempting to place their own nominees in positions of power and may also develop dual structures of appointments to attempt to exercise control over policy. To some extent the United States, with its powerful and independent Congress, offers the clearest opportunity for this style of politicisation but other presidential regimes in Latin America also display some of this behaviour. Also, semi-presidential governments may have some conflicts over control of the bureaucracy between the president and the prime ministers (see Arter 1985).

6) *Social politicisation*

Finally, as the public sector has become increasingly tied to social actors through networks and analogous structures, those social actors now appear to be able to exercise a good deal of influence over the bureaucracy (see Sorenson and Torfing 2007). These influences can rarely be overt, given that the social actors do not have the right to appoint civil servants or affect their career patterns directly. That said, however, in some countries and some policy areas the social actors may be sufficiently important that they can influence the career success of civil servants responsible for those policies.

The consequences of politicisation: empirical

We might be able to extend this analysis and develop several other types of politicisation. That might help to further differentiate patterns of behaviour, but these categories capture most of the reality of contemporary politicisation in the public service. This is not, as can be seen, a simple phenomenon but rather a number of different patterns of behaviour to be seen as increasing the influence of political leaders on the bureaucracy and on public policy. These are all politicisation, but they may have substantially different effects on governing.

Perhaps the most important difference among these strategies for politicisation is whether the style tends to create competition over policy control, or whether it creates greater domination by the cadre of politicised officials. For example, overt politicisation and the anticipatory form of politicisation tend to eliminate challenges to policy control of the dominant political party or parties. Redundant and dual styles of politicisation, on the other hand, tend to institutionalise some competition over policy ideas and may therefore in the end produce better policies. That more positive outcome may depend, however, upon the willingness of political officials to weigh evidence coming from multiple sources.

Strategies of politicisation also have consequences for the civil service as an institution and for its role in governance processes. All of the politicisation strategies tend to undermine the professionalisation of the civil service. Even with the professional strategy in Germany, civil servants are aware that for career purposes they will have to abandon their neutral detachment and become more a part of the political process at some point. For a public servant committed to the career service such political involvement may appear undesirable. That said, however, this strategy is less detrimental to professionalism than are the other approaches.

The consequences of politicisation: normative

The conventional normative stance on politicisation of the public service is that it is a blight on well-functioning democratic politics. This conventional approach to the question values highly the expertise and stability of the career public service and places less importance on the capacity of political officials to shape public policy through shaping the personnel who work for government. This neutral competence is

assumed to be a means of maximising the quality of policy choices and implementation.

Although the conventional wisdom and the conventional normative analysis denigrates politicisation of the civil service, there are arguments that can be made in favour of more political control over the public bureaucracy. The most obvious argument on behalf of politicisation is that direct political control over the bureaucracy is in many ways democratic. If political leaders are elected to make policy and control the actions of government then having a civil service that is committed to the success of that program can contribute to that democratic process. While it is important that the civil service be highly competent, it may also be important that those civil servants also be interested in the success of the government.

The permanence of the civil service may also present problems for democratic government. If the civil service is divorced from the remainder of society and not at all representative of that society then it can hardly function in a democratic manner. The representative bureaucracy literature has discussed this in terms of the social and educational characteristics of the civil service, but the simple lack of movement in and out of government may also reduce the connection of government to society. While politicisation may not be the most beneficial way in which to create that connection, it does create some links between the State and society.

Conclusion

Governing effectively, and governing democratically, requires both political officials and public servants. The important question that arises is the extent to which these officials can work together and produce that governance. At various times either politicians or civil servants may become the dominant actor in governance, and there is a continuing process of institutional politics among these two sets of actors. The politicisation of the civil service and the attempts of the civil service to assert its autonomy from political control are two components of the same political process: attempting to define the relative powers of actors in governing.

The past several decades have had a substantial increase in the political pressures on bureaucracies. These pressures have to some extent been successful in making public bureaucracies more directly tied to the governments of the day. The problem for the current governments,

however, is that they increasingly open the gates for continuing politici-sation by the next government. The dangers of greater swings in policy and less stability in governing have become more evident. The ques-tion is how political parties and individual political leaders perceive the costs and benefits of politicisation.

The politicisation of the public service may also have significant conse-quences for the public service itself. If it becomes increasingly apparent that professional civil servants are being marginalised by politically appointed officials, then the role for civil servants is diminished and talented people. The dominant motivations for civil servants taking these positions is that the job is interesting and they can serve the greater good for society. If the interesting, policy relevant components of the posi-tions are removed and handed to political appointees then the 'best and brightest' will no longer be interested in government, and government will be the poorer thereby. Thus, as is often the case, there is the need to find some balance between the commitment of the politically appointed officials and the expertise and professionalism of a career civil service.

Notes

1. The extent to which this is in fact true varies across countries, with many Westminster systems having civil servants specialise in a policy area only relatively late in their careers. For others such as the United States, most civil servants spend most of their careers within a single department or even a single component of a department.
2. The coalition government elected in Britain in 2010 has pledged to keep its ministers in one department for a more extensive period of time than in the past, giving them the opportunity to gain some expertise while in office. See 'Governing in the Long Term', UK Cabinet Office.
3. A number of political advisors may be appointed for each minister, but the principal hierarchy within the department remains almost entirely career. Likewise, the creation of executive agencies with chief executives appointed possibly from outside government has added additional opportunities for political involvement.
4. These may be the extreme among the more industrialised and institutional-ised democratic systems but in some others, such as Mexico (Mendez 2009), there is much more extensive appointments to positions in government.
5. The assumption appears to have been that these would be 'real managers', many coming from outside government, rather than the career public serv-ants who were the bane of the neo-liberals. In practice many if not most of the individuals filling the managerial posts were in fact civil servants.
6. The appointment of Michael Brown as head of the Federal Emergency Management Agency at the time of Hurricane Katrina was an egre-gious example of the politicisation of appointments under the Bush

administration. Mr. Brown had no previous experience in emergency management nor indeed in any other area of public policy.

7. The extreme version of this form of politicisation may be the system in communist regimes in which the party and the government are in essence parallel structures that spend a good deal of their time watching each other rather than making and implementing public policies.

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3
Civil Servants and Politicians: Problems and Future Prospects

Luc Verhey

Introduction: the Dutch Iraq report

At the beginning of 2009, after six years of quarrelling in Dutch politics, an independent committee was established to investigate the decision-making process in the Netherlands concerning the invasion in Iraq in 2003. On 12 January 2010, the Chairman of the Committee, the former President of the Dutch Supreme Court Davids, presented the Committee's report to the then Dutch Christian Democratic prime minister Balkenende (CDA). What happened immediately afterwards was astonishing: the Dutch prime minister gave a press conference the same day during which he rejected almost all the critical conclusions of the Committee. He considered that what his government had decided at the time, which amounted to political support for the invasion, was still right and that the Committee's position merely illustrated that one could take a different view of the matter.

That this was not the most sensible thing to do under these circumstances became immediately clear. The Social Democratic party (PvdA), who had always been against the invasion, demanded a rectification by the government. They were currently coalition partners with the Christian Democratic party (CDA), but were in the opposition when the invasion took place. Their demand almost led to a political crisis. At the end of the day the government came up with a statement, reluctantly supported by the prime minister, that in view of the knowledge they now had available, a more adequate legal mandate of the invasion would have been necessary. A few weeks later, after lengthy internal debates, the government came up with a more elaborate reaction which seemed to support the headlines of the report but in which at the same time many things were brilliantly omitted.[1] However, this

all appeared to have come too late to save the government. Two weeks later the government stepped down because it could not come to an agreement on the eventual renewal of the Dutch military mission to Afghanistan.

As mentioned above, the report of the 'Davids Committee' is very critical of the way the Netherlands decided to support the invasion. What from the perspective of this volume is particularly relevant is that the report gives an interesting view on the way politicians and civil servants dealt with the matter. As the report suggests, there was a fundamental difference of opinion within the Ministry of Foreign Affairs regarding the legitimacy of using force against Iraq. According to the committee, legal arguments were systematically overruled by political considerations. Lawyers of the Legal Division of the ministry were hardly have been involved in the decision-making process. Further, they did not have had direct access to the minister. The legal arguments sustaining the conclusion of the Dutch government at the time – that there was a sound mandate under international law – the committee found to be biased, as if such a mandate, although controversial, could still be construed (Davids Committee 2009, 268–273).

More or less the same happened with the information of the Dutch Intelligence and Security Services. Although these services were more critical about the presence of weapons of mass destruction in Iraq than their colleagues abroad, these signals were, again according to the committee, not reflected by the relevant ministers and departments. On the contrary, ministers and departments extracted those statements from the intelligence service reports that were consistent with the political stance already adopted. Even the competent parliamentary committee, coming together in secret, had not been informed by the government about the more nuanced views of the intelligent services.

However, the critical analysis of the committee was not the final word. After the publication of the report, feelings of dissatisfaction and anger about some of the committee's conclusions leaked out of the Ministry of Foreign Affairs.[2] Some civil servants, whose conduct has been heavily criticised were very disappointed about the report because, they held, it described the facts incorrectly. The suggestion, for example, that the decision to support the invasion was taken in a meeting which lasted only 45 minutes was in view of some of the civil servants involved absolutely false. A civil servant, who like his colleagues wanted to remain anonymous, concluded: 'If our ministers are not prepared to correct this, let us then have a parliamentary inquiry so that we can defend ourselves'. Jaap de Hoop Scheffer, the Minister of Foreign Affairs at the

time and former secretary general of NATO, did defend the civil service before the final parliamentary debate took place. He argued that the committee was wrong on several points and claimed that his civil servants did no wrong.

The end of the story is that a parliamentary inquiry had not been initiated because the government finally accepted the committee's presentation of the facts. Moreover the government announced some measures to ensure that what occurred in 2002 and 2003, would never happen again. One measure is that a special adviser on international law issues is to get a separate and strong position within the Ministry of Foreign Affairs.[3] The government also found it necessary to 're-establish' the rule that different opinions on major political issues within the civil service must have access to the minister. Apparently this was not self-evident at the time.

What the Iraq report has meant for the relationship between civil servants and politicians is not entirely clear. Nevertheless, what the report does illustrate is that this relationship is increasingly a delicate one. Over the years, tensions between civil servants and politicians have grown; this does not apply solely to the Netherlands. In many countries civil servants seem to have come under growing political pressure. The question is: how come? Is this indicative of some trend of politicisation of the civil service and if so, how should this be viewed? Further, if we do conclude that there are serious problems in the relationship between civil servants and politicians, how can they be solved? I will now go into these questions and try to formulate at least a beginning of an answer. My answers will be based both on academic literature and on my personal experiences as a Dutch civil servant over the last almost 20 years. Although it concerns experiences from one specific country my observations are meant to be relevant to the relationship between civil servants and politicians at large.

In this chapter, I will first go into the issue of politicisation as the analytical framework of this volume. After setting the framework I will shortly analyse the growing tensions between civil servants and politicians and its possible causes. This analysis will be followed up by taking stock of possible ways of solving the present problems. In short, my conclusion is that more than changing the constitutional rules and conventions of ministerial responsibility, a clearer identification of the fundamentally different roles of politicians and civil servants can bring us nearer to workable relationships. If civil servants and politicians are strongly aware of their roles in the democratic process, I will finally take the view that politicisation of the civil service, if proportional and

well embedded in the daily business of the civil servant, as such, is not a bad thing.

Politicisation: the broader context

In parliamentary democracies the traditional view is that politics and the civil service should be strongly separated. The roles and responsibilities of politicians and civil servants are in this view fundamentally different. Civil servants are permanent functionaries that have to serve ministers of different political parties and backgrounds. To be successful and trustworthy in their role, civil servants have to be politically neutral. Obviously politicians are not. They have an electoral mandate to try to achieve their political goals. When politicians are in power and become part of the government, civil servants are expected to support them, but this does not mean that are doing the same job. They cooperate with each other from different historical and professional perspectives. Civil servants are supposed to be policy experts who advise politicians on the basis of their expertise and their long-standing experience. Politicians often are (at least initially) amateurs in the policy area they are responsible for but have the political contacts and political skills to effectively achieve things.

Despite the fact that the separation of politics and the civil service still seems to be generally accepted, academic literature draws attention to a general trend toward greater politicisation of the civil service (Bekker 2009). As Peters describes (Chapter 2 in this volume) this tendency has been apparent in any number of industrialised democracies over the past several decades. In an earlier publication he and Pierre (Peters and Pierre 2004) have defined politicisation as:

> ...the substitution of political criteria for merit-based criteria in the selection, retention, promotion and disciplining of members of the public service

Although many factors contribute to greater politicisation, the driving force behind this trend seems to be the growing political will to reduce the power of the permanent civil service who is considered to be entrenched and unresponsive. Strengthening political control over public policy is to be achieved by selection and by disciplining civil servants on the basis of political criteria. Peters has analysed in more detail which forms of politicisation can be observed in practice. At the same time however, the phenomenon of politicisation should not be

overestimated. With perhaps the exception of relatively few systems (like the United States and Australia), direct politicisation by replacing career officials by political appointees is still extremely rare. In so far as political intervention does take place, it generally concerns only very few functionaries at the top of the departmental hierarchy. Expertise and long-standing experience are, although perhaps less evident than in the past, still indispensable and highly esteemed features of what a normal civil servant is supposed to offer.

To fully understand how the relationship between politics and the civil service has developed over the last decades and which problems have arisen, it is necessary to put the issue in a broader context. Hereafter I will discuss three developments in the public sphere which possibly enhance tensions between politicians and civil servants:

1. The internationalisation of policymaking;
2. The increasing public attention for incidents in the executive sphere, and
3. The blurring of constitutional rules and conventions.

The analysis is not meant to be an exhaustive explanation of what has taken place within the civil service over the last years. Of course these tensions cannot be detached from the issue of politicisation. On the contrary, politicisation plays a role in the broader context of the development of the public sector at large as touched upon below. I will come back to this issue later.

Tensions: possible causes

Internationalisation of policymaking

The first relevant phenomenon is also the most external one. National civil servants are doing their work increasingly in an international arena far from public scrutiny by parliament or the media. Often only a few insiders know what civil servants are discussing in international and European networks not to mention ordinary people. This also results from the fact that supranational organisations are a fundamentally different environment to work in if one compares them with national bureaucracies in the traditional nation state. Decisions are not taken in a top-down fashion under political supervision but through a process of informal consultation and negotiation among politicians, civil servants, the private sector and civil society which often takes place outside the scope of parliamentary control (Vanhoonacker 2009). One could

easily assume that civil servants like this rather unclear situation in which they can often take up a position on their own, and perhaps some of them do. However, many civil servants do not like 'swimming around' without political guidance nor realising that politicians are hardly interested in their work.

An example from my own experience as a civil servant may illustrate this. In 1998 I was representing the Dutch government in the so-called Article 31 Committee: the Committee which assists the European Commission in implementing Directive 95/46/EC on data protection.[4] In this committee, we were discussing the conditions under which personal data could be transferred to the United States where in many areas no proper data protection legislation was in place. During the debates in the Committee, I was feeling increasingly uncomfortable: how could I reasonably choose a position without knowing how my minister was thinking about this highly sensitive issue?

When I arrived back home from Brussels I went to see my minister and I told him what this data protection debate was all about and I remember well the way he looked at me with glassy eyes, apparently not having the slightest idea what I was talking about and, even worse, not at all interested in what I was saying. After a while he asked me: 'What is Germany's position?' I told him and got the impression that my answer did not at all influence his final conclusion by which he ended our conversation: 'Well, follow Germany'. One of the things I learned from this and other experiences is that national politicians are often not very interested in what civil servants are doing abroad. The main reason for this seems to be that politicians cannot easily score with the public on international policy issues. However, if it goes wrong afterwards civil servants can easily get the blame.

Incidents in the executive sphere

The second reason for growing tensions between civil servants and politicians is the public attention for incidents in the executive sphere. What we have seen over the years is a shift from holding ministers to account for their policy to searching for what went wrong in the farthest corners of the state bureaucracy. In this respect journalists and parliamentarians are often focused on who must get the blame rather than on what lessons can be learned (Verhey 2001). This can easily lead to difficulties in the internal relationships within governmental departments. Ministers and civil servants could be tempted into blaming each other for mistakes that have been made. What makes civil servants even

more nervous is that it can hardly be foreseen in advance which part of the executive bureaucracy will be in the spotlight. This often seems to happen by sheer accident.

A well-known example of the problems that can occur is the political clash in the United Kingdom around the safety in prisons in the nineties of the last century (Tomkins 2008). After a series of spectacular prison escapes Michael Howard, the Home Secretary at the time, started an independent inquiry into prison security. The inquiry's report that followed was highly critical of the Prison Service and of the entire system of prison management. When the report was published, a political storm broke out and the opposition called for Howard's resignation. Yet he refused to resign, instead calling for the resignation of the chief executive of the Prison Service. When the latter for his part refused to step down, Howard carried his decision through and dismissed him.

What was important in this case was the reasoning by which Howard evaded responsibility. He claimed that as a minister he was only responsible for policy matters, not for operational concerns. Because the problems which had been identified in the inquiry's report were caused by operational failures, Howard took the view that the chief executive of the Prison Service was responsible and therefore had to step down. Although Howard got away with it in this individual case, a few years later the House of Commons rejected Howard's distinction between policy and operational matters.[5] Nevertheless, vast experience in the United Kingdom and elsewhere shows that when political tensions are rising, ministers sometimes publicly criticise their civil servants for executive failures.

As we speak about the growing public attention for incidents in the executive sphere the media plays a crucial role. To survive in politics nowadays a politician has to have a good relationship with the media. Protecting his reputation in public opinion is a top priority of every contemporary politician. This vital aspect of the daily life of a politician can easily cause tensions at ministerial departments. Where politicians feel the pressure of the media and often want straight answers and quick results, civil servants are inclined to exercise due caution on the basis of their expertise and experience.

Blurring of constitutional rules and conventions

Michael Howard's reasoning concerning the scope of ministerial responsibility closely relates to a third development which influences the functioning of the civil service. Constitutional rules and conventions

which affect the relationship between politicians and civil servants have increasingly been called into question. This especially seems to apply to the concept of political accountability. Critics are claiming that the concept is not suitable for holding large executive bureaucracies to account and that it should be replaced or at least be counterbalanced by other accountability mechanisms (Scheltema 2000). This could be achieved by involving other accountability forums like courts, chambers of audits, ombudsmen and civil society panels.

The debate on accountability does not in itself disturb the relationship between civil servants and politicians. The problem is much more that the perceptions of the key players in the political arena about what political accountability actually means or should mean have become blurred. One is not very familiar anymore with the rules of the game, and insofar as one is, one has become more and more divided about how these rules should be interpreted. Civil servants are increasingly confused about to whom they are accountable. Is it the minister, parliament, civil interest groups or society at large?

I can illustrate this again by my experiences when I was a civil servant during a course I took in the Dutch School for Public Administration. During the discussions we had and the role-plays we had to do, there appeared to be a widespread view with my colleagues that a civil servant is primarily a public manager whose task is to facilitate the decision-making process and by wheeling and dealing achieve a result that is supported by the most important interest groups involved. Then a fool suddenly asked: 'What about the minister?'. Most of those present looked at him in annoyance, apparently thinking: 'Probably a lawyer'. It was abundantly clear that the minister was an obstacle in the management game civil servants are playing and that for that reason ministerial responsibility should be reduced or even be abolished. Surprisingly this picture was by no means corrected by the course instructor.

Potentially the confusion about the role of the civil servant is even bigger at the level of the European Union. Within the fragmented and complicated institutional structure of the European Union a clear-cut concept of political accountability does not exist (De Witte 2009; Craig 2010). I could imagine that in the minds of European civil servants questions like 'To whom am I accountable?' and 'What does accountability in the EU context mean precisely?' could easily arise. This is not the place to go into this matter any further but suffice to say these are questions that are far from easy to answer (Bovens et al. 2010). At the very least the questions seem much more difficult in the international context than in most national democratic systems.

Executive accountability: changing the rules?

The relationship between politics and the civil service cannot be dissociated from the rich and in-depth academic debate on executive accountability. Traditionally in parliamentary systems executive power is located in the government who is accountable to parliament. In these systems, ministerial accountability is a vital constitutional principle without which effective parliamentary control of executive power would not be possible. However this picture does not fully correspond with political reality. Nowadays executive power is exercised not only by ministers who form the government, but also by many agencies and networks that function at arm's length of daily politics. As a result, many civil servants do not work at the traditional ministerial departments but at organisations where ministerial accountability does not or does not fully apply ('t Hart and Wille 2002).

In some states, agencies have become increasingly controversial. The most important reason for criticising agencies is their lack of accountability. Ministerial accountability for the actions of independent agencies is limited. Other, more 'horizontal' accountability mechanisms are controversial because they have not proven to be a full-grown alternative. Some people call for a restoration of traditional political accountability. In 2004, for example, a commission in the Netherlands recommended to bring almost all the agencies back to the ministerial departments (Werkgroep Kohnstamm 2004). However this advice was not followed up. On the contrary, the significance of agencies seems to be still growing.

The agencies debate shows that there is no consensus which model of the executive should be preferred. There are arguments for and against shared executive power (Craig 2010). However, experience shows that fragmentation of the executive is a serious concern. There is a considerable risk of getting into an obscure system of committees, agencies and policy networks which are almost inaccessible to the outside world and who are in fact accountable to no one. Here the 'problem of many hands' arises: because many different administrative groups and entities contribute to the decision-making process, it is hard to identify who is, at the end of the day, accountable for the outcome (Bovens 2007). For civil servants this is highly confusing. Because there is no single locus of executive power and because the traditional concept of political accountability has increasingly come under pressure it has become much more difficult for civil servants to meet everyone's expectations.

This is not the place to go much deeper into the pros and cons of different types of executive accountability. It is a complex debate which closely relates to the view one has on the role of politics in society. In any event it is an illusion to think that we could get rid of political accountability. Apart from very exceptional cases, civil services cannot function democratically without politics. There is no real alternative for obtaining democratic legitimacy than by politicians initiating political accountability for what the executive is trying to achieve or has achieved. Other accountability mechanisms can be worthwhile and are even indispensable sometimes, but they cannot substitute political accountability. So perhaps we should resist the first reflex to fundamentally change the constitutional rules. Or, as a prominent Dutch civil servant once said: 'do not take refuge in constitutional structures' (Niessen 2001).

Given the probability that political accountability will remain a core constitutional principle in parliamentary systems at least in the foreseeable future, it can be deemed essential to think about solutions within the current constitutional framework. In order to achieve a more effective implementation of political accountability mechanisms one should try to clarify the specific roles of the politician and the civil servant ('t Hart and Wille 2006). Political scientist 't Hart (2000) has argued that in this relationship there are three general principles that should be recognised:

- that civil servants and politicians always treat each other with due respect;
- that they give each other enough room that they can effectively fulfil their responsibilities, and
- that their relationship is based on reciprocity.

In the next two paragraphs it will be explained precisely what this means for the minister and the civil servant respectively.

The minister: 'role responsibility'

First the minister – what exactly should he do and not do? In 2002 the British constitutional lawyer Diana Woodhouse advocated a different way of implementing ministerial responsibility (Woodhouse 2002). She criticised a construction of ministerial responsibility which focuses on what she called 'causal' responsibility, that is, on the direct involvement of ministers in any errors or misjudgements. This is exactly what,

in Woodhouse's view, has resulted in ministers seeking to distance themselves from the cause of any departmental failings by employing constructions like Michael Howard's distinction between policy and operational matters. To avoid the scape-goating seen in Howard's case Woodhouse proposed moving away from direct personal culpability towards what she called 'role responsibility', that is, defining the requirements of the ministerial job.

Indeed the most harmful thing for a minister to do is to seek distance from departmental failures by publicly saying that they are not responsible. What actually happens then is that the minister gives the impression that he openly wants to shift the blame to his civil servants while these are not able to defend themselves. By doing that they are not only presenting themselves as a weak and insecure minister but are also undermining the very essence of the relationship with their civil servants. It seems self-evident that this should be avoided but practice shows it is not.

What should be done instead is defining the role of the minister more precisely. What he should do towards his civil servants are in fact three things:

- giving guidelines;
- explaining;
- supervising and amending if necessary.

The first thing he must do is give guidelines. A minister must make clear what he wants and what he expects from his civil servants to achieve this. When a government first takes office this is often not yet very clear. The most exciting time at the ministry is when the new minister comes in. The civil servant must be keen to find out as soon as possible what the minister wishes to achieve and how. Sometimes nothing happens. What makes a civil servant feel highly uncomfortable is a minister who has no opinions, who does not want to achieve anything or is simply not interested in the policy issues the civil servant has to deal with.

The second thing a minister must do is not only to say what he wants but also explain why. If a minister is only giving orders without giving the reasons the civil servants run the risk of not having understood how they should achieve effective results. Giving reasons also implies that the minister is fully prepared to listen to the arguments given by his civil servants and to explicitly weigh the pros and cons before coming to a decision. A good minister is a minister who initiates discussion and gives room to his civil servants to come up with all the relevant

arguments even when some of the arguments could limit the minister in what he wants to achieve.

From my personal experience this is not at all self-evident. As a civil servant I once sent my minister a memorandum in preparation of a meeting in which I thought I would hear his opinion on the issues involved. Shortly before the meeting I was called by the minister's secretary who read out loud what the minister had wrote down on my memorandum with his feared red pencil. He wrote:

> Meeting can be cancelled. The advice of the civil servant is sufficiently well formulated.

I was puzzled by this note, sent the minister an e-mail and asked him:

> What do you mean? Do I understand you correctly that you follow our advice and that we can go on with what we had planned to do?

I had got it all wrong because the minister's simple answer was:

> No, I do not want to follow your advice although I understand what you are saying.

Well, I answered, of course I am ready to follow any of your instructions but we could help you much better if you would explain to us exactly what you want to do and why. My reaction could not prevent the meeting from being cancelled, and we waited quite some time before we exactly knew where the minister was going policy wise.

The third and last thing a minister should do pertains to what should happen after the policy decisions are made and the implementation has started. In that phase, the minister's task is supervising and correcting where necessary. Of course a minister cannot and should not know everything what civil servants do in order to realise governmental policy. That would not only be unrealistic but also undesirable. But that does not alter the rules of the game. These rules imply that he can and will be held accountable for what his civil servants have done. In this respect the question is: What should be expected from a minister to make his responsibility work effectively? In other words, what precisely is the supervisory and amendatory role he has to fulfil?

Generally speaking a minister should focus on creating and maintaining the conditions under which policy implementation can be successful in the first place. In this respect his responsibility is that

the necessary legislation that legitimises what the government wants to achieve does apply, that sufficient resources are available for effective implementation of policies, that there are capable employees who occupy the key positions in the department and in executive agencies and that there are appropriate mechanisms in place to monitor whether the governmental policies are realised in practice.

Subsequently a minister must take amendatory action if the implementation does not prove to be successful. If necessary, a minister has to set up an inquiry to find out what went wrong, inform parliament and society at large about the results of the inquiry and explain which measures he wants to take to put things right. Which measures are adequate should be determined case by case. However, it is clear that the minister is politically responsible, which means that it cannot be excluded that he himself must face the political consequences. In the last instance this can mean resigning from office.

Of course the minister cannot fulfil the supervisory role I just have tried to identify completely on his own. On the contrary he needs competent staff to support him. However, a minister personally can play an important role. Ministers who have a good sense of what is politically needed and know how to translate this into operational action are often the most successful. And of course a good memory helps. I once worked for a minister who immediately wrote down what he discussed with his civil servants in a booklet so that everyone knew that he could come back to it anytime in the future. I can assure you that it helps.

The civil servant: professionalism, political feeling and loyalty

Although the minister and his civil servants should try to achieve common goals, the civil servant has a role that is fundamentally different from that of the minister. In exercising his role three things are important:

- professionalism,
- sensibility for political issues, and
- loyalty.

Firstly a civil servant must be a highly professional. This simply means that he knows what he is talking about; this sounds self-evident but it is not. One of the biggest failures in present-day thinking about the civil service is the overestimation of managerial capacities and the parallel

underestimation of professional expertise. The consequences of this are disastrous. Many civil servants nowadays do not have enough professional knowledge to achieve the quality that is needed. Undoubtedly this has a negative impact on the public confidence in public authorities.

On the other hand there are fortunately still many good examples of civil servants who put up a good performance. If you look for example at my profession, there are many good and dedicated lawyers in the Dutch civil service who are doing an excellent job. Contrary to what one might think, the quality of the legal debate within the civil service is sometimes even higher than what one can find in academic literature.

The second thing civil servants urgently need is a high sensibility for political issues. A civil servant, even if he is a top-of-the-bill expert, will not be very effective if he cannot cope with the political circumstances in which he has to do his job. A civil servant has to understand that the decision which should be taken from a purely professional point of view is sometimes unfeasible for political reasons. Consequently he may have to come up with alternative options and next best solutions. Moreover, a civil servant must always think about what is the best way to present governmental views and proposals in the political context at present. As practice shows, not all civil servants are equally capable of taking the relevant political aspects into account.

Political advisers and public relations officials are nowadays playing such an important role just because of these political aspects ('t Hart and Wille 2002). In my view that, as such, is not a bad thing. On the contrary, in modern times, with the mass media operating everywhere and with a political arena in which it has become more and more difficult to survive these advisers are indispensable in the departmental decision-making process. The other side of the coin is of course the risk of spin-doctoring – of disguising or straining the truth and thereby overruling the traditional civil service. However, this risk should not be exaggerated. Political advisers and public relations officials, which Peters probably would indicate as 'redundant politicisation' (Peters, Chapter 2 in this volume), in my experience often do an excellent job in close cooperation with departmental experts.

Sensibility for political issues does not mean that civil servants should get involved in party politics. In my view there is a clear distinction between the domain of the politician and that of the civil servant. In the exercise of his duties the civil servant has to distance himself from party politics. In this sense civil servants have to be politically neutral (Overeem 2005). As a civil servant I once crossed the border of what I thought was acceptable. Just a few days before the plenary

debate in parliament of a Bill which intended to change the politically controversial relationship between the minister of Justice and the public prosecution service[6] my minister at the time asked me to call members of parliament to negotiate the amendments they were planning to submit. I felt highly uncomfortable trying to behave as a politician and remember that some MP's were quite annoyed that a simple civil servant was calling them and not the minister.

The third and last quality civil servants ought to have has to do with loyalty. But what is loyalty? If I put it simply: civil servants are not paid to hamper ministers because they think that what he wants is not right. If they do not want to do things they would not do if they were a minister themselves, they should not have become a civil servant. So the basic attitude is actively supporting the minister in achieving his political goals even if they are not personally liked by the civil servant. A good civil servant even considers supporting a political view he does not share as an attractive and challenging sport.

Loyalty should not by any means be confused with always saying yes to the views or measures the minister wants to take. A good civil servant sometimes strongly advises against ministerial proposals or opinions if he thinks this is necessary. A civil servant must clearly warn if in his view the minister runs a considerable legal, economic, political or other risk in the case he would stick to his original intentions. In this sense the relationship between a minister and a civil servant is not one-sided but what 't Hart has called reciprocal ('t Hart 2000).

In my experience this is not at all an easy thing to do. Some ministers get annoyed, thinking civil servants are only obstructing the wise and noble policies he wants to achieve. For this reason it is highly important that – let me take an arbitrary example – a lawyer does not confine himself to just saying 'no' but also does the utmost to find alternative solutions which are legally acceptable or at least less questionable than the original proposal. It would for example be interesting to have a closer look at the Iraq case and try to determine whether all legal options of supporting the Iraq war were seriously considered.

Politicisation: finding a balance

In the preceding paragraphs I have tried to analyse the normative roles of the minister and the civil servant. These roles are fundamentally different. One might think that this analysis reflects the old tradition of separating politics and the administration, a system in which civil servants are politically neutral. This is only partly true. Civil servants should

indeed be politically neutral in the sense that they should keep distance from party politics. However this is not the whole story. Politicisation is to a certain extent not only desirable but also necessary to give public policy the democratic legitimacy that is needed.

As Peters rightly points out, politicisation is not 'a simple phenomenon but rather a number of different patterns of behaviour to be seen as increasing the influence of political leaders on the bureaucracy and on public policy'. Because it concerns different patterns of behaviour, they also 'may have substantially different effects on governing' (Peters, Chapter 2 in this volume). For this reason one cannot simply conclude that politicisation is good or bad. Its effect depends on many factors like the constitutional context in which politicians and civil servants have to operate, the specific form of politicisation and the proportionality by which it is carried out in practice.

Strong politicisation of the civil service is highly undesirable. Replacement of experts by political appointees on a large scale would be extremely harmful for the quality of any public policy. However, this is not the whole story. One has to place politicisation as a phenomenon in a broader context. In this respect the widely used definition of politicisation as '…the *substitution* of political criteria for merit-based criteria in the selection, retention, promotion and disciplining of members of the public service' (emphasis added) is somewhat misleading because it does not cover the whole variety of patterns which could be indicated as 'politicisation'. The definition particularly reflects what Peters calls 'direct politicisation': appointing political loyalists at positions that might otherwise be career positions. As said before this form of politicisation is, at least in Western parliamentary democracies, still very rare. This could change. It is not at all unthinkable that as a result of a changing political climate more political loyalists will be appointed in the future.

However, in most systems other forms of politicisation are still more relevant. Especially important is what Peters indicates as 'professional politicisation' (Peters, Chapter 2 in this volume). It is a mixed pattern in which the upper echelons of the civil service are filled by political loyalists who at the same time are the product of a career system that is highly professionalised. So the appointed officials at the top of the departmental pyramid are both political and experts in the policy areas. The clearest example would be Germany (see Chapter 9, by Battis in this volume). However this pattern does not seem to cover the whole reality. 'Softer' types of professional politicisation seem to occur more often. Professional politicisation to a certain extent should apply to all civil servants. As I explained in the preceding paragraph, civil servants

cannot do their job successfully without a good sense of the political field in which they have to use their professional expertise. So there almost always has to be a proportional mixture of professionalism and political sensibility. What this mixture should be in any particular case depends on the particular position of the civil servant. Obviously, political sensibility is more important at the top of the departmental pyramid than further below. But even at the lower levels of the civil service a good feeling for the political aspects of public policy is highly relevant nowadays.

Next to 'soft' professional politicisation, other types of politicisation may be useful as well. Peters points out to additional structures within the civil service, which he calls 'redundant politicisation'. The use of ministerial cabinets, with personal appointees of the minister monitoring civil servants, is well known in Western democracies like Belgium and France. However, this type of politicisation has serious drawbacks as it could easily develop as a separate unit within the ministry severely distrusted by the regular civil service. Perhaps easier to build into the civil service are the special advisors which are mentioned by Peters as well. Their task is not – or not primarily – to control departmental officials but to support them by translating policy into politically acceptable 'formats'. In my experience 'redundant politicisation' can be very fruitful if civil servants and political appointees work together on the basis of mutual understanding and with mutual respect for each other's territory.

Summarising, one could conclude that politicisation as such is not incompatible with the traditional idea of the separation of politics and the civil service. On the contrary, as Peters rightly points out, the concept of politicisation helps us to realise that 'while it is important that the civil service be highly competent, it may also be important that those civil servants also be interested in the success of the government'. Therefore it is not enough that civil servants are professional experts; they must also be capable to translate their knowledge into a politically workable outcome. In this specific way all civil servants have to be 'politicised'. But politicisation of the civil service should have its limits. As is often the case, one has to search for and ultimately find the right balance within the civil service between professionalism and political commitment.

Concluding remarks

In this chapter I summarily dealt with the relationship between politicians and civil servants. I started with the Iraq report of the Dutch

Davids Committee, which amongst many other things can be seen as an illustration that this relationship is increasingly a delicate one. Over the years tensions between civil servants and politicians seem to have been grown, not only in The Netherlands but in many parliamentary democracies (see other chapters in this volume). Changing the constitutional rules and conventions of ministerial responsibility does not seem to be appropriate to solve the problem. What is essentially needed within the framework of ministerial responsibility is clearly identifying the roles of politicians and civil servants. As I have tried to show, their roles are fundamentally different, and it is extremely important that both politicians and civil servants are strongly aware of that. In practice this is not always the case. This does not mean that 'politicisation' by definition is a bad thing. On the contrary, politicisation of the civil service, if proportional and well embedded in the daily business of the civil servant, can have a positive effect on the democratic process. On the other hand direct, politicisation in the sense of replacement of experts by political appointees would be extremely harmful for the quality of the public policy and the 'democratische rechtsstaat' at large. Hopefully the tendency to greater politicisation as pointed out by Peters (Chapter 2) in this volume does not go in this direction.

When we look at the relationship between politicians and civil servants it is important to note that it cannot be seen in isolation; it must be placed in the broader context of developments in society at large. The key word I finally want to bring in here is 'trust'. Do citizens still believe in politics? Do citizens still trust the civil servants to whom citizens get in touch when they are getting a new passport or are complaining about their tax assessment? And what about the other way around: does the state still trust its citizens? It seems to me that mutual trust in all kinds of relationships in society, although essential for its proper working, has been substantially reduced. We often do not seem to trust each other anymore.

I think 'trust' is also a vital element in the relationship between politicians and civil servants. Without trust this relationship will be highly problematic and full of tension. This element cannot be easily influenced without taking into account the broader picture of society as a whole. This makes the relationship between politicians and civil servants all the more delicate.

Notes

1. Kamerstukken II 2009–2010, 31847, nr. 18.
2. NRC Handelsblad 29 January 2010, p. 2.

3. Kamerstukken II 2009–2010, 31847, nr. 18, p. 4. This measure has finally been carried out through the appointment of Prof. A. Nollkaemper in May 2011.
4. Directive 95/46/EC 23 October 1995.
5. HC Deb., Vol. 292, cols. 1046–1047 (19 March 1997).
6. Law of 19th April 1999, Stb. 1999, 194.

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4
Civil Servants and Whistle-Blowing: Loyal Neutrality and/or Democratic Ideal?

Geoffrey Hunt[1]

Introduction

This chapter, by a political philosopher, opens a preliminary investigation of the indirect and complex relationship between the politicisation of the civil service and the incidence of whistle-blowing civil servants. The principal question is whether politicisation generates stresses on the idea and self-image of a neutral and professional civil servant and whether this may be the cause of the paradoxical stance of affirming the traditional democratic role of the civil service by speaking up, while thereby breaking the role-boundaries of that same tradition. This is a complex and novel idea, and I attempt to lay bare some important aspects of this complexity. My hypothesis, which needs empirical research from social scientists, is that any trend to whistle-blowing civil servants may itself be symptomatic of politicisation.

In this chapter, first some conceptual issues are dealt with by sketching a democratic political-philosophical framework: the Principle of Complementarity. This presents freedom of information and freedom of expression as 'two sides of the same coin', which broadens the study of politicisation into an arena of 'informational struggle' that embraces whistle-blowing, 'Wikileaks' and the legislative realm of citizens' democratic rights. Within that framework the specific case for considering civil servants as potentially vicarious 'whistle-blowers' is then presented, that is, acting on behalf of the public when the right to freedom of information is denied and democracy may be threatened. The argument is illustrated with reference to some whistle-blowing civil servants in the European Commission. Secondly, Council of

Europe proposals for procedures on whistle-blowing are considered and, thirdly, a case study is presented on the whistle-blowing situation in the United Kingdom. Finally, there is a tentative exploration of connections between politicisation and whistle-blowing for social scientists to investigate.

The ethics of whistle-blowing

The principle of complementarity

'Whistle-blowing', more politely known as 'public interest disclosure', may be defined thus:

> Whistle-blowing is the public disclosure, by a person working within an organisation, of acts, omissions, practices, or policies that are perceived as morally wrong by that person, and is a disclosure regarded as wrongful by that organisation's authorities (Hunt 1998a, p. 525).

'Whistle-blowing' is sometimes treated as an aberration that has little connection with other aspects of organisational and political life. This author argues instead that it is to an important extent a response emerging within the inchoate decline of Western democracy. Whistle-blowing does not stand alone; it is intimately connected with democratic issues of political accountability, human rights, freedom of information, and freedom of expression.

The substance of a whistle-blowing act is always crucial, and many discussions fail to distinguish between matters which are of internal interest only, matters which are of mixed internal/external interest and matters which are of external and sometimes very serious public interest. It is those matters which concern the very nature and survival of democracy that are the concern in this chapter.

This author has argued for a 'Principle of Complementarity' as a core aspect of public accountability (Hunt 2006). This is the ethical notion that if there is a relationship of accountability between government and citizens, as is essential to any democratic state, then government ought to provide an account when the citizen asks for it (subject to reasonable exceptions), *and if Government fails to do so then the citizen has a right (or possibly a duty) actively to hold Government to account*. Freedom of government information embodies the former side of this relationship and a right to freedom of expression (subject to reasonable exceptions)

embodies the latter side. Thus the democratic ideals of freedom of information and freedom of expression complement one another – they work together.

To narrow this idea down: It does not appear to be reasonable to assert the legitimacy of freedom of information while denying the legitimacy of freedom of expression when information is not forthcoming despite there being a legitimate claim to it. There is an even more general basis for this in classical liberal social contract theory: governments have no legitimacy unless they represent the will and/or interests of citizens.

One might put it crudely: if democratic government has a right to X from a citizen (e.g., taxes) for the social good, then that government also has a right to take reasonable steps to take X from that citizen if they wilfully refuse. Similarly, if a citizen has a right to Y from government (e.g., information) for the social good, the citizen also has a right to take reasonable steps to take Y from government if they wilfully refuse. The details of the argument are not rehearsed here (see Hunt 2006). The argument is now extended into the ambit of the social responsibilities of civil servants in the shifting crises of unpopular war, governmental corruption, deregulation and the 'Wikileaks affair'.

Whistle-blowing is sometimes, but not always, of the ethical nature just outlined. Conscientious civil servants may see themselves, and indeed in terms of 'European values' are encouraged to see themselves, as a special kind of servant and custodian of the social contract. This appears to be true generally in liberal democracies (Rainey 1982; Perry and Wise 1990). The Principle of Complementarity also applies to the vicarious role of the civil servant i.e., their role *on behalf of* citizens (Cf. Hunt 2006, 46). That is, if the government is withholding information that the public ought to have, and *a fortiori* if the government is misinforming the public, then the civil servant has a vicarious ethical duty to assist the public in taking what is rightfully theirs. Where citizens have a right to certain information that is wilfully being denied to them the conscientious civil servant will wish to act vicariously for the citizens, on pain of otherwise undermining the very worth and meaning of their professional role.[2] A government which in actual practice denies freedom of information, and *a fortiori* ignores or even victimises the civil servant who takes freedom of information seriously, is corrosive of the very rationale for civil service as understood in a democracy.

Much is sometimes made of the danger of whistle-blowing civil servants eroding or even destabilising government; but much more needs to be made of a process of politicisation and arbitrary executive power in which governments are eroding and corrupting the values of civil

service, including the 'separation of powers'. This poses questions for the civil service profession: have we in Western democracies moved in recent times from the liberal framework of loyal neutrality *and* the democratic ideal to a dilemma of loyal neutrality *or* the democratic ideal? If so, does loyal neutrality sometimes have to be qualified, or in extreme cases jettisoned, in efforts to revive or even save the democratic ideal? Of course it may also be asked what political democracy would remain were the loyal neutrality of the civil service to be jettisoned in this way. This is our modern political paradox, and the delicate balance to be struck.

Formal procedures and/or ethics

The question of whistle-blowing will nearly always be perceived in different ways by the authority and the whistle-blower, the former emphasising correct procedures and the latter emphasising democratic rights. Thus the contenders are often arguing at quite different levels, the former in a legalistic or administrative manner and the latter in a logically deeper, ethical manner that sometimes questions the moral basis of the procedures that the authority appeals to (and, understandably, that the authority set up in the first place). Let us take some examples from the highest European level, that of the European Commission, since one suspects that if the argument applies here *a fortiori* it applies at lower levels and can hardly be dismissed as aberrant.

In one celebrated European case the Commission chief accountant Marta Andreasen lost her job in 2005, two years after being suspended because of disloyalty and distrust, in the authority's eyes. Her putative offence was to go public with her claim, first raised internally, that the EU's budget was open to fraud. We have to keep in mind the context, in which the budget is about 100 billion Euros, and that Andreasen was brought in three years after a serious financial scandal. One may note that this case has certain parallels with the earlier and well-publicised case of Commission accountant Paul van Buitenen, whose disclosures on widespread corruption in the EU executive led to the resignation of the entire Santer Commission (Buitenen and Dale 2000).

While Andreasen appealed to democracy, Commissioner Neil Kinnock, who sacked her, appealed to the procedures for raising internal concerns. He was reported as saying that her behaviour would not have been tolerated by any civil service in the democratic world. Meanwhile, she impugned the Commission's democracy, saying: 'If Europe wants to advance…it has to have trust in its governing institutions. I believe

I can be trusted. The people don't trust the Commission'. She said that she had followed the procedures but they did not work (BBC 2004).

There is a clear imbalance here, and an unavoidable one it will be said, which is that the *authority* sets up the disclosure procedures in the first place. Whatever formal procedures are created, there is the issue of who the custodian of such procedures is, and who interprets them. This is what may be called the question of the 'privilege of interpretation'. Without a determining authority that has such a privilege there is often a moral indeterminacy, that is, a failure in the availability of criteria for resolving the rightness of the decisions taken by the contending actors involved. This is because it is often a matter of 'subjective' interpretation and disagreement whether the rule is being applied properly and even whether the procedure was created democratically in the first place. Thus, whether it is a case of 'ethical procedures' or 'ethics vs. procedures' is not always clearly decidable. It appears that the whistle-blowing civil servant in some situations takes an ethically higher position but, as is often the case in moral conflict, that position is also open to contending interpretations.

It may be thought that where there is such irresolvable difference one must accede to 'authority', otherwise anarchy will ensue. On the other hand, it may be thought that in such circumstances one must accede to the 'citizens' otherwise authoritarianism will ensue. One should keep in mind that the European liberal tradition has been that authority ultimately has no legitimacy save the will of the people, which is what Andreasen appealed to in her capacity as a civil servant.

The fact is that not all moral conflicts are resolvable, which is increasingly so during a period of social and political crisis. New forms of moral conflict are generally signs of a shift in legitimacy i.e., a shift in power. When they are not resolvable they inevitably end in one side giving up in exhaustion or fear while the other resorts to force of some kind, whether judicial or extra-judicial. This author suspects that where there is increasing politicisation of the administration there will also be pressure building towards this kind of whistle-blowing situation with an attendant irresolvable contention between procedural authority and democratic appeals (see *infra*). Indeed, the hypothesis that an increase in the latter is probably one more symptom of an increase in the former needs empirical research. One also has to consider at what point the symptom becomes the cause. Increases in whistle-blowing and demands for freedom of information do not necessarily bring about more open government. They may provoke more authoritarian

forms of proceduralism, including judicial force, and ultimately even extra-judicial force such as the assassination of journalists in Russia and elsewhere (for cases see: Committee to Protect Journalists 2010). A downward spiral may develop.

At present in the European Union as such there are no comprehensive laws for the protection of whistle-blowers. However, this may be about to change. We now turn to a Council of Europe attempt to develop general guidelines for whistle-blowing procedures. Of course, only time will tell whether this is part of a trend to greater openness or, in effect, toward greater containment of whistle-blowing.

European initiatives

The council of Europe recommendation

The Parliamentary Assembly of the Council of Europe (PACE) published a report from the Committee on Legal Affairs and Human Rights on 14 September 2009 entitled 'The Protection of Whistleblowers' (PACE 2009). PACE then passed Recommendation 1916 and Resolution 1729 on 29 April 2010, calling on member states to review their relevant legislation (PACE 2010a; PACE 2010b). It would have been useful to examine in some depth why this initiative should have been taken at this historical and political juncture, but we can at least consider it here as a manifestation of some of the tensions already referred to.

Examining the Resolution (PACE 2010b), we find important weaknesses. One resides in Paragraph 6.2.1, where it proposes that legislation should 'give appropriate incentives to government and corporate decision makers to put into place whistle-blowing procedures'.

However, taking the example of the UK's employment law and its public interest disclosure protections we see that such 'incentives' have not generally led to employers instituting whistle-blowing procedures. So the question arises, should there be a legal requirement for such procedures throughout Europe, as we already find in some shape or form in Norway and Romania (PACE 2009, sec. 116, sub-sec. L)? A similar point could be made about victimisation of the whistle-blower; the Council of Europe's proposal is not for the criminalisation of such behaviour.

It is notable that although Hungary has no comprehensive set of laws protecting whistle-blowers, it appears to be alone in Europe in declaring in its criminal code that one who makes reprisals against 'a

person who has made an announcement of public concern is guilty of misdemeanour and may be punished by imprisonment not to exceed two years' (PACE 2009, sec. 80). This probably does not apply in the case of civil servants disclosing state or official secrets. What is more, the current instability of legislation protecting such freedoms is highlighted by a law passed by Hungary's parliament in December 2010 that subjects all media, including websites, to state censorship (*The Times* 2010).

Despite such weaknesses, the Council of Europe initiative will surely be seen as a way forward, and maybe it is in many regards. However, there is a more fundamental issue. The 'privilege of interpretation' remains squarely with the authority and the courts. For example, paragraph 6.2.4 states that a whistle-blower,

> should be considered as acting in good faith provided he or she had reasonable grounds to believe that the information disclosed was true, even if it later turns out that this was not the case, and provided he or she did not pursue any unlawful or unethical objectives.

The deficiency here is that there is no guidance on what constitutes such an objective and the whistle-blower is only likely to find out *post hoc* when the court has determined it. Hence the court is given the power to decide on ethics. Will the authority dare to shift the onus onto *itself* by allowing protection to the whistle-blower regardless of their motive? We shall see.

The foregoing point about 'privilege of interpretation' is intimately connected with onus or burden of proof. In the case of the UK law it remains squarely with the whistle-blower; this author has argued since 1997 that it should rest with the employer within a human rights framework (Hunt 1998b). On the matter of employer reprisals a reversal of burden of proof would mean that where there is a *prima facie* case of reprisals the employer must demonstrate that they would have taken the action in question for reasons independent of the whistle-blowing act.

It is curious perhaps that while the Parliamentary Assembly's report considers 'human rights violations' (racism, sexism, etc.) as one among many fitting objects for whistle-blower protection (PACE 2009, 6.1.1), it does not suggest that the unjust silencing of whistle-blowing is itself such an object. This may imply that the Council of Europe is not ready to grasp the nettle and embrace whistle-blowing within the provi-

sions for freedom of expression of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

However, PACE's Resolution calls on member states *inter alia* 'to review their relevant legislation' and in particular to 'consider drafting a framework convention on the protection of whistle-blowers' (PACE 2010b, sec. 2.3). Little indication is yet given as to the form or content of such a convention. How will the special position of the civil service in its close relation to government be dealt with in such a convention? Will there be various exemptions concerning civil servants and provisos to sidestep conflicts with official secrets laws?

European Convention on Human Rights

A key question is whether any proposed whistle-blowing convention would fit, or how it would fit, in the existing framework of human rights. Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms protects freedom of expression. It declares,

> Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises (ECHR 2010).

Of course, there are exemptions, and these are stated as follows:

> The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The statement of exemptions is very broad and no doubt would usually have a special and even draconian application to civil servants. It is hard to see how the protection of whistle-blowers – let alone whistle-blowing civil servants – could specifically be incorporated in the ECHR, and it is

likely that a very limited convention under European labour laws will emerge instead, if anywhere.

Still, the ECHR has in fact been applied in at least two cases relevant to whistle-blowing civil servants. In only one case is it directly relevant, and that is the case of Guja. This sets an important precedent in reconceptualising civil service whistle-blowing as a candidate for human rights status.

Guja v. Moldova

The ECHR was invoked in the case of a whistle-blowing civil servant who leaked two letters to the media and was subsequently dismissed. This is the 2008 case of *Guja v. Moldova* (ECtHR2008). The European Court of Human Rights held that the disclosure of the contents of the internal documents to the media was *in casu* protected by Article 10 on freedom of expression. Mr. Guja, Head of the Press Department of the Moldovan Prosecutor General's Office, was dismissed on the grounds that he had divulged the two letters without consulting the heads of other departments of the Office. Guja claimed that he had acted in line with the President's anti-corruption drive because the letters revealed that the Deputy Speaker of Parliament had exercised undue pressure on the Public Prosecutor's Office concerning pending criminal cases. When Guja's civil action failed, he complained to the human rights court.

In reaching its decision, the Court emphasised the importance of the matter in a democratic society. The Court noted that the sanction could have an inhibitory effect on other civil servants and employees and the interference with Guja's right to freedom of expression was not 'necessary in a democratic society' (ECHR 2008).

Tillack v. Belgium

The other case is indirectly relevant because it applies to the protection of media sources, which may be located in the civil service. The European Court of Human Rights upheld the right of a German journalist, Hans-Martin Tillack, to refuse to disclose the sources that had provided him with information on alleged irregularities in Eurostat and in OLAF (the European Union's anti-fraud office). The Court found Belgium to be in violation of Article 10 of ECHR, particularly in respect of police searches and seizures carried out at Tillack's home and office (Tillack 2007).

One result of this affair was that the entire Eurostat directorate was dismissed (Tillack 2009). Clearly this case, involving the press as

the whistle-blower's protected vehicle of disclosure, might invite us to extend the debate into the possible politicisation in some form or another of the police force, anti-fraud offices and other bodies that are part of the wider structure of the European and member state apparatuses. It is also generalisable as a vehicle in the form of Wikileaks-type mass disclosure of information (see *infra*). We now focus on the situation in the United Kingdom in particular, with reference to specific cases, in order to highlight the ethical, legal and political tensions underlying whistle-blowing by civil servants.

Case study: legal reforms in the UK

In many ways, the whole issue of whistle-blowing in relation to government has been most prominent in three jurisdictions in particular: The United States, Australia and the United Kingdom. As a member state of the European Union, the debate in the last of these gives us a great deal to ponder in relation to the question of politicisation in Europe. In the last two decades there has been a significant shift in the UK, on the legal front, towards enhancing the public accountability of government, limiting its powers and enhancing the rights of citizens (Power2010). It is perhaps curious that this has developed alongside, rather than in alignment with, increasing centralisation of government and politicisation of the civil service.

What we have here appears to be a historical process of polarisation, which will probably reach a critical tension within the next decade. Certainly, one explanation is that this apparent liberalisation in the UK is a 'catching up' with a similar shift that took place much earlier in some advanced democracies. The UK was, for example, very late in instituting a Freedom of Information Act (2000). No doubt, increasing numbers of whistle-blowing and other public challenges have also forced judicial changes. Whistle-blowing has now come to be perceived more positively; whereas in the more paternalistic political culture of the past it was regarded with great suspicion in the UK as disloyalty and trouble-making.

Among the most significant legal reforms are the Constitutional Reform and Governance Act 2010, The Public Interest Disclosure Act 1998, The Freedom of Information Act 2000, The Human Rights Act 1998, and the 1989 revision of the Official Secrets Act. The constitutional act is of great significance for UK civil servants (CRGA 2010). It gives the principle of neutrality and professionalism in the Civil Service's Code of Conduct a statutory status in order to reinforce the civil service's independence.

It will also put the role of the Civil Service Commissioners on a statutory footing (see below). A critical history of this legislative intervention might have to consider which direction it is facing in the relation between State and citizen; whether it is meant to 'neutralise' the civil service as servant of the people or as servant of the political elite.

The Public Interest Disclosure Act (PIDA) came into effect on 2 July 1999. No doubt it helps create awareness in management of the right to raise public concerns and of the fact that management may suffer penalties for victimising a whistle-blower. It is discussed at some length below since, in the opinion of this author, it is too weak to assist the serious external whistle-blower, or indeed many whistle-blowers at all (Lewis 2008; NHS Reform Group 2011).

The Freedom of Information Act 2000 (FOI 2000) legitimises some kinds of public interest disclosure that were previously restricted and may facilitate 'whistle-blowing' in many situations, as is argued elsewhere (Hunt 2006).

The Official Secrets Act 1989 (OSA 1989) is highly relevant for UK civil servants, both because it narrows down the criminality of disclosure and because it abolishes the 'public interest defence' for disclosure embodied in the previous (1911) version of the Act. In one example, Clive Ponting, the civil servant who leaked documents concerning the sinking of an Argentine ship during the Falklands War, had been acquitted because he was able to appeal to the public interest defence (R v Ponting Crim LR [385]). However, the 1989 Act makes it an offence for a person to disclose information 'without lawful authority' if the information is likely to cause 'damage' to matters of defence, international relations, investigation and prevention of crime. The Act sets out what constitutes damage in terms of, for example, something that 'endangers the interests of the United Kingdom abroad, seriously obstructs the promotion or protection by the United Kingdom of those interests or endangers the safety of British citizens abroad'. The Act is now much clearer and narrower as to what constitutes a criminal act under its terms.

Significantly, Ponting stated: 'My conscience is clear – a Civil Servant must ultimately place his loyalty to Parliament and the public interest above his obligation to the interests of the Government of the day'. What was a salutary lesson for government and the judiciary was that a jury of citizens (not a judge) exonerated Ponting despite the fact that he had broken the Official Secrets Act (Norton-Taylor 1985). Before and since Clive Ponting there are many cases of civil servants and public sector employees whistle-blowing or leaking information. Some of these cases are recorded in the British Library's 'Freedom to Care' archive (FtC

2005). Two other prominent cases follow, which provide evidence of a link between politicisation and whistle-blowing.

Katherine Gun

When the civil servant Katherine Gun was working at Government Communications Headquarters (GCHQ) for monitoring signal intelligence activities in 2003, she leaked an email from the US National Security Agency. She thought that the request made in the email was 'immoral, illegal and completely against humanity' and was inconsistent with what the public were being told. She knew that she could be prosecuted for making the disclosure, but felt very strongly about the matter and felt sure that an internal complaint would be ineffective (PASC para 81).

Despite the absence of a public interest defence under the OSA, Gun had planned to use a similar legal ploy from the common law. This ploy was 'necessity of circumstance', to the effect that she had to break the law in order to save lives for whom she was in some way responsible. In the event, the case against her was abandoned.

Derek Pasquill

Pasquill was party to policy on the government's engagement with Muslim political groups and believed it to be 'potentially catastrophic for Britain'. Since there appeared to be little or no criticism of the policy, he took it upon himself to leak information. He was also aware that he could be prosecuted and also had little confidence in the internal channels. He was arrested and suspended from his job in 2006 and finally cleared in 2008 (*Guardian* 2008). He told PASC (para 81) that there was a 'patronising attitude' by people at the top of departments. He also thought that his department would stifle an investigation by the Civil Service Commissioners (CSC) had he asked for one.

We now return to the earlier remark that there may be considered to be an imbalance in the fact that it is the *authority* that sets up and interprets the disclosure procedures. This possible imbalance will be examined with a brief analysis of selected developments in disclosure procedures in the United Kingdom.

The Constitutional Reform and Governance Act

The Civil Service provisions of the Constitutional Reform and Governance Act 2010 came into force on 11 November 2010, placing the Civil Service values on a statutory footing and including the publication of the Civil Service Code. It sets out Ministers' powers to

manage most of the civil service and diplomatic service and establishes the Civil Service Commission as a body corporate. For our purposes, we must note that it gives a statutory footing to the Civil Service Code, recruitment into the civil service and the role of the Civil Service Commissioners. This claims to strengthen the neutrality (impartiality) of the civil service.

While a truly independent CSC would be a welcome step, it has to be recognised that there is a strong tendency for members of such commissions to be drawn from the 'Establishment', which is quite paternalistic and loyal to the *status quo ante*. It is well known that in the UK the members of one government agency or commission will often appear on several others. While the principle of 'merit' is emphasised in the new Act, how exactly will members of the CSC be appointed?

The Civil Service Code

The core values of a civil servant according to The Civil Service Code (Cabinet Office 2010) are integrity, honesty, objectivity and impartiality. It defines objectivity as 'basing your advice and decisions on rigorous analysis of the evidence' and impartiality as 'acting solely according to the merits of the case and serving equally well governments of different political persuasions'. There are two unexamined assumptions of note.

Firstly, it assumes that different political persuasions are always within the ambit of democracy, rather than a threat to it. One cannot assume that the actions of policymakers, executive officials, special advisers and others within government are always in the interests of democracy and humanity.

Secondly, rigorous analysis does not necessarily give us an objective view; indeed is there any such thing? Two equally 'objective' people can arrive at different views because the *values and attitudes* by which they interpret the 'facts' are different. Is the glass half-empty or half-full?

The code states: 'If you believe that you are being required to act in a way which conflicts with this Code, your department or agency must consider your concern, and make sure that you are not penalised for raising it'. It demands that if the civil servant has a concern then they must raise it first with the line manager and failing that, with the 'nominated officer' (custodian of the Code) and failing that with the Civil Service Commissioners. If that fails, the Code concludes: 'If the matter cannot be resolved using the procedures set out above, and you feel you cannot carry out the instructions you have been given, you will have to resign from the Civil Service' (Cabinet Office 2010a, sections 16–19).

It seems, however, that in most of the truly significant cases, such as that of Gun and Pasquill, it is not a matter of not carrying out instructions but of knowing certain things (decisions, policies, omissions, intentions and failures of procedure) that are democratically or ethically unacceptable.

Public Administration Select Committee (PASC) recommendations

Prior to the enactment of constitutional reform, and following upon a flurry of leaks and whistle-blowing by civil servants in recent years (especially under the stress and controversies of war), the UK's Public Administration Select Committee (PASC) in 2009 investigated the whole question. The subsequent report makes instructive reading in the whole context of European developments concerning civil service disclosure and the informational relation of State and citizen (PASC 2009).

The PASC report purports to strike a balance between the damage that leaks can do within or to government and the public right to know, drawing particularly on the context of the Civil Service Code, the Freedom of Information Act and the Public Interest Disclosure Act. On the one hand, leaks 'endanger ministers' confidence in an impartial Civil Service' and, on the other, 'leaks can raise matters of genuine public interest…' (PASC 2009, Summary).

The PASC took evidence from civil service whistle-blowers Katherine Gun, Derek Pasquill and 'concern-raisers' Carne Ross and Brian Jones (Ross 2007; Evans 2004).[3] It also mentions the case of Christopher Galley (associated with Member of Parliament, Damian Green) (see *infra*). The report takes the view that while the UK government must recognise in practice the general shift to a public right to know that is marked by the Freedom of Information Act, and public interest whistle-blowers must be protected; at the same time civil servants should understand and abide by their Code, and managers should create channels and a culture for raising concerns that would make leaks and whistle-blowing largely unnecessary. Induction programmes for new civil servants should explain their duty of confidentiality with a 'counter-balancing exposition of the public's right to be informed' (PASC para. 102). Meanwhile, the Public Interest Disclosure Act is seen as an adequate and appropriate shield against reprisals. In the background there is other relevant legislation which may come into the balance, especially the constraints of the Official Secrets Act (OSA) and possibly, but not mentioned by PASC, the protections of the Human Rights Act (HRA).

In this framework the PASC makes a number of recommendations, some aspects of which are worth considering independently of the new constitutional reform Act.

i) FOI Requests: It is recommended that it should be regarded as quite acceptable in some circumstances for a civil servant indirectly to disclose information by 'prompting a request' under the FOI. Such an action is seen as a 'legitimate alternative' to leaking (para. 30). This is completely in accord with the Principle of Complementarity and is a leap forward. However, we have to ask what is meant by 'prompting a request', since there are certain to be legitimate and illegitimate ways of doing that.

ii) Recommendation on Special advisers: At the moment a special adviser may only be disciplined by their respective minister if they leak information, which is not a 'desirable situation'; therefore the CSC 'may be the appropriate body' to investigate (para. 36). One may comment that the role of 'special advisers' is highly problematic, especially so with regards to policy-oriented whistle-blowing. They are temporary civil servants and are officially justified as providing advice to a Minister 'from a standpoint that is more politically committed and politically aware than would be available to a Minister from the permanent Civil Service…' One should note that, they are 'exempt from the general requirement that civil servants should be appointed on merit and behave with impartiality and objectivity so that they may retain the confidence of future governments of a different political complexion.' But, curiously, 'They are otherwise required to conduct themselves in accordance with the Civil Service Code…' (Cabinet Office 2010b, sec. 4). Their role will no doubt be partly responsible for 'ordinary' civil servants feeling excluded from the decision-making process, a feeling that must be connected with an inclination to blow the whistle on democratic grounds.

iii) The misuse of 'misconduct' common law: The common law offence of 'misconduct in public office' should not be used to undermine 'the clearly expressed will of Parliament in limiting the scope of offences under the Official Secrets Act',(PASC para. 46) it is recommended. PASC goes on to comment:

> The intention in passing the 1989 Official Secrets Act was to limit those areas in which it would be a crime to leak official information. The use of misconduct in public office charges in connection with the leaking of information raises concerns that the boundaries

established by the 1989 Act may be becoming blurred. It is important that this common law offence is not used to subvert the clearly expressed will of Parliament in limiting the scope of offences under the Official Secrets Act (Ibid).

This is a reference to the case of Damian Green MP and Christopher Galley, which had prompted the PASC inquiry in the first place. The two were arrested by police for leaks concerned with MP's allowances, under the common law offence of 'misconduct in public office', which is an abuse of public trust. This case is not discussed here, but one has to agree wholeheartedly with the PASC on this point.

iv) Policymaking: Heads of department 'should foster a culture of vigorous internal policy debate where dissent is encouraged even on the most sensitive of political topics' to counteract the feeling of the civil service that information is being ignored or suppressed in policy debate' (para. 112; Conclusion para. 29).

Again, this is all very well, but how? Without an analysis of why there is a lack of internal policy debate and why dissent is stifled, this recommendation is feeble. If there is a systemic drift to politicisation how is *that* to be addressed; indeed, can it be?

In general, what the PASC approach amounted to is the giving of greater powers, even investigative powers, to the independent CSC, now ratified under the Constitutional Reform & Governance Act, 2010. This author is not convinced that this kind of top-down proceduralism will address the *causes* of democratic challenge from the civil service.

Certainly, the PASC report raises the level of debate. It recognises the difference between a narrow *party*-political motivation for leaking (described as 'reprehensible', para 24) and an ethical one motivated by concern for the democratic ideal, but it does not sufficiently distinguish between them in its deliberations, conclusions and recommendations. The difference is crucial, and that is the basis of the critique offered here.

The Public Interest Disclosure Act (1998)

In its 'Conclusions and Recommendations' the PASC Report says:

> …there are exceptional circumstances in which a civil servant could be justified in leaking material in order to expose serious wrongdoing. This would need to have followed a failure of proper channels both of disclosure and challenge within government. In short, it

must be a last resort. The provisions of the Public Interest Disclosure Act 1998 cover the majority of these circumstances and the Act sets an appropriate balance between the competing interests of maintaining a trustworthy Civil Service and protecting the public interest (PASC 2009, para. 25).

One may take issue with this reliance on PIDA. Although the PIDA may be a step forward, it is but a small step and it cannot fulfil the expectations that many workers, including civil servants, have of it.

As it stands, PIDA puts the entire onus on the whistle-blower to prove the public interest in their case and that they have gone about their disclosure in the approved way. For this reason this author was one of those who, as founder of the UK public sector whistle-blower support group Freedom to Care, criticised the Act at the time of its drafting. Here, the argument has always been that a law to protect whistle-blowers is certainly needed, preferably on a European level, but that it must be modelled on anti-discrimination law (sex, race, disability) and must assume a prior right to freedom of speech in the workplace. This would make it simple in conception and place the onus on the employer.

Whistle-blowing can be regarded as a matter of an employee's human right, i.e., a right to freedom of speech *in the workplace,* and the public accountability of employing organisations. What we learn from the British case is that there is indeed a tension between the political and administrative domains and that under the stress of decision making about military action this tension breaks out in the form of civil service whistle-blowing.

Whistle-blowing and politicisation: a link?

Background pressures

Enough has been said here to conclude that the linkage between the politicisation of the civil service and the incidence and character of whistle-blowing by civil servants will not be simple and causal. It will be complex, mediated and shifting. This author proposes that among the background pressures that predispose to such actions there are those of a socio-cultural kind, those of a political character, those which are peculiar to public administration and those which are economic, environmental and technological.

Socio-cultural: Prominent here is the emergence of a society in which deference for authority has declined and the expectations of a 'right

to know' and a 'right to participate' have amplified. Meanwhile the political passivity of a media-soaked consumer society has generated celebrity status for those social 'avatars' who represent various human features in the social imaginary – the Janus-faced 'whistle-blower' being one such character on the stage. This creates a difficulty for consolidating research into our primary question of politicisation, for it is the personal history of the whistle-blower rather than the organisation and its policy that has largely been the object of study (Johnson and Kraft 1990).

Political and economic: The pressures created by contentious government policies, such as war-making decisions, deregulation, managerialism and public expenditure cuts as well as corrupt and unaccountable behaviour are within the political dimensions. A broader political background lies, no doubt, within the 'need' for the responsiveness, flexibility and direction that is offered by a 'politicised democracy' with centralised executive decision making in a historical period of financial crisis, destabilising global redistribution of power and environmental and demographic threats.

Public administration: Within the very concept of public administration there now appears to be a historical rift between the traditionalists adhering to strong notions of professionalism (expert advisory neutrality) and service to the public and a newer generation of administrators for whom the civil service is 'just a job like any other'. It is the former that feels a dislocation in the value of their work and is more likely to reach a point where blowing the whistle is perceived as saving their own integrity and professional self-image.

Technology: Modern digital communications has released a plethora of new possibilities in access to, and release of, information. The advent of the Internet is beginning to change the relationship between government and citizens, and therefore the role of the civil service. In the 'Wikileaks affair', tens of thousands of confidential government and diplomatic documents were leaked to the media through the intermediary of a protected Internet website. The 'fuzzy' characteristics of the disclosure process have completely changed the parameters of control over government information (EUobserver 2010). We may be going beyond the determinacy both of the unofficial and heroic whistle-blowing act (as illustrated in the cases above) and the official opening up of government by procedural means such as Freedom of Information legislation. A world appears to be emerging in which unknown legions fight other unknown legions in indeterminate spaces (Aron 2010).

Deeper complexity

Besides the question of these underlying factors, there is also the converse question of whistle-blowing's impact on politicisation, on government and on the socio-cultural milieu generally. There can be no doubt that the impact has sometimes been very great, as is well documented in the American cases of Daniel Ellsberg's leaking of the 'Pentagon Papers' concerning the Vietnam war. A very focussed study undertaken in the USA proves the kind of impact that can be effected by the whistle-blower (Johnson and Kraft 1990). In this chapter we have presented cases of whistle-blowing by EU officials that have resulted in high-level resignations, significant reforms and changed the political debate.

The civil servant may be politicised, not by the political elite directly, but by the very process of whistle-blowing. They may begin with a self-image of their action as based on professional or ethical grounds, and due to the process of organisational retaliation find themselves being politicised. Thus not only may the civil servant become positively politicised by politicians pushing through their policies, but negatively politicised by way of reaction to victimisation, a process in which they come to see themselves as defenders of democracy, as 'policy entrepreneurs'. We might call this 'secondary politicisation'. The complexity here is even deeper. While we may fruitfully examine the 'politicisation of the civil service' as a process in which the political class stealthily comes to control the civil service, it does not always occur to us that we may be seeing signs in Europe of a counter-process. In that process, civil servants either politicise themselves on behalf of democracy/citizens/the public (rather than government or state) or allow themselves to be politicised by ethical pressure, not from above but from below i.e., civil society organisations, sections of the media, the Internet and social networks, NGOs and so on.

At the very least one may find a 'traditional' layer of civil servants being encouraged to defend what they perceive as the fundamental liberal values of democracy. To draw a parallel: a rash of whistle-blowing broke out in the UK's National Health Service (NHS) in the 1990s as traditional professionals such as hospital doctors resented their loss of power to a new managerial class (Hunt 1995). Powell argued that the new managerialism was behind the whistle-blowing in social work in the same period: 'For many social workers it seems that there is a growing culture of fear created by the effect within social work organisations of a dominant, managerialist ideology' (Powell 1998,

166). Of course, a younger generation of civil servants may not share traditional values, and the retrenchment of the old and recruitment of the new will consolidate an acceptance of politicisation as the new normality.

Another layer of complexity may lie in a counter-trend. Here the problem is not the civil servant accepting accountability to the public, but rather the civil servant accepting unaccountability to the public. The concept of the civil servant speaking out on behalf of the citizenry may appear increasingly ludicrous in the face of a growing perception of bureaucracy as unaccountable – a civil service that defends itself and its political masters rather than the citizenry. In this Orwellian scenario civil service whistle-blowing will be dead, not just in action but in its very conception.

Finally, there is the propensity of new communication technology to move the goalposts. Since a case has been made here for regarding freedom of information and civil service whistle-blowing as intimately related, it follows that the recent 'Wikileaks' imbroglio can be regarded neither as merely deviant behaviour nor as a peculiar 'freedom of information' issue that has nothing to do with civil servant whistle-blowing in the context of politicisation (ColbertNation 2010). One has to inquire more carefully into the specific conditions and motives under which those who have access to sensitive government information feel they ought to adopt devious hi-tech means to make it publicly available.

Conclusion

Whistle-blowing civil servants and their containment may increasingly become a social issue within the ambit of political controversy about freedom of information, freedom of expression and the erosion of democracy in an age of crisis and powerful Internet technologies. In this chapter we have explored the paradoxical affirmation of the traditional civil servant's role by means of very untraditional public disclosure. Underlying this paradox is a manifold of complexities at different levels: economic, political, ideological, administrative, legal, ethical and technological. This has been illustrated in the European context and, with greater focus, in the UK one.

There can be no doubt that the very nature of the civil service will continue to be challenged and polarised as it bears the brunt of conflicting pressures between the political class and the citizenry in our global crisis.

Notes

1. An earlier version of this chapter was presented at a conference on 'Civil Servants and Politics: A Delicate Balance', Montesquieu Institute, Maastricht University, Netherlands, 4–5 March 2010. I am grateful to the participants and the editors of this volume for their invaluable comments.
2. One study in the USA provides evidence that public employees are more likely to place a higher value on the intrinsic reward of work than those in the private sector; although it is not certain we can connect this with public-spirited civil servants; Houston, David J. (2000) 'Public-Service Motivation: A Multivariate Test', *Journal of Public Administration Research and Theory*: J-PART, 10 (4): 713–727.

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Part II

Politicisation of Civil Servants between Neutrality and Political Activism? Country Studies

5
Civil Servants and Politicians: A Very British Relationship

Diana Woodhouse

Introduction

Since the 1980s the British civil service has undergone what amounts to a perpetual revolution (Bogdanor 2003) as both Conservative and Labour politicians have sought to make it more responsive and effective in the delivery of [their] programmes. Moreover, this period of unrelenting reform is set to continue as the Conservative-Liberal Democratic coalition aims to reduce the financial deficit by cutting public spending. Currently, there are approximately half a million civil servants, with numbers in administrative, that is support and front line services, and executive or managerial grades split roughly 50–50. Senior civil servants account for only 1% of the total (Office of National Statistics 2010) but their influence on the civil service culture and the arrangements by which Britain is governed is considerable. Hence the focus of this chapter is on these higher level positions and their relationship with politicians. The most senior civil servant has, since 1981, also been Cabinet Secretary, the title by which he (and so far they have all been men) is usually known. In this capacity, he advises the prime minister and the Cabinet on issues of policy, as well as on the conventions, precedents, powers and limitations of ministerial office. He thus has a close relationship with senior ministers and a pivotal position within government. As Head of the Home (as opposed to the Diplomatic) Civil Service he is also the glue which holds the civil service together, as well as its protector and chief spokesperson, a role which, from time to time, puts him in the spotlight.[1]

All civil servants are servants of the Crown, which, successive governments have argued, means that for practical purposes they serve the government of the day (Armstrong 1986). Indeed, the civil service in

Britain has no constitutional personality separate from that government. It exists to advise and assist ministers in the formulation and implementation of policies, to manage and deliver government services and, as the permanent arm of government, to provide continuity and stability when political administrations change. The extent to which it also has a responsibility to serve the public interest is a matter of some debate, raising, as it does, the question of whether this interest corresponds with or diverges from that of the government (Norton-Taylor 1985). Proponents of the civil service see it as providing a high-quality service which not only sustains the government of the day but also supports the wider interests of society, acting as a constitutional check on those with elected power. Its detractors view it as an inefficient, unresponsive bureaucracy that works to protect its own interests rather than serving those of politicians and/or the public. Both views recognise that, for better or worse, the operation and culture of the civil service is informed by two separate but related elements: the convention of individual ministerial responsibility and the core values under which the service was established. It is these elements that underpin its relationship with ministers and the wider political community.

Ministerial responsibility and the civil servant/minister relationship

The character of the Civil Service was shaped by a view of parliamentary government, developed in the nineteenth century, which located political power in the ministerial, and hence elected, heads of government departments, and required them to be responsible to Parliament for the way in which they exercised these powers, holding office only for as long as they had the confidence of Parliament, most notably the House of Commons. This was encapsulated by the convention of individual ministerial responsibility which provided the required accountability of ministers to Parliament and accommodated the creation of the new civil service through the development of a chain of responsibility, whereby civil servants were responsible up the departmental hierarchy to ministers, and ministers alone were responsible to Parliament.

These apparently simple arrangements were intended to clarify the civil servant-ministerial relationship and through the protection of officials from public accountability, to enhance political, and hence democratic, accountability. However, even by the beginning of the twentieth century, there was concern that by enabling powerful senior civil servants to hide behind their ministers, these arrangements were

hindering rather than enhancing Parliament's ability to hold government to account. Such concerns have not abated. Indeed, as government has increased in size and complexity, the unease has increased. There has also been concern that the constitutional arrangements are resulting in cumbersome and inefficient government (Fulton 1968).

An underlying problem is the uncertainty and at times disagreement about the requirements of the convention of individual ministerial responsibility as they relate to the civil servant-ministerial relationship. The notion of ministers being personally responsible for every act or omission of their officials, no matter how far removed from them, has been recognised as untenable, at least since the statement by Home Secretary Sir Maxwell Fyfe after the Crichel Down affair in 1954 (Marshall 1989). Ministers are, however, responsible to parliament for errors committed by their departments, in the sense that they are required to give explanations, provide reassurances and, where appropriate, tell parliament what amendatory action has been taken (Woodhouse 1994). Moreover, if the errors are sufficiently serious or provide evidence of a pattern of mismanagement, ministers may find their ability to oversee their department questioned. This may lead to a requirement of resignation or to a cabinet reshuffle at a later date. Hence ministers may seek to distance themselves from serious errors on the basis that they occurred too far down the civil service hierarchy for them to have been involved or to have known what was happening and/or that officials were acting outside their authority. Such claims may be justified. However, they sit uneasily with the underpinning premise that there is a chain of responsibility through which all civil servants are responsible upwards to the minister, thereby enabling him or her to fulfil their responsibility to Parliament.

Despite this, successive governments have used this premise as the basis for their justification that civil servants are not, and cannot be, accountable to parliament or to its select committees, which, since 1979, have been formulated to shadow government departments. These committees claim the right to take evidence from civil servants as part of the accountability process, a claim that has brought them into conflict with successive administrations which insist that, under the convention of ministerial responsibility, civil servants cannot give evidence on their own behalf but only on behalf of ministers to whom they are accountable and according to their instructions. Cabinet Secretary, Sir (now Lord) William Armstrong, was categorical: 'The ultimate responsibility lies with Ministers, and not with civil servants, to decide what information should be made available.' (Armstrong 1986). This line is

supported by the rules civil servants and select committees are required to follow (Osmotherly Rules, 1997), which are not only portrayed as necessary for upholding the convention of ministerial responsibility but also as essential for protecting officials from what might be unfair public scrutiny. The application of these rules in routine operational matters seldom causes problems. However, there are occasions when a rigid interpretation can frustrate select committee inquires (e.g., Foreign Affairs Committee 1979–80 and 1998–99, Trade and Industry Committee 1985–86) and result in accusations of ministerial/civil service collusion to restrict accountability when this is embarrassing to ministers and/or to senior civil servants.

The establishment of Next Steps Executive Agencies in the late 1980s and 1990s has been particularly challenging to the notion that civil servants appear only on behalf of their minister. These agencies, in which around three-quarters of civil servants now work, were part of the reforms introduced by the Thatcher government. Through the separation of policy advice – a core department function – and opera- tions – the responsibility of the agencies – they are intended to make the delivery of services more efficient and effective. Chief execu- tives are responsible for the day-to-day running of agencies and their continuation in office is dependent upon the agency's delivery against performance targets. Yet, despite the personal nature of this respon- sibility which means they are in the firing line should their agency become subject to public criticism, the government insists that, like all civil servants, they cannot give evidence on their own behalf. While in practice this seldom inhibits accountability for agency operational responsibilities, it can put chief executives in a position where they are unable to defend themselves from criticism of under-performance, which, they believe, has been caused by shortcomings in policy or a lack of resources. In such instances, ministerial responsibility clearly does not act as a protection for these civil servants but more as a protec- tion for ministers and possibly for the department in which the agency is located, albeit as an operationally separate entity.

Occasions when civil servants have been 'named and blamed' also demonstrate that their protection from public accountability is not absolute. Most of these cases have been a result of independent inquiries or inquiries undertaken by select committees, both of which have been established to investigate matters of public concern. While the former are established by government and thus have its cooperation, even if they result in blame being attributed to officials, the latter are estab- lished by parliament; in the second case the attribution of culpability

to particular officials is condemned by government which insists that because of ministerial responsibility, select committees must not 'explicitly or implicitly seek to assign criticism or blame to individual civil servants' (Treasury and Civil Service Committee1986–1987). Yet this is a rule that ministers themselves do not always follow and there have been occasions when they have publicly exposed officials.

Ministers are not required to endorse or defend errors made by their officials (whether named or unknown) nor to assume personal responsibility as if the errors were theirs own; the convention does not require vicarious responsibility. However, publicly attributing blame to a particular civil servant, as a means of deflecting criticism away from themselves, strikes at the heart of the relationship between civil servants and politicians which is based to a large degree on trust and on the premise that in return for loyalty to their minister, civil servants are protected from public scrutiny. The most contentious example of this happening was the sacking in 1995 of the director-general of the prison service by Home Secretary Michael Howard after a number of prison breakouts were blamed on operational and management errors (Learmont 1995). Howard utilised the division between 'policy' and 'operations', arguing that the former was the responsibility of ministers and the latter of officials, and sought also to make a distinction between 'accountability' and 'responsibility', claiming that he was accountable in terms of giving an account but not responsible in terms of culpability; responsibility for operations lay with the director-general and he was culpable when things went wrong.

While providing greater definition to a convention may be helpful, there are problems with these distinctions. It is not always easy to tell whether errors are the result of operational mistakes, bad policy or a combination of the two. In this case, the director general claimed that the failures were not operational but the result of policies that increased the prison population without providing additional resources. Moreover, he argued that far from having full operational responsibility, the agency was subjected to extensive interference by the home secretary. This points to another important issue; as long as agencies remain the responsibility (however responsibility is defined) of ministers, they have reason to interfere, particularly when the failings of an agency have political ramifications. Most agencies operate on the lower political slopes and interference may not therefore be an issue. However, their failure can project them into the headlines, as happened with the Child Support Agency in 1994 and the Passport Agency in 1999, and require a political response from the minister (Woodhouse

2003). This is recognised by Cabinet Office Guidance, which states, 'the Secretary of State is accountable to Parliament on all matters concerning their agencies, and accordingly should retain the right to intervene in the operations of the agency if public or political concern justifies it' (Cabinet Office 2006).

Determining civil service and ministerial responsibilities is therefore not easy, or even possible, whatever distinctions are made. Separating 'responsibility', in the sense of culpability, and 'accountability' seems artificial; the convention of ministerial responsibility is not composed of two separate and distinct elements but rather of two interrelated components (Public Service Committee 1995–1996). Moreover, there are occasions when blame cannot solely be attributed to either ministers or officials. Errors and misjudgements may lie with both and are, in any case, subject to judgement by different communities. This is evident in situations where both ministers and officials have suffered the consequences of 'operational' failings, albeit without any public acceptance of dual responsibility. Thus, for instance, in 2006 the Home Secretary lost his job because of the department's failure to repatriate foreign prisoners, and although there were no disciplinary proceedings against the officials involved, three of them subsequently took early retirement. Such behind-the-scenes attribution of blame is in line with the convention of ministerial responsibility and contrasts with the position of the chief executive of the Rural Payments Agency who lost his job over the failure to implement the single payment scheme effectively. In this case, public responsibility resided with him, although the subsequent removal of the minister from his post suggests that he was also, less directly, punished for the failure (Public Administration Committee 2006–2007).

The lack of agreement about who should be accountable for what and to whom and what this accountability requires is a source of tension between ministers and officials. Even at the highest level there is a lack of consensus about the split of responsibilities between the political and permanent heads of a department. One view is that the responsibilities are quite separate and thus ministers should not interfere in those that reside with the permanent secretary; the minister sets the policy objectives and the permanent secretary organises and manages the department and accounts to the minister to ensure these objectives are met effectively. A counter view is that while most responsibilities operate in parallel, there is some convergence and, consequently, some responsibilities within the permanent secretary's job description are also to be found in that of the minister. Hence it is acceptable, even desirable, for

ministers to be involved in running the department, for they, as well as the permanent secretary, are responsible for its effectiveness (Public Administration Committee 2006–2007).

In practice, the extent to which ministers involve themselves with the operation of the department depends on their inclination, the time available and their relationship with the permanent secretary. There is therefore variability across departments. This is not a bad thing. However, the lack of a generic articulation of the respective roles and responsibilities of ministers and permanent secretaries can cause tension which may be exacerbated by the fact that the permanent secretary's accountability to the minister is not absolute but complicated by complimentary – even conflicting – accountabilities.

This is evident in his or her personal accountability, as accounting officer, to the Public Accounts Committee, for the probity and rectitude of departmental spending, which, since the nineteenth century, has been an exception to the rule that officials do not account in their own capacity to parliament but through their minister. Such accountability has the potential for conflict with the minister, as it allows permanent secretaries formally to note their dissent if they consider that the expenditure required for a particular policy breaches the requirements of propriety or regularity or does not provide value for money. Their objections may be overridden by the minister through a written direction which instructs senior officials to authorise the appropriate spending and provides a general basis, such as the public interest or political imperative, for the instruction. Thus the Public Accounts Committee is able to see that the permanent secretary bears no responsibility for the particular action.

Written directions are described by officials as 'the nuclear option' and are rarely necessary. Nevertheless, they are an indication of tension, even conflict, between the political and permanent head of the department. A notable instance of their use was in 1991 when the Foreign Secretary, supported by the prime minister, decided, against the advice of the permanent secretary, to finance the construction of the Pergau Dam in Malaysia from the Overseas Aid and Development budget. The permanent secretary warned that this was an abuse of the budget, a view that was subsequently supported by the National Audit Office and by the High Court. Controversially, the permanent secretary's dissent and the use of written directions were kept secret within government for two years, undermining the clarity for responsibility the procedure is intended to provide. The rules have since changed, such that each ministerial instruction must be reported immediately through

the National Audit Office to the Public Accounts Committee which makes the direction public, although whether this requirement is met by placing the documents in the House of Commons Library, to which only Members of Parliament normally have access, is questionable.

Pergau Dam was a rare example, which became a case celebre, in part because of the secrecy surrounding it. More recent instances of written directions have concerned the Millennium Dome, when the objection of the Millennium Commissioner to grants being given to bail out the project was overruled by ministers on the basis that failing to rescue the project would damage the country's image, and the overpayment of £15 million in welfare benefits to hundreds of disabled people, when arguments that value for money required the funding to be clawed back were overruled on political grounds, ministers being concerned that they would be seen as insensitive and uncaring if they recouped money from this group of people.

The use of ministerial directions has varied. Between 1993 and 1997 the Conservative government used them only seven times, while between 1997 and 2001, under Labour, they were used 13 times. However, caution needs to be exercised in concluding that this represents a greater degree of tension between civil servants and a Labour administration, as many of the directions were of a technical nature rather than matters of policy (Evans 2001) and may have been indicative of the new administration's lack of experience. This would seem borne out by the decline in their use by a more confident Labour government, such that between 2005 and 2008, only five directions were given. In different circumstances, high usage may indicate recognition by the governing party that it is running out of time to implement its policies. This might explain the unprecedented use of directions in the run up to the 2010 election (fourteen in a seven month period, contrasting with an average of two a year over the fifteen years between 1990 and 2005) which suggested increasing tension between politicians whose chances of being re-elected were slight and a civil service preparing to serve a new administration, probably of a different political persuasion. If there was pre-election tension, it was, no doubt, intensified by Britain's severe financial crisis, as policies designed to deal with its consequences clashed with the requirements of financial probity and value for money. Hence the car scrappage scheme, intended to protect the automobile industry from the worst of the recession, was opposed by officials on the basis of the potential loss to taxpayers, as was the underwriting of the Bank of Scotland's risky loans, designed to maintain confidence in the banking sector. It is hardly surprising that permanent secretaries

refused to sign off expenditure for these projects without ministerial directions; it is also not surprising that ministers felt it appropriate to issue such directions. Both were doing their job: the former, protecting the public purse; the latter taking action they believed was strategically and politically essential. Other ministerial directions, which included giving grants and supporting controversial changes in the structure of two local authorities, are less easy to understand, except as a last minute attempt to protect ventures which Labour ministers thought were unlikely to be supported by a different government.

Whatever the usage of ministerial directions, the existence of a procedure which protects permanent secretaries from being held responsible by the Public Accounts Committee for actions they have opposed demonstrates that their accountability to ministers is not absolute. Moreover, it is constrained further by a range of other accountabilities, including that to the Cabinet Secretary for the outcome of capability reviews to the courts for the legality of departmental policies and actions, and, more tenuously and controversially, to the civil service core values and the wider public interest. The protection afforded by employment law also limits the extent to which ministers can extract accountability. If holding someone to account means having the power to discipline and ultimately dismiss, ministers no longer have this power – hence the successful employment tribunal case brought by the director of the prison service after his sacking – which now resides with civil servants. Notions of civil servants, particularly those in senior posts, holding their position at the minister's pleasure, are therefore no longer grounded in reality and the relationship of the civil service and ministers is more complicated than convention suggests.

Core values and the reform of the civil service

Along with the convention of ministerial responsibility, the character of the modern civil service stems from the Northcote-Trevelyan Report of 1854. This ended patronage in favour of appointment by merit and promulgated the core values of the new civil service; integrity, honesty, objectivity and impartiality. These require officials to put their obligation of public service before their own interests; be open and truthful; base their advice and decisions on a rigorous analysis of the evidence; and act solely on the merits of the case. They also encapsulate the permanent, non-partisan nature of the civil service, requiring its members to refrain from engagement in party politics and to serve governments of different political persuasions with equal veracity. These core values

have remained central to the very being of the civil service; hence the disquiet during the last 30 years about the effect the more or less constant programme of civil service reform may have on them. This arose out of concern about the service's ability to respond to the issues and problems of the modern world, and from political frustration with what was seen as the conservative and risk-averse nature of civil servants who too often seemed to be following their own agenda (Dearlove and Saunders 1984; Sedgemore 1980).

Under the Conservative governments of Margaret Thatcher and John Major (1983–1997) civil service reform included market testing, with the hiving off and contracting out of some functions to the private sector, and constant efficiency reviews. The establishment of Next Steps Agencies, noted above, was just one development in an ongoing process of fundamental change to the civil service's structure, practices and personnel. This was accompanied by the import of private sector methods and managers and a shift from administration to 'new public management' with its focus on individual performance against targets and objectives and performance-related pay.

The process of reform continued apace under the Labour government of Tony Blair which introduced capability reviews and business planning systems and accelerated the number of those appointed from outside the service. It also tried to shift the operation of the civil service from being departmentally driven to joined-up or holistic operations, such that departments were required to work together, and with groups beyond central government, on challenging social problems such as social exclusion, drugs and community health. These initiatives were accompanied by a change in the role of some senior civil servants from the traditional one of policy advice to project management, the belief being that a more entrepreneurial approach was required for the first class delivery of public services.

The reforms have resulted in a reduction in civil servants numbers of between two and three hundred thousand (depending on the figures used) and a move away from common systems of pay, grading, recruitment and promotion, with many senior positions being subject to open competition. Indeed, by the end of the twentieth century nearly a quarter of senior civil service posts, including many permanent secretaries and agency chief executives, were recruited from outside the service. These changes have removed any expectation that a job in the civil service is a job for life and, in so doing, they run counter to traditional notions of there being a 'public service bargain', whereby senior civil servants trade the perks of employment in the private sector for a

role at the centre of government, a generous pension scheme and prestigious awards, while politicians relinquish the right to hire and fire in return for the loyal service of the country's highest academic achievers (Hood and Lodge 2006).

The relenting nature of the reforms and the reforms themselves led to concern that the civil service's core values were being undermined. Further, a climate where the ministerial emphasis was on developing a 'can do' culture, the protection afforded civil servants from requests to act contrary to these values was inadequate. As a consequence, there was increasing pressure from civil service unions, parliamentary committees and others for the constitutional position of the civil service to be given legislative effect, a pressure that was resisted by a succession of ministers and cabinet secretaries, though the Civil Service Code was published in 1996. This sets out the constitutional framework of the civil service, its core values, and a process by which officials can raise concerns directly with the independent Civil Service Commissioners – rather than through their line manager – if they believe they are being asked to act in a way which conflicts with the Code.

The Civil Service Code was subsequently supported by both the Ministerial Code (1997), which tell ministers to uphold the political impartiality of the civil service and not to ask civil servants to act in a way that contravenes its core values, and the Code of Conduct for Special Advisors, first produced in 2007 (revised in 2009) in response to concern that the increase in their use was undermining these values. Such concern was probably overstated; totalling less than 90 in 2007, their numbers were – and still are – modest, with most advisers not situated in departments but in the Prime Minister's office or the Chancellor's Council of Economic Advisers. That said, their status as temporary civil servants, together with their direct appointment by ministers, places them in a very different position to regular civil servants. Moreover, while they are expected to conduct themselves with honesty and integrity, the nature of their appointment means they are exempt from adherence to the principles of impartiality and objectivity; their political commitment and awareness is intended to provide an additional resource of advice and assistance for the minister.

Arguably therefore, their presence should give an added protection against ministers putting pressure on regular civil servants to act in ways which would undermine their impartiality. However, there can be issues if overzealous advisers give inappropriate instructions to regular civil servants or act in a way that undermines normal departmental relations. Such occurrences may have consequences for ministers who

are required to take full responsibility for the conduct of their advisers, as Stephen Byatt, Secretary of State for Transport, discovered in 2002 when he was required to relinquish office after his failure to control the excesses of his special adviser appeared to result in the breakdown of his relationship with his permanent secretary (Woodhouse 2004). It was to allay fears of such an instance being repeated that the Code of Conduct for Special Advisers was published. Its message is clear; advisers must not ask civil servants to do anything which is inconsistent with their obligations under the Civil Service Code. Moreover, it provides a procedure for permanent civil servants to follow should they have concerns about any requests from special advisers.

The development of the various Codes, noted above, suggests that despite major changes to the operation of the civil service, its core values are as strong now as at any time since their initial articulation, though the culture they support would seem incompatible with the attitudinal change that successive governments have thought necessary, to make the civil service fit for (their) purpose. Indeed, arguably, the values have been strengthened, for in one of its last pieces of legislation, the Labour government put the position of civil servants on a statutory basis. The Constitutional Reform and Governance Act 2010 gives the Civil Service Code and the core values it contains force in law which cannot be changed without the assent of Parliament, and also ensures the independence of the Civil Service Commission and the right of civil servants to appeal to it. Yet there may be more subtle changes afoot. To ensure the relevance of the core values to the goals of modern government, the current Cabinet Secretary has linked them to what he calls the 'Four Ps; pride, passion, pace and professionalism' (O'Donnel 2009). Thus while the core values remain, what they mean and how they translate into action may be changing.

Politicisation

A related concern generated by civil service reform has been whether the appointment of outsiders is politicising the senior civil service. Direct politicisation, in the sense of civil servants being appointed because of their political allegiances and loyalty (Peters, Chapter 2), is not supported by evidence. The British civil service continues to be at the extreme end of the spectrum in its insulation from political influence; even senior appointments neither follow party allegiance nor reflect ministerial preference and thus personal and political loyalty. Moreover, to ensure this position is maintained, ministers are kept at

arm's length from appointments that are subject to open competition, and in contrast to key appointments within the service, they are neither consulted nor allowed to express a preference, although they may reject a successful candidate and thereby cause the competition to be rerun. This lack of ministerial involvement led a parliamentary committee to comment that concerns about politicisation, or accusations thereof, have, in the case of open competition, limited the ministerial role too much, creating 'a danger that ministerial influence over the civil service will be reduced to the extent that it is hard to reconcile with ministerial [and democratic] accountability.' (Public Administration Committee 2006–2007). Certainly the limitations have resulted in inconsistency between internal and external appointments and there may be merit in ministers being able to express a view about short-listed candidates, providing that a key criterion remains the ability of candidates to serve a government of a different political persuasion.

Fears that appointing outsiders to senior civil service positions is politicising the service would therefore seem unfounded, at least in terms of the appointments being political; appointments continue to be made on merit, something that is reinforced by the Constitutional Reform and Governance Act. Nor is there evidence to suggest that external appointments are changing the ethos of the service (Public Administration Committee 2010) or that the higher visibility of senior officials, whether external or internal appointments, is affecting its culture. The erosion of anonymity, through media exposure, public appearances before parliamentary select committees – even when speaking on behalf of ministers – and greater transparency, is in sharp contrast to traditional ideas of the nameless, faceless official working behind the scenes. This has resulted in some senior civil servants being publicly known and, on occasion, associated with particular policies. However, this does not undermine the requirement of impartiality, nor does it mean that the civil service is becoming politicised.

Similarly, despite the influence and public exposure of particular prime ministerial appointments, notably press officers, there is little to suggest that the use of special advisers, in general, is resulting in a redundant version of politicisation (Peters 2011) or if it is, that this is anything other than a transient state, linked to particular individuals. It may, of course, be too soon to tell; such changes take time and may be difficult to discern initially. It may, alternatively, be an indication of the strength of the civil service culture and its resistance to change, something that is likely to concern future politicians.

Civil servants and the wider political community

So far this chapter has been primarily concerned with the relationship between the civil service and the governing party, but civil servants also engage with the wider political community, although this engagement is limited by the convention of ministerial responsibility and notions of civil service loyalty. As we have seen, this imposes restrictions on the evidence officials can give to multi-party parliamentary select committees. It also affects their drafting of ministerial responses to parliamentary questions from which, while not actually misleading, they may omit facts and arguments that could make their minister vulnerable to political point scoring. Whether this accords with the 1996 Parliamentary Code's requirement – that ministers and officials must be open and honest when answering parliamentary questions – is debateable. Certainly such strategies do not endear civil servants to members of parliament, particularly those from opposition parties, at least unless, or until, they assume ministerial office.

Beyond the limits – and limitations – of parliament, civil servants have routine contacts with members of the opposition parties giving briefings on specific aspects of departmental organisation or on government policies, although the latter requires ministerial approval and usually the presence of ministers. They also act as foci for the numerous networks through which political and other interest groups have an input into policy formulation and implementation. Less routine, but nevertheless significant, are the pre-election contacts with opposition parties which take place without ministers being present and without discussions being reported to them. Prior to 1964, formal contact with opposition parties was not allowed, although officials would do what they could to familiarise themselves with the opposition's plans to enable as smooth a transition as possible should a government of a different political persuasion be elected (Hennessy 1989).

Subsequently, a convention has developed whereby the main opposition parties request, and the prime minister agrees to, confidential discussions with senior civil servants. Initially, the practice was to allow contacts to commence in the last six months of a five-year parliament. However, this proved problematic in 1983 and 1987 when, in the absence of fixed-term parliaments, an election was called before parliament had run its full course. Hence, in the run up to the 1997 election, the prime minister authorised contact some 16 months before parliament was due to end and a similar amount of time was made available prior to the election of 2010. Nevertheless, the fact that the point of

commencement is at the discretion of the prime minister means that he or she can frustrate the process of familiarisation between civil servants and opposition parties.

The current coalition government has plans to regularise the length of the parliamentary term to five years which, if passed by parliament, will bring some certainty to an otherwise uncertain situation.[2] Further clarity would be provided by the adoption of a rule allowing discussions three and a half years after the previous general election (Riddell and Haddon 2009). The suggestion that both the timing and the process should be under the control of the Cabinet Secretary, not the prime minister of the day, also has much to recommend it and would reinforce the civil service's impartiality and raise the profile of the cabinet secretary's constitutional role. Though this seldom receives public attention, a succession of cabinet secretaries has been required to plug gaps in the constitutional arrangements and provide rules and guidance on issues of governance, including, in the run up to the 2010 general election, working with the Queen's private secretary and constitutional experts to devise a procedure for forming a government when no party had an overall majority. After the election produced the expected 'hung parliament' result, he and other senior civil servants were proactive in assisting the delicate process of coalition forming, providing high level secretarial support during the various negotiations. Indeed, the part played by the civil service, both before and after the election, demonstrated the importance of it having a constructive, albeit neutral, relationship with the wider political community.

Conflicts/tensions

At a number of points in this chapter, reference has been made to tension between civil servants and politicians, particularly those who hold government office. Such tension has existed, in varying degrees, since the formation of the modern civil service. This is inevitable given their different yet interdependent roles, and as long as the tension is constructive, it may be a positive sign that the delicately balanced relationship is working as it should. Complaints from both sides of the ministerial-civil servant axis have long been part of the chit-chat of the Whitehall/Westminster village, with ex-ministers criticising civil servants for their lack of delivery skills, managerial competence and commitment to the success of government policies, and ex-civil servants protesting that ministers do not take the advice of their officials, fail to provide consistent leadership and are obsessed with new

initiatives of doubtful practicality. The difference in recent times is that these complaints are now expressed publicly (Public Administration Committee 2006–2007).

This change may suggest a deteriorating relationship between ministers and civil servants born out of the increasing complexity of governing and government structures, the frustration of ministers at the failure of their policies to make the anticipated difference, and the dissatisfaction of officials with constant policy changes and a political disregard for past experience. It may however have more to do with the end, or at least the beginning of the end, of the culture of secrecy that has traditionally pervaded Whitehall and Westminster. The Freedom of Information Act, together with the greater openness and transparency engendered by the establishment of agencies and select committee inquiries, mean that the public is now privy to the tensions residing within government in a way that was not previously the case.

Whatever the reason, there may be a case for adopting a Code of Good Governance, as proposed by the Public Administration Committee, which focuses on the civil service-ministerial relationship and brings together, in one document, the rights and expectations of both parties. Such a code might include the right of civil servants to expect that political leadership will be clear and consistent, programmes will be matched with resources, and they will not to be made public scapegoats. Ministerial rights might include the expectation that civil servants will have the skills and experience to provide appropriate advice and deliver the government's objectives in a professional and committed way and that poor performance will be dealt with by a robust system of performance management (Public Administration Committee 2007–2008). The notion of such a code, at least as a generic document, was rejected by the government, though it has not been averse to individual departments supplementing existing codes with statements delineating responsibilities, such as the compact produced by the Home Office, although these are more concerned with individual and departmental performance than with articulating responsibilities.

The value of a broad, generic separation of responsibilities and expectations is, in any case, doubtful while providing a detailed, yet general, articulation would seem impossible. However, outlining the respective and overlapping roles of the political and administrative heads of departments, that is, of ministers and permanent secretaries, could be both useful and possible. It could, for instance, facilitate the innovation whereby permanent secretaries could raise objections with ministers over decisions they believed would adversely impinge upon their

areas of responsibility, such as the management, governance or values of the department, record a minister's insistence on the decision and their objections to it, and make this document public (MacAuslan and Addison 2010). This would mirror the procedure available to permanent secretaries as accounting officers and, as with that procedure, its use would no doubt be rare. Moreover, it would not infringe on the doctrine of ministerial accountability; indeed, by clarifying responsibility, it would ensure that ministers, rather than officials, could be held to account when their decisions and actions impacted on the running of a department or agency. It would also provide a safety valve for permanent secretaries and prevent tension developing in a way which is destructive to the ministerial-civil servant relationship.

Conclusion

This chapter has examined the two constitutional principles that underpin the relationship between civil servants and politicians, the convention of individual ministerial responsibility and the core values of the civil service. It has also considered the impact of ongoing civil service reform on these principles. At first sight, there appears to have been little effect. The theory of individual ministerial responsibility remains intact, at least with regard to its central tenet; civil servants continue to be accountable to their minister and ministers alone are accountable to Parliament. Yet there have been modifications in practice, especially in relation to executive agencies, which may, in time, require an adjustment to the theory. In particular, while civil servants are still shielded from parliamentary accountability, in the sense of not accounting on the Floor of the House or, unless instructed to do so by ministers, to select committees, they are expected to be directly accountable to the public for their responsibilities. Thus while traditionally their protection was absolute with political and public accountability being one and the same, it is now partial, with public and political accountability being separated. Increasingly, therefore, the question has to be asked whether individual ministerial responsibility still affords mutual benefit to ministers and civil servants, or whether changes in practice are undermining the delicate balance of the relationship.

The rhetoric surrounding the core values also suggests that these are unchanged by the reform programme of successive government and even, with the passing of the Constitutional Reform and Governance Act, that they are stronger than in the past. On paper this is the case, although giving them legal protection at this point might be an

indication of their vulnerability. However, much is in the interpretation and the actual operation of the values and, despite a lack of hard evidence, it seems likely that the import of a new breed of civil servants, together with the fundamental changes to civil service practice and culture, are affecting, or will over time affect, their interpretation and operation and could result in what Peters calls 'redundant politicisation'.

Yet, all that said, such changes should not be overestimated, neither should the importance of what has not changed be underestimated. (Bogdanor 2003). On the surface, at least, this includes the principles that underpin the relationship between civil servants and politicians. Their apparent robustness may be an indication of the deep seated conservatism of Britain's political culture or a reassurance of continuity. Either way, the reform process is set to continue. The coalition government is committed to increase efficiency, further decrease civil servant numbers and reduce civil service costs, including those arising from redundancy and final salary pension schemes. Thus notions of there being a public service bargain will be buried deeper in the mythology of the civil service. How this will affect the relationship between politicians and civil servants remains to be seen.

Notes

1. In recognition that the civil service reform agenda required strong leadership, in 2012 the roles of Cabinet Secretary and Head of the Civil Service were again split between two senior civil servants.
2. The Fixed Term Parliament Act was passed at the end of 2011. As a result, the next election will be in 2015.

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6
Managerialism and Politicisation in the Dutch Civil Service

Sandra van Thiel

From the early 1980s on, a series of administrative reforms has been implemented in the Dutch government. Internationally, this trend is known as the New Public Management (NPM) – see e.g. Pollitt and Bouckaert, 2004). NPM aims to make governments more efficient, by adopting business-like methods and instruments. These reforms affected personnel policies and instruments, including the appointment system for (top) civil servants and their tenure and salary arrangements. It has been claimed that NPM has led to higher mobility and an increased focus on the managerial skills of public officials. Implicitly, the underlying notion in NPM is that a separation of politics, policy and administration will add to the quality of each of these processes as each actor focuses on what (s)he does best; politicians deal with politics, bureaucrats use their expert knowledge to develop policies, and executive agencies implement those policies in an impartial and professional way. Following this line of reasoning, top civil servants are not only expected to become more managerial but also less political as a result of NPM reforms. However, there are indications that under the influence of NPM reforms (top) civil servants have in fact become more political actors, instead of taking the role of non-political public managers (see e.g., Noordegraaf 2000; Van Thiel et al. 2007).

This chapter will deal with these contradictory claims by discussing whether Dutch (top) civil servants can be characterised more by managerialism or by politicisation. To this end, it looks at recent changes in personnel policies and appointment procedures, political influence on appointments in ministries and some demographics of top civil servants including party membership and the focus of their daily activities. Data on these topics is taken from secondary sources (prior research,

government documents and reports) and from a qualitative survey based on 50+ elite interviews (Van Thiel 2012).[1]

The Dutch civil service system

The Dutch civil service system is a position-based system (OECD 2003, 2005; PUMA 2003). Employees are recruited for a function, not for a career (Van der Meer and Dijkstra 2000). Vacant positions are open – through advertisements – to a wide range of candidates from both the civil service and the private sector. Personnel management is decentralised (cf. Peters 2010; Van der Meer and Raadschelders 1999). Consequently, there are varying labour conditions between the different parts of the public sector, hindering mobility across organisations or policy sectors. In a *career-based* system, by contrast (see Table 6.1), senior civil service top positions are held by members of an elite, who share a common background and socialisation. They change jobs relatively frequently but in principle never leave the civil service, which is one system with uniform conditions.

In the Netherlands, each government and public sector organisation can determine their own procedures and labour conditions (cf. Van der Meer and Dijkstra 2000). For example, at the national level the ministries fall under the same central labour agreement (in Dutch: CAO). Municipalities have their own arrangements, just like different types of semi-autonomous agencies. This can be an arrangement tailored for one organisation, or an arrangement set for an entire sector like for instance the police force or public schools (see Table 6.2 for an overview of the number of employees in different parts of the Dutch public sector). The decentralised nature of personnel management fits with the Dutch politico-administrative tradition in which many tasks and authorities are decentralised and sub-national governments or semi-autonomous organisations are granted high levels of autonomy.[2]

NPM reforms

The Dutch Constitution states that all Dutch men and women are eligible to be appointed as a civil servant. There are no special exams and the idea of and 'administrative class' is alien to Dutch political and administrative thinking (Van der Meer and Dijkstra 2000). There is also little mobility between political and administrative functions. On occasion, a former civil servant will be elected in parliament or appointed to political post, but the appointment of (former) politicians to civil service positions is very uncommon (Van der Meer 2004).

Table 6.1 Characteristics of civil service systems

	Career based	Position based
Recruitment	Recruitment based on scholastic background, by examination	Open procedures, applications by candidates from all backgrounds and sectors
Management of senior civil services	Centralised management, pre-structured career paths	Decentralised management
Aim	Coherent civil service; one culture, easy communication and high internal mobility	Wide choice of candidates, promoting competition, innovation and adaptability
Appointment	Appointment to civil service is permanent, contracts are related to positions	Contracts specify individual appointments for fixed terms, sometimes linked to organisational objectives
Disadvantages	Lack of (external) competition for top positions; Bias towards generalist skills; Alienation from society and work floor	Need for intricate appointment procedures; Lack of common culture among top executives; Weak mobility across organisations; In case of departmental basis; small pool of good candidates
Countries	France, Italy, Spain	Belgium, Finland, the Netherlands, United Kingdom

Source: Based on: PUMA 2003.

Table 6.2 Number of employees in the Dutch public sector, 2008

	Number
National government	123,000
Municipalities	171,000
Provinces	13,000
Judiciary	4,000
Water Boards	10,000
Education (all)	504,000
Security (police, military)	130,000
Welfare and Care	1188,000
Public sector total	2,143,000
Private sector total	5,160,000

Source: Ministerie BZK 2009, 55.

Next to this egalitarian outlook the Dutch civil service was and is considered to be predominantly Weberian. Civil servants are expected to be neutral experts, who dispose to the wishes of their political principals ('t Hart et al. 2002; Nieuwenkamp 2001). However, under the influence of NPM the civil service has become more entrepreneurial and more visible in the public policy and/or political debate (Van der Meer 2004). This is both caused by and a consequence of changes in the way how the civil service is organised and in the way it operates. These changes have been implemented as part of the NPM reforms.

The legal position of civil servants

The implementation of NPM ideas has led to a number of changes in the Dutch personnel system, aiming to make the civil service more business-like (Peters 2010; Van Thiel et al. 2007; Farnham et al. 1996; OECD 2005; Pollitt and Bouckaert 2004; PUMA 2003; Van der Meer and Dijkstra 2000; Page and Wright 1999; Wright 1994). The reforms focused on three issues: (i) a reduction of permanent tenure by, for example, appointing top officials on a temporary basis and (ii) often on performance-related contracts because (iii) performance and managerial competence became more important criteria in decisions to hire and fire top officials. Particularly the last reform has become known as the managerialisation of the civil service.

A concrete example of these reforms is the 'normalisation' of the legal status of government employees i.e., to make it more like private sector arrangements for instance by reducing the permanence of tenure and more opportunities to work part-time. Several HRM instruments and policies have been introduced including policies to increase the diversity of government staff. The pension fund has been privatised. Performance related pay has been introduced, but on a haphazard and selective basis. Salaries of top civil servants have been maximised. Furthermore, attempts were made to increase the mobility of civil servants for example by introducing new trainee programmes but most importantly by the establishment of a Senior Civil Service.

Senior Civil Service

The Senior Civil Service, in Dutch 'Algemene bestuursdienst' and abbreviated to ABD, was established in 1995 (Van der Meer and Raadschelders 2000). It includes all top civil servants from salary scale 15 and upwards – estimated at about 1,500 officials. The ABD was established to improve the management capabilities and mobility of top civil servants.[3]

The ABD bureau manages a pool of top civil servants; in fact, the civil servants are employees of the Home Office (in Dutch 'Ministerie van Binnenlandse Zaken en Koninkrijksrelaties', abbreviated as BZK). Ideally, the selection and recruitment for all top positions in ministries is handled by the bureau. (In practice this is not always the case as we will see later on.) When a vacancy is advertised, the bureau will provide a list of suitable candidates from their own database, organise the selection and assessment process, and finally nominate a candidate. In case of the two highest ministerial functions (secretary general [SG] and director general [DG]) the minister of BZK has to co-sign the final appointment.

All appointments of ABD members are temporary. Top civil servants are expected to take up a new position every five years (or shorter in case of interim management). As a result the mean length of stay in a senior management position was only 3.2 years in 2002 (ABD 2003). Until then, most senior public officials progressed in their career through a well-defined path, usually within the same department. Long careers within specific segments of the civil service were the result. Although mobility has increased slightly since the introduction of the ABD, it is difficult to say whether this can indeed be attributed to the ABD, as mobility at the top level was already quite high before 1995 (Van der Meer and Raadschelders1999; Van der Meer and Dijkstra 2000). Mobility between the private and public sector is however still very low; in 90% of the cases the general career pattern of (top) civil servants runs within the civil service and usually within the same ministry (Van der Meer and Raadschelders 1999).

The ABD is not an entirely closed circuit, about 10 per cent of the job openings are expected to be fulfilled by outside candidates. Data do indeed show an increase in the percentage of 'outside' appointments – from 9 per cent in 2002 to 11 per cent in 2009 – although the large majority still came from within the public sector (ABD 2003, 2010). Finally, the bureau has expanded its scope over time to include appointments to international positions (like in the EU) and lower levels of government. In 2008 a pilot was started regarding appointments to certain types of semi-autonomous agencies and in 2010 the management programme for the police force was included in the ABD.

It was expected that the ABD would contribute to a de-politicisation of the civil service. Studies show that it has facilitated the development of an *'esprit de corps'* ('t Hart et al. 2002), with more emphasis on the managerial aspects of a senior management job and a reduced need for material knowledge of a certain policy field. However, several respondents in

the interviews consider this loss of substantive knowledge to be a sign of increased politicisation (Van Thiel 2012). They conceive the ABD's aim to 'create a unified civil service ethos' as a call to increase the civil service's compliance with the wishes of the *political* principal (Van der Meer 2004). I will return to this point later on.

Managerialisation of the top civil servants

NPM has introduced the idea of managerialism into the Dutch civil service. Civil servants nowadays have become 'public managers' who 'run' the government in a business-like way (Noordegraaf 2000, 37–38). They are expected to be entrepreneurial and innovative to display leadership and operate strategically; to manage networks of public organisations, political actors, interest groups and citizens; and to be professional managers while retaining a strong public sector orientation or ethos (Pollitt and Bouckaert 2004). As a result, civil servants have become more proactive – contrary to the reactive Weberian civil servant – and thus more visible to parties outside the government (cf. Verhey, Chapter 3 in this volume). This has led to a blurring of the boundaries between politicians and bureaucrats (Van der Meer 2004).

The more proactive behaviour of civil servants has not been matched with an increased accountability of civil servants. The principle of individual ministerial accountability is still dominant in the Dutch politico-administrative system (Andeweg and Irwin 2005). This mismatch has led to a number of incidents and conflicts ('t Hart et al. 2002), for example where top civil servants have expressed outspoken opinions on policies in the media.

The creation of numerous semi-autonomous organisations – another result of NPM – has further increased the 'democratic deficit', in two ways. First, civil servants are in charge of the steering or control of semi-autonomous organisations, and there is little interference from political principals except in case of incidents (Van Thiel 2008). Second, while the appointed CEOs of semi-autonomous organisations have become more active in the public and political debate, there are no appropriate accountability mechanisms yet to hold them accountable in a democratic way (cf. Vibert's 2007). The reader should note that up to 40 per cent of these CEOs are in fact former civil servants (Van Thiel et al. 2004a,b). This is the same in the United Kingdom (James 2003).

Composition and performance of the civil service

Privatisation and agencification of most executive parts of the government – as part of the NPM reforms – have also led to an exodus of

lower-ranking and lower-skilled employees. Nowadays, the average civil servant in a ministry is a mid- to high-ranking policy advisor, a white male (88% are men), just over 50 years old and with an academic background; 96% has a university degree, most commonly law or economics (Van der Meer and Dijkstra 2000; Nelissen et al. 1996).

The dominance of policy advisors in the ministerial staff makes one wonder about the claim that NPM has turned civil servants into public managers (see above). So, what do we know about the daily functioning of civil servants? Based on large-scale survey by the Home Office, Table 6.3 describes a number of job characteristics (cf. Steijn 2004).[4]

Senior civil servants have a loaded working week as they work more hours than stipulated in their contract and perceive a high level of work pressure. At the same time, their job autonomy is somewhat higher compared to other employees, which may explain why they are more satisfied with their job compared to other workers and why fewer of them are looking for another job (cf. Nelissen et al. 1996, 97–100). If they do, however, they are more interested in a job in another organisation than the ministry they are currently working in; a third even preferred a job in the private sector (overall, this was a preference of 19 per cent of the employees).

Data on senior public officials do not fit with the rise of managerialisation. Self-reports still value policy advice skills as most important; there is even a self-acknowledged disinterest in managerial skills. Top

Table 6.3   Job characteristics of senior management, middle management and ordinary employees in selected public sectors in the Netherlands (2004)

	Senior management	Middle management	Ordinary employees
Number of working hours (factual)	49	40	35
Mean number of subordinates	117	24	3
Number of years with current organisation	19	15	14
Autonomy in job (5=highest)	4,14	3,94	3,84
Level of work-pressure (5=highest)	3,42	3,17	2,92
Looking for another job? (% yes)	24%	36%	34%
Job satisfaction (5=high)	4.24	3.95	3.75

civil servants at the central level see themselves as a 'statesman' (60 per cent), charged with the task of governance – not management (Nelissen et al. 1996, 93–97; see also Noordegraaf 2000). They are dedicated to the policy programmes they have to carry out (42 per cent). Hardly anyone would call himself a generalist manager (7 per cent). Further, when asked, most of them (56 per cent) perceive their own leadership more participative than hierarchical. This would suggest that NPM has not led to real changes in the work profile of senior public officials.

Increased use of political advisors

According to Eichbaum and Shaw (2010), NPM has also led to an increased use of political advisors. These advisors are used by ministers to counter the loss of substantive knowledge and attention for politics in the now managerialised civil service.

This applies only very moderately to the Dutch situation, as there is no spoils system and ministerial cabinets in the Dutch government (Van der Meer 2004; Van der Meer and Dijkstra 2000). The number of political advisors has increased slightly but is still very low (Van der Meer and Raadschelders 1999). Several ministers – and at local level several mayors and aldermen – nowadays have a (one) political advisor.[5] These political advisers are appointed on a short-term basis, no longer than the duration of the ruling government coalition. Although they are appointed as civil servants, they are not part of the government bureaucracy hierarchy. It is the only appoint that the minister can *personally* make, without interference from the civil service. The grounds for selection are unknown.

Conclusions on managerialisation

The Dutch civil service system has been affected by NPM reforms in several ways. The legal regulations regarding the civil service have become more like private sector arrangements, for instance by introducing more flexibility and a modest use of performance-related pay. Privatisation and agencification have led to a change in the composition of the civil service work force; ministries are now staffed with highly educated policy advisors, and less with technocrats and street level bureaucrats. The establishment of the Senior Civil Service (ABD) has led to an increased focus on managerial skills, most certainly for top civil servants like SG and DG, and a depreciation of the need for substantive knowledge of a policy field. However, in daily practice most (top) civil servants perceive themselves more as policy advisors than public managers. Moreover according to some observers (interviewed

experts), managerialisation will lead to an increased focus on politics and hence politicisation of top civil servants because of the reduced focus on substantive knowledge. There have indeed been some incidents in which outspoken civil servants – and CEOs of semi-autonomous agencies – have come into conflict with their political principal. For now we can therefore conclude that there has indeed been an increase in managerialisation of the Dutch civil service, but it is not yet clear what the effects have been on the degree of politicisation of (top) civil servants.

Political influence on appointments

There is no spoils system in the Netherlands; all civil servants stay on after elections. Occasionally there will be some reshuffling in the top of the civil service, but this is not common practice. This fits with the typically Weberian character of the Dutch civil service as explained before.

In a Weberian system, selection is based on neutrality, training and expertise. In the Dutch case, competence is mentioned as the sole criterion for appointments, both in the official documents and by almost all our interviewees (96 per cent). The existence of political influence on appointments is (officially) denied (Müller 2006; Andeweg and Irwin 2005; Van der Meer 2004; Van der Meer and Dijkstra 2000; Van der Meer and Raadschelders 1999). However, civil servants have to work together with or be disposed to the demands of their political principals. 'Responsive competence' is therefore probably a more important requirement to (top) positions than pure neutrality (Peters 2010, 83). In a spoils system, responsive competence is ensured by appointing like-minded civil servants. In a Weberian bureaucracy responsiveness can be achieved through training and/or by having a representative composition of the civil service.

The next section will deal with the role or influence of political aspects and actors in the appointment of (top) civil servants, and the dominant criteria for appointments. To better understand the political context in which appointments take place, I will briefly sketch the Dutch political tradition first.

Dutch political tradition

The Dutch political culture is characterised by a long-standing tradition of consensualism (Lijphart 2007). This is caused by the history of pillarisation and the fact that political parties always need to form coalitions

to obtain a majority in parliament.[6] Pillarisation refers to the vertical segmentation of Dutch society; each pillar had its own newspapers, sports associations, interest groups, schools, churches, broadcasting companies, trade unions and political parties. Despite the segmentation there was a stable structure because consensus and compromise were achieved by cooperation among the pillar elites, usually the elites of the associated political parties. From the 1960s on, a process of depillarisation took place, but even today remnants of pillarisation can be found in all parts of society, including parts of the public sector like education and broadcasting (Van Thiel 2012).

The tradition of consensus and cooperation permeates all parts of the public sector including policy-making and implementation. For example, a ruling coalition will supply the ministers and under-ministers who are in charge of the ministries. It is not uncommon that one minister and one or two under-ministers from different parties are appointed to the same ministry. This means that civil servants will work for politicians from different parties at the same time (Van der Meer 2004; Baakman 2004). For example, the Ministry of Health, Welfare and Sports is in charge of three policy areas (health, welfare and sports). The minister and one or two under-ministers are appointed as the political leaders of the ministry. The administrative and managerial leadership is carried out by the DGs of the three directorates-general and the SG, who together form the managerial board of the ministry. The ministry has a number of semi-autonomous agencies which are in charge of policy implementation, regulation and policy advice. Also, there are a number of official advisory bodies that the ministry has to consult on policy changes.

Appointments are a ministerial prerogative

Appointments of civil servants are the prerogative of the minister is in charge of the ministry where the candidate will be working. In practice, however, ministers are only actively involved in the appointment of top civil servants like directors, directors-general (DG) and secretaries-general (SG). Lower-level appointments are mandated to the SG. Therefore, in those cases the formal role of the minister is no more than a rubberstamp on the nomination or selection of the best candidate – prepared by the administration and/or professional headhunting agencies. According to the respondents in the interviews, the minister's signature on such appointment decisions cannot be influenced by political considerations or political actors.

In case of top appointments, however, the majority of respondents (56 per cent) state that political parties and actors may and do try to influence the minister for example by nominating or supporting candidates from the party network (Van Thiel 2012). This is usually done informally, through the party network and at meetings between party leadership and (under-)ministers. Not all ministers are equally susceptible to such influences though. Moreover, the ABD-procedure applies to top appointments (see above). A professional selection and assessment procedure is then used to select the most competent candidate. According to respondents, this decreases the opportunities for political influence.

On the other hand, respondents also indicate that the reach of the ABD is limited in a number of policy domains, because of additional requirements about the training background and/or previous career of candidates. Appointments in the armed forces, the diplomat service, the judiciary and the financial sector have more characteristics in common with a career-based system (cf. Table 6.1) and therefore seldom concern outsiders, according to the respondents. Positions in these sectors require specific expertise or prior experience which can only be gained by training and/or 'climbing through the ranks'. This does not mean that on occasion exceptions are made, such as the occasional appointment of former politicians to important diplomatic posts. However, this is more the exception than the rule. According to the respondents most appointments to the top of military, the judiciary and for example the central bank are solely based on competence (expertise, career) and not on political profiles or party membership.

Party membership of civil servants

Civil servants are more frequently a member of a political party than the general population. About 2.5 per cent of the population is member of a party, while 23 per cent of all Dutch civil servants and almost 100 per cent of the top civil servants (SG and DG) are member of a political party (Binnenlands Bestuur 2010). The most favourite party among civil servants is the Social-Democratic Party PvdA, but until the early 1990s most civil servants belonged to the Christian-Democratic Party CDA (see Van der Meer and Dijkstra 2000, for a historic overview).

There are, however, no studies that show that top civil servants act in (party) political ways. The literature suggests two explanations for this seemingly contradictory finding. First, Van der Meer and Dijkstra (2000) state that at the top of the civil service people with different political backgrounds always have to work together, and therefore top civil servants will look for compromise rather than pursue their own

agenda. A second explanation also points to consociational demands but from a different perspective, namely the need to have all major parties represented, not only in politics (coalition) but also in the civil service and in the wider public sector. This explanation fits with the aforementioned need for a responsive civil service. Both lines of reasoning can also explain why in many cases Dutch ministers will appoint top civil servants with a different party political background than their own (Van der Meer 2004, 216–217). A certain mutual understanding of policy problems is considered to be more important than a shared political affiliation. According to Van der Meer, the recent appointment of some high profile candidates – with a strong opinion on certain issues – points to a different type of 'politicisation' of civil servants. Civil servants have become policy entrepreneurs, not party entrepreneurs (Eichbaum and Shaw 2010, 204).

Criteria for appointments

In the interviews, 96 per cent of the respondents agreed that competence is the most important criterion for appointments. However, under the influence of NPM, the definition of competence has changed; rather than having substantive knowledge and networks in a specific policy sector, top-level officials nowadays primarily have to have managerial skills and experience in different sectors (mobility). About half of the respondents appreciate this change, but the other half considers it to be a change for the worse. Respondents who consider it a good development point to the benefits of the influx of new ideas (fresh eyes, innovations) and the improvement of the management of public organisations (application of new techniques like performance indicators). Respondents who consider it a bad development point to the memory loss of the government, the constant need for (structural) change and a short term focus, which leads to the destruction of knowledge, organisations, networks and traditions, and to inefficiency and poor policy. These respondents blame the ABD to some extent, but mostly blame the advent of NPM ideas into the Dutch government. The experts in the field of education were most critical; they claim that the decentralisation of legal competencies and finances to municipalities and school boards, the large scale mergers of educational institutions leading to bureaucratisation, the high mobility among civil servants in the ministry, and constant reorganisations and budget cuts have undermined the quality and effectiveness of educational policies. Appointments based on managerial competencies instead of substantive knowledge will only reinforce the memory loss and inefficient policy making.

The second most important criterion for appointments (according to 64 per cent of the respondents) has to do with some kind of 'political allegiance'; this can take on many different forms. First, most top level officials in public and semi-public organisations have to have the political sensitivity that is required for their function (responsive competence, see also Verhey, Chapter 3 in this volume). Therefore, they usually have a certain degree of political awareness, regardless of their membership of a political party. Second, public officials are more oriented and interested in the public 'cause or interest'; that is often why they want to work in the public sector. This awareness can be translated into a party membership. But even without party membership, it is often not difficult to find out what viewpoints top-level officials hold based on their past performance. Respondents state that even if it is not public knowledge to which party a certain candidate belongs, 'one usually has a pretty good idea where [s]he stands', because the candidate has expressed his or her views before, either in public or within the policy sector, ministry, networks, etcetera. Therefore, a selection committee will never ask about a candidate's party membership, according to all (!) respondents. Third, outright partisan appointments – where the appointer appoints a fellow party member – are rare. In fact, many respondents state that 'a strong minister will appoint candidates from other parties to create a system of checks and balances'. Or an appointer will appoint a candidate because his/her viewpoints fit with the requirements of a specific function or task. Particularly when changes have to be implemented, either in policy or in the organisation, an appointer will select a candidate who has similar viewpoints about those changes and/or has prior experience with similar changes.

In sum, political allegiances do play an important role in appointments in the Dutch public domain, but seldom in a partisan way. In fact, when asked 91% of the respondents state that Dutch political parties have a strong tradition of distributing and sharing appointments. This fits with the Dutch aforementioned tradition of consocialism (cf. Baakman 2004). The distribution of appointments between political factions is most visible in the (representative) composition of advisory bodies and boards, but respondents also stated that ministers – and civil servants – strive for a 'political' balance in the top positions of ministries.

Conclusions on politicisation

Despite a relatively high level of party membership, Dutch civil servants appear to be driven more by (substantive) policy issues and by a need for consensus, rather than pursuing their personal convictions.

While this is perhaps not entirely the same as the value of 'neutrality' that is central to the Weberian ideal-type, it does fit with the notion of responsive competence. Civil servants are expected to serve political principals from different parties; they have to have a degree of political sensitivity and an interest in the public cause. Party membership, or the personal convictions of top civil servants, is often an open secret, but they are not a subject of discussion in selection and appointment procedures.

Ministers seem to use appointments to achieve responsive competence by purposively appointing civil servants from different political backgrounds – thus creating a representative civil service. This kind of distribution fits very well with the Dutch tradition of consensualism and the sharing of power between political parties. The distribution of appointments, whether in the top of the civil service or in boards and committees, is used to create checks and balances and to obtain more consensus on and support for policy decisions.

Officially, any political influence on appointments is denied to exist. In practice political parties are very interested in the process and do try to influence appointments, but can only do so indirectly, as appointments are a ministerial prerogative (Van Thiel 2012). Moreover, the advent of NPM has reduced the possibilities for political influence on appointments. The increased emphasis on managerial skills and competences has reduced the possibilities for purely political appointments (like rewarding active party members for services rendered). NPM has also led to a professionalisation of the selection procedures through the use of independent head hunting agencies and assessments. The ABD plays an important role in top appointments, although its influence should not be overrated; the reach of the ABD is particularly limited in typical career services like the military, judiciary, diplomatic service and the public financial sector. However, that does not mean that these services are more open to political influence. Rather the contrary, competence, expertise and experience are the dominant criteria for appointments in these sectors.

Conclusions

The Dutch civil service has to operate in a system that expects them to be neutral: there is no spoils system, ministers have very few (personal) political advisors, there is no administrative elite, appointments are (said to be) based solely on merit and competence and the consensualist nature of the Dutch political system means that civil servants have to

work with politicians from different party backgrounds at the same time (because of coalition cabinets) leaving no room for their personal opinions. More recently, there are even more incentives that are expected to induce neutrality, caused by the rise of managerialism (NPM). Senior civil servants have become public managers who 'run' the government in a business-like manner. As a result, managerial skills have become the dominant criterion for appointments. At the same time, appointment procedures have become professionalised and more transparent, leaving less room for political influences. According to the (scarce) literature on this topic, political motives for appointments of top civil servants are therefore non-existent in the Netherlands. In fact, examples are given of ministers who – purposively – appoint civil servants with a different party background, fitting with the consensualist tradition.

The findings presented in this chapter provide partial support for these claims but also show that politicisation of the top civil service is a well-known feature, in different guises. Self-reports show for example that top civil servants spent most of their time and attention on policy and politics, and much less (or preferably none) on managerial matters. Party membership is quite common among civil servants, in particular at the top level. Responsive competence requires (top) civil servants to have some degree of political awareness or sensitivity. Civil servants are the primary (political) advisor to ministers, because specialised political advisors are still rare. And finally, we have seen that ministers do take candidates' viewpoints into account with appointments, not to appoint a fellow party member but to create a balance in viewpoints (checks and balances) and/or to facilitate the implementation of a certain policy agenda.

Therefore, the question whether Dutch servants can be characterised more by politicisation *or* managerialisation cannot be answered with a single yes or no. It would seem that they are characterised by both developments. Managerialisation has affected their mobility pattern and legal status; politicisation is and has remained part and parcel of their daily functioning.

Notes

1. The interviews were held as part of an international comparative research project into party patronage (Mair et al. 2012). Following the interview protocol, 51 experts on nine policy areas were interviewed about the appointments in a pre-selected number of organisations (71) in the (semi)-public domain. Respondents included academics, (former) senior civil servants and politicians, CEOs and board members and journalists.

2. It may also explain why the Netherlands were rather late, in comparison to for example the Anglo-Saxon countries, in improving the legal position of civil servants (Raadschelders and Rutgers 1996). The first Civil Service Act dates from 1929. Nowadays, the regulations for civil servants in ministries are laid down in the ARAR (general regulations) and BBRA (salaries). Distinctions between different functions are expressed in salary scales, with 18 and 19 as the highest levels, equal to a ministerial salary. This type of 'ranking' has been copied in most parts of the public domain, but with different typologies and distinctions.
3. For more information see www.algemenebestuursdienst.nl
4. Based on the 2002 survey in which data were collected from 28,312 respondents, from which 75 (2.6%) belong to the top (salary scales 16–18).
5. Research into this topic is scarce. A study by Van der Steen et al. (2009) shows that a political advisor is an intermediary between the minister and the neutral bureaucracy, between the minister and the political party and between the minister and the media. Political advisors collect, spread and filter information for and from the minister to these other 'worlds' but also monitor and sometimes block political and administrative processes. Political advisors are in charge of relation management, information management, crisis management and career management i.e., the minister's career, daily functioning and well-being.
6. Exceptionally, a minority coalition of liberals and Christian-democrats was formed in 2010. To assure itself of a majority in the Second Chamber of parliament, it negotiated an agreement for the support of the populist PVV.

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7
Civil Servants: How to Support the Political Level: The French Case

Frank Baron

The question how the civil service is related to the political class is a particularly complex one in France because of the political history of the country since the French Revolution, which has seen the succession of a number of fundamentally different regimes. Each regime has dealt differently with the question of how to reconcile the principles of state neutrality and continuity, which form the essence of the French understanding of civil service – with the legitimacy of political power stemming from universal suffrage. The role and the importance of the administration in public decision making have therefore undergone a considerable evolution under the different French regimes.

In spite of the changing conditions posed by the different institutional systems in France since the French Revolution, we have to note the existence of certain structural elements, which confer upon the French administration a major role in the development and the implementation of public policies:

- First of all, state centralisation, inherited by the late Old Regime and reinforced by the French Revolution and the Empire;
- Second, the existence of specific schools for the formation of the administrative and military elite;
- Finally, the need to remedy the political instability, manifested by the succession of antagonistic regimes and periods of high ministerial instability.

The question of the politicisation of the public service, as defined by Guy Peters (Chapter 2), has to be addressed by considering the above-mentioned characteristics from a historical point of view. The early introduction of universal suffrage as the major source of political

legitimacy and the need to ensure the political loyalty of the administration in the face of regime changes or changes in the political majority have led to significant tensions between the political and the administrative sphere, marked by the succession of periods of separation or fusion of the two spheres, both serving the public interest.

Direct politicisation, which Guy Peters defines as the completely discretionary designation of senior administration officers on the sole basis of their political loyalty, occurred during the French Revolution, as the central government sought to avoid any opposition to its authority both on the local level and within the different ministerial departments (Peters, Chapter 2 in this volume). The same logic prevailed during the Empire: state councillors and prefects were appointed by the emperor to retain control of the administration through political power.

With the definite establishment of the republican regime in the late nineteenth century, the main recruitment method of civil servants became the *concours*, a high-level entrance examination, ensuring equal access to the public service and neutral selection. Henceforth, direct politicisation would become residual and only manifest itself in the right of the executive power to nominate *au tour extérieur* – a very limited proportion of members of the *grands corps* and of certain management positions in the central administration. Unlike the *concours,* which is based on academic merit, this procedure follows a discretionary logic: it combines both the politicisation of professional civil servants, rewarding those who entered civil service the normal way and subsequently proved their political commitment, and direct politicisation, integrating politicians into the senior civil service.

After the Second World War, the establishment of the *Ecole nationale d'administration,* which became the almost exclusive way to enter senior civil service, and the institution of the organisation of civil service, led to the limitation of direct politicisation in the civil service and to the recruitment and support of civil servants, who *de jure* and *de facto* were independent from any political authority. In this context, redundant politicisation developed in the Fifth Republic through the establishment of ministerial cabinets, which are mainly composed of senior civil servants recruited on the basis of their political commitment and the affirmation of their political loyalty.

It is obvious that processes of anticipatory politicisation exist in the senior civil service, especially in the highest ranks of the hierarchy, which are designated by the council of ministers: the absence of an American style spoils system opens the way for authorities or representatives, who make the career choice of temporarily occupying a position

of less political exposure. The rules of mobility allow civil servants to change their position without being penalised in their career: a *magistrat,* for example, can work either as a public prosecutor, which means under the authority of the executive, or independently as a presiding judge.

Dual politicisation as described by Guy Peters does not apply in the French case; in the absence of a strict separation of powers, the parliament is not able to influence the appointment of senior officials, which therefore only dependent on the Executive. The competition rule also prohibits any interference of the *partenaires sociaux* (the employer groups, lobbies and worker trade unions) in the recruitment and the promotion of senior civil servants, thus eliminating any possibility for social politicisation. However, the fact that some senior civil servants prolong their administrative career by a political one combined with the current over-representation of senior civil servants in the French political class, whether in government or in the parliamentary assemblies, raises the question of whether there exists another specific form of politicisation in the French case.

The question how the civil service is related to the political level in France clearly confirms the categories defined by Guy Peters. However, unlike the German system, which is mainly an example of professional politicisation, and the British system, which can be placed in a context of redundant politicisation, several types of politicisation coexist in the French system as a result of the different political systems since the French Revolution. The analysis of the French case must therefore be at once historical, legal and sociological.

This chapter will therefore start out with a brief history of the characteristics of French civil service since the 1789 Revolution in order to better understand the underlying legal and sociological issues. Building on this general framework, two case studies will shed more light on the concrete modalities of the relationship between the administrative and the political sphere in France: the case of the ministerial cabinets and that of the parliamentary administration.

Civil service in the political system since the French Revolution

The French Revolution radically changed the relationship between administration and politics by making universal suffrage the major source of legitimacy. By doing so, a hierarchy was created between the elective administration and the non-elective administration, the latter

being *de jure* and *de facto* subordinated to the former. Whereas under the Old Regime, office holders were appointed by the monarch and were ultimately accountable only to his person, the French Revolution introduced the principle of equal access to public service and the accountability of civil servants to society, or rather to their elected representatives.

These two founding principles were formalised in the Declaration of the Rights of Man and of the Citizen of 1789: 'All citizen being equal…, shall be equally eligible to all high offices, public positions and employments, according to their ability, and without other distinction than that of their virtues and talents'[1] and, 'Society has the right to ask a public official for an accounting of his administration.'[2] The administration is therefore subject to the principle of equality, which means the equal treatment of all citizens, including of its own agents, and the principle of legality, which is the obligation to act according to the laws issued by the political power.

The principle of the subordination of the public service to the elected representatives can be derived directly from the democratic principles introduced by the French Revolution. Nonetheless, the importance of the civil service within the state machinery has constantly evolved because of the rapid succession of different regimes in the years following the Revolution of 1789; the position of the public service ranged from being a simple extension of the Parliament, as under the National Convention regime (1792–1795), to being an adjunct of the executive power, as it was the case under the Directory (1795–1799). However, in any institutional configuration, the public service was subordinated to the political power, legitimised by universal suffrage. 'The source of all sovereignty lies essentially in the Nation',[3] but the question whether the public service must be placed under the authority of the legislative or of the executive power, remains open. The history of the French institutions shows that there has been more than one answer to this question.

Under the First Empire (1804–1814) the predominance of the executive over the administration was established. The principle of equal access to public service dating from the French Revolution was reinforced, for its part, by the generalisation of the *concours* as almost the only form of recruitment of civil servants. At the same time, the establishment of the *grands corps*, recruited via the *Grandes Ecoles*, elite schools dependant on the central government, favoured the emergence of an administrative and scientific elite ousting elected representatives to the margins of the state apparatus. In fact, in order to rule freely, the emperor preferred to rely on civil servants, whose career he could

fully control, to a government, who would draw its legitimacy from its responsibility to an elected parliamentary assembly. It was under this regime that the *Conseil d'Etat* was created, serving as the emperor's staff for the drafting of laws and regulations and, at the same time, as the Supreme Administrative Court. This group of public officials would play a major role in the state machinery as they supplied a great number of administrators, ministers and parliamentarians, thus establishing a close proximity between senior civil service and the political system. At the local level, the establishment of the *corps préfectoral* (prefects) under the direct authority of the emperor, who controlled both local state services and municipalities, also turned civil service into the mayor custodian of the public interest against locally elected boards.

The Third Republic (1875–1940) was built mainly in opposition to the First and the Second Empire (1852–1870) and as an answer to the different constitutional monarchies seen during the Restoration. It enshrined the primacy of parliamentary assemblies elected through universal suffrage over the executive, however, without questioning the position of the *grands corps* in the politico-administrative system. Furthermore, once the predominance of the parliamentary assemblies was clearly established within the institutional system, it coexisted with the administrative system inherited to a large extent by the First and Second Empire. The weakening of the government vis-à-vis the assemblies meant neither challenging the *grands corps* at the central level, nor putting into question the prefects at the local level. These two remained crucial actors in the definition and implementation of public policies as the chamber of deputies could not directly administer the country. In many ways, the ministerial instability characteristic of the assembly regime and the paralysis of the parliamentary system, caused by an egalitarian bicameralism, strengthened the public service in its role as a guarantor of the public interest and as an essential element of state continuity. It should be noted that even though the republican regime introduced the principle of the election of local councils (municipalities and departmental assemblies), it did so far not challenge the unitary and centralised state. Consequently, it confirmed the importance of the senior civil service in the formulation and implementation of public policies.

After the Second World War, major reforms of the recruitment system of the administrative elite were undertaken with the goal of renewing the staff, many of which had collaborated with the German occupation forces under the Vichy Regime (1940–1944). The *Ecole libre des sciences politiques*, a private school of political studies, which had a quasi-monopoly on the

formation of the administrative elite, was nationalised and turned into the *Institut d'études politiques de Paris* (Paris Institute of Political Studies). Institutes of Political Studies were also created in provincial universities in order to diversify the demography of the senior civil service. Finally, the establishment of the *Ecole nationale d'administration* (ENA) completed the picture; the recruitment of senior officials was now based on a unitary national examination, on the results of which important positions in the administration were allocated.

The desire to democratise the senior public service, which was manifested by the government after the Second World War, ironically led to the reenforcement of its position within the state apparatus, especially with the establishment of the ENA – a prime breeding ground for the political elite. As Pierre Bourdieu shows in his book 'State Nobility: Elite Schools in the Field of Power' (1989), the mechanisms for the reproduction of the politico-administrative French elite were strengthened as the quasi-monopoly on the recruitment of the administrative elite was conferred upon the ENA.

Bourdieu compares the nobility of the Ancien Régime (particularly the *noblesse de robe*, those who had initially gained their title through public or judicial office*)* with contemporary senior civil service, paralleling the symbolic function of academic qualifications and the entrance examination of the elite schools with a knighting ceremony: '[T]oday's technocrats are the functional heirs (and sometimes the descendants) of the noblesse de robe, a state organ which was created by creating the state, in other words, which had to create the state in order to create itself, which means among other things, a whole political philosophy of "public service" as a service of the state or the "public" – and not just that of a king, like the old nobility – and this service as a "disinterested" activity in favour of the common good. The "service of the king" is an attribute included somehow in the social definition of the nobility … On the contrary, the "public service" dedicated to the state is less of a legacy than a deliberate choice of vocation, a profession consciously assumed (*Beruf*), which requires a disposition and also special talents and skills acquired through study.' (ibid., 544)

If the establishment of the ENA has resulted in the strengthening of the legitimacy of the administrative elite, this actually strikes a cord with the paradox described by Max Weber: Democracy encourages the replacement of the domination of the notables by the domination of competent staff from different social strata, while fearing the emergence of a caste privileged through academic titles and qualifications (Weber 1964, 718). The establishment of this specific route of access

to senior civil service, however, does not suffice to explain the recent over-representation of senior civil servants in the political class.

In his book 'The Heights of Power' (1982), Pierre Birnbaum shows the impact of the institutional system on the demography of politicians, on the parliamentary regime of the Third Republic (1875–1940) and the Fourth Republic (1946–1958) with the tendency to separate senior civil servants from political staff, while the regime derived from the constitution of 1958 has led – through the strengthening of the executive – to the establishment of a veritable 'Republic of deputies' in which the political elite is mingled to a great extent with the administrative elite.

Pierre Birnbaum hence writes: 'The split between politicians and senior civil servants was also characteristic of the Fourth Republic, which in this respect is scarcely distinguishable from the Third. Once again, the "Republic of deputies" emerged triumphant, the deputies being recruited among the same social groups as under the Third Republic. In the Fourth Republic deputies were mainly doctors, lawyers, and teachers (in an even greater proportion than under the Third Republic). However, the entry into parliament of a rather considerable proportion of workers and low-level servants, most of them belonging to the major left-wing parties…. On the other hand, prominence should be given to a small proportion of senior civil servants, still smaller, in fact, than under the Third Republic: the separation of political and administrative power had widened even further'[4] (Birnbaum, 1982, 31).

However, the Fifth Republic has led to a rapprochement of the political and administrative powers because of the considerable strengthening of the powers of the executive in public policymaking. The election of the President through direct universal suffrage since 1965, the alignment of the presidential mandate with that of the deputies under the reform of the presidential term which came into force in 2002 (from seven-year terms to five-year terms), and the organisation of legislative elections two months after presidential elections, have considerably reduced the influence of the parliament and accordingly increased the role of the government.

The break with the parliamentary system means that the head of the executive government no longer nominates the members of the government in parliament. Consequently, the number of senior civil servants entering ministerial positions has increased tremendously under the Fifth Republic. A new *cursus honorum* has come into being; whereas under the previous republic regimes a parliamentary mandate with the possibility to enter a ministerial position was the cherry on the cake of a long career as a local politician, the traditional political career of the Fifth Republic passes through the ENA, to a *grand corps*, on to a position

in a ministerial cabinet or the General Secretariat of the President, finally culminating in a ministerial position. In this type of career, the parliamentary mandate comes as the last step, allowing at once for the acquisition of a local base and the legitimacy of universal suffrage.

Analysing the original professions of the ministers of the Fifth Republic, Pierre Birnbaum writes the following: 'Although senior bureaucrats account for only 9 percent of the deputies in the Assembly, they occupy 29.7 percent of the posts in the government under the Fifth Republic, compared with only 11.8 percent under the Fourth. By themselves they fill almost a third of the top spots in the Fifth Republic. They have been the beneficiaries of the gradual withdrawal of doctors, lawyers, and the like from the executive branch: thus little by little they are replacing the professional politicians.

One final point to notice … is the continuing standstill of big representatives of business, who even under the Fifth Republic have not, for the time being anyway, moved into government; their share of posts hardly changes from one republic to the next. The full significance of this observation emerges when we compare it with the steadily increasing prominence of the senior civil servants. The essential point is this: traditional political professionals have been expelled from the precincts of power, but the commanding heights of government remain inaccessible to intruders from the world of big business. In this way the distinctive identity of the state has been preserved in an attempt to reconcile two different types of professionalisation, which earlier had clashed; in parliament, the old-style political professional, in the government, senior civil servants drawn largely from the Grands Corps, men with an expertise profoundly different in nature from that of the deputies.' (ibid., 52–54).

In this context, the relationship between civil service and the political level differs within the executive and the parliament. In the former case, existing intersections between political and administrative careers have to be reconciled with the principles of the neutrality and the continuity of public service. In the latter, expert opinions independent of political uncertainties have to be provided due to the functional separation between the government and the parliament. These two cases will be considered in the following section.

The case of the ministerial cabinets

From being only simple executive staff, comprised of the personal staff of the minister under the Third and the Fourth Republic, ministerial

cabinets have undergone considerable development under the Fifth Republic by combining both technical and political competences. The cabinet, according to a decree of 1948, which presents its legal basis, is an intermediary between the administrative and the political sphere; its primary functions consist in the transmission of instructions and requests from the minister to his civil servants, the validation of legal and regulatory documents prepared by the civil servants, arbitration between the different services, as well as the participation in inter-ministerial arbitrations under the aegis of the Prime Minister.

Even though there is no binding rule on the formation of the ministerial cabinet, the decision being left to the respective minister, the vast majority of advisers under the Fifth Republic are recruited among senior civil servants – alumni of the ENA or the *Ecole Polytechnique* – because the ministries are in need of scientific expertise (Schrameck 1995). This form of recruitment allows the minister to directly choose his personal staff, thereby ensuring not only their technical competence but also their political loyalty. A minister can also decide on a discretionary basis to terminate the appointment of his advisors. The existence of the ministerial cabinet ensures the continuity and neutrality of the administrative services under the authority of the minister: Unlike the cabinet, the administration remains in effect detached from the spoils system and is subject to the principles of continuity and neutrality, which are essential to the French notion of public service.

No legal document requires that the members of the ministerial cabinet be recruited among civil servants. However, the precarious nature of such a position gives an advantage to civil servants, because they have the right to reintegration in their administration of origin at the end of their service in a cabinet. In addition, good knowledge of the administrative machinery is indispensible to perform such functions, which are placed at the interface of political and administrative decision making. Working in a ministerial cabinet also serves as a career booster for senior civil servants, facilitating access to management positions in senior positions in the state (*grands corps*, prefects, diplomats, etc.).

The rise of ministerial cabinets under the Fifth Republic somehow presents a paradox; it reflects the need to reconcile the respect for the principles of neutrality and continuity of the public service with the ministers' need to be surrounded by staff that prove to be politically loyal. Therefore, the cabinets in some way participate in the politicisation of the administration. Given that they are functionally separated from the latter, in turn, assures them a real independence from the

political sphere. The fact that most senior civil servants spend some time during their career in a ministerial cabinet also helps to make them more aware of the political aspects of administrative action, which is therefore no longer seen as a mere application of general and impersonal rules.

Being mainly composed of senior civil servants, the French ministerial cabinets perfectly illustrate the advisory role vested in the senior civil service in France. If the administration as such remains above all subject to the logic of neutrality and continuity corresponding to the ideal type of Weberian bureaucracy, senior civil servants are nonetheless encouraged to exercise rather political functions by passing through the ministerial cabinets. Some subsequently follow a political career, while others prefer to return to the administration. The cabinets thus play a bridging role between the administrative and the political sphere, while preserving all along their respective specificities.

In his book on the heights of power, Pierre Birnbaum analyses this specific function of the ministerial cabinets in France, to function as bridges between the senior civil service and ministerial, and then parliamentary positions: 'In the Fifth Republic, the route to the ministries has changed; it now passes through the cabinet staff and from there to the government, rather than passing through parliament as in the past…the private sector is almost entirely excluded from the ministerial staffs, through which most future ministers pass. This mode of recruitment has greatly enhanced the autonomy of the governmental machinery, which has severed its ties with both private-interest groups and the traditional political professionals. To some extent the political apparatus has become a homogenous unit, as a result of the increased politicisation of the senior civil service; despite the technical nature of much staff work, some political loyalty is required by the ministers, men who have moved from being senior bureaucrats themselves into ministerial positions in the service of the majority.' (Birnbaum 1982, 67).

This sociological analysis highlights the specificity of ministerial cabinets in the French system. They indeed affirm the redundant politicisation described by Guy Peters, allowing the minister to fully ensure the political loyalty of his staff recruited among civil servants. In some cases they also serve as a point of entry into the political career for senior civil servants, which leads to the hypothesis of a specific form of politicisation of the senior civil service in France, combining the characteristics of redundant and professional politicisation, as defined by Guy Peters (Chapter 2 in this volume).

The case of the parliamentary administration

The French parliamentary administration also plays an advisory role to the deputies, which offers in many ways from the parliamentary administrations in other countries that are rather focused on organisational tasks, logistics and procedural support. Nevertheless, the parliamentary administration is still governed by the principles of continuity and neutrality, characteristic of public service in France, and thus differs from the logic of politicisation in the ministerial cabinets.

Unlike the members of the ministerial cabinets, the parliamentary staff is recruited on the basis of a *concours,* after an anonymous selection, largely based on a written examination; their career thus does not depend on their political orientation. Discretionary recruitment hence only applies to the personal staff of deputies or the political groups, but not for parliamentary staff, being recruited exclusively on the basis of the *concours* and whose careers are governed by a specific statute guaranteeing their independence vis-à-vis the executive (Avril and Gicquel 2010).

The tasks performed by the French parliamentary staff are extremely diverse and correspond to the three major functions of the parliamentary institutions: representation, legislation and control. These tasks have varied over time, the parliamentary staff being originally focused on the management of the parliamentary mandate, the writing of reports and on proceedings. The increasingly technical nature of legislation and the institutional balance of the Fifth Republic, which strictly separates the parliamentary mandate from the ministerial office, have led to changes in the tasks of the parliamentary staff, increasingly taking over from the deputies content-related tasks, such as the drafting of laws, amendments, legislative and informative reports.

This evolution of the tasks of the parliamentary administration reflects in many ways the changing institutional context. Under the Third and Fourth Republic, the ministerial staff was almost entirely recruited in Parliament and ministerial cabinets were often composed of some political advisors from the immediate entourage of the minister. Ministers originating from parliament retained their parliamentary mandate and had the right to vote in parliamentary sessions. In this context, the issue of access to information held by the administration seemed relatively insignificant to the deputies of the majority, their main concern being the political control of the minister through interpellation or the questioning of government accountability.

Under the Fifth Republic, the separation of the executive, now under the authority of the president, elected through direct universal suffrage, and parliament has grown wider. Ministers are no longer necessarily chosen from amongst the deputies and the Constitution renders the function of a member of the government incompatible with a parliamentary mandate. Moreover, the growing importance of the ministerial cabinets in public policy making has resulted in an increasing functional separation between the administration and the deputies – the ministerial cabinets are now playing the role of an intermediary between the deputies and the administration. It has thus become more difficult for the deputies to intervene directly in the administration and to directly obtain information in the possession of the administrative staff without passing through the political filter of the cabinet.

Ezra Suleiman, an expert on the political and administrative elite in France, has demonstrated the separation between the senior civil service under the executive and the parliamentary administration in the Fifth Republic. According to Suleiman, the senior civil service takes 'defending the public interest' as a pretext to not inform deputies whom they perceive, because of the way they are elected, as merely defending particularisms and local interests (Suleiman 1976) This situation of the strict functional separation between deputies and civil servants described by Ezra Suleiman and Pierre Birnbaum largely explains the changes in the role of the parliamentary staff into that of an advisor, namely to standing committees, but also to many monitoring bodies established by the two assemblies (boards of inquiry, fact-finding missions and, more recently, the evaluation and control committee of the National Assembly).

These developments, however, do not imply a trend toward the politicisation of the parliamentary administration. The latter is, in fact, not subject to the logic of the spoils system and political changes do not result in systematic changes of staff, as may be the case with other European parliamentary administrations. This is due in large part to the mechanism of the merit-based entry examination, which bestows legitimacy upon the civil servants and credits them with a renowned expertise. The parliamentary civil servants present an element of continuity and a veritable instance of second-opinion in the face of the civil servants of the executive and the advisors of the ministerial cabinets. Finally, because of their neutrality they can just as easily work for deputies belonging to the political majority as for members of the opposition. This is particularly important because the opposition has specific

rights, laid down in the Constitution and in the regulations of the assemblies, including the ability to create commissions of inquiry or to put legislative proposals on the agenda.

This special role as an advisor conferred upon the parliamentary civil servants implies a very strong requirement of neutrality. Not only are the parliamentary civil servants obliged to refrain from taking any public position (obligation of professional secrecy), but their status also prohibits them from serving under the executive, outside of organs with an independent statute (such as courts or independent administrative authorities). Moreover, service in a ministerial cabinet, if not prohibited, is also not encouraged; the statute does not provide for any possibilities of detachment, at least for National Assembly, and years served in a ministerial cabinet do not count towards promotion. This is in contrast to the case of civil servants of the executive for whom, as we have seen, service in a ministerial cabinet often serves as a career accelerator, either to advance their administrative career or to start a political one.

The French parliamentary administration is thus an interesting case combining both the principles of neutrality and continuity with the exercise of advisory functions to the political authority. As in the case of the ministerial cabinets, this can be explained on the one hand by the characteristics of the French civil service itself and, on the other hand, by the institutional developments that have rendered necessary the consulting of an independent expertise, which can be mobilised within the parliamentary institution rather than within the governmental administration.

Conclusion

The relationship between the civil service and the political system in France has both elements of discontinuity, associated with the successive modifications of the power balance under the different regimes, and of continuity, linked to the centralised nature of the state, to the existence of the *grands corps*, and to a specific demography of the politico-administrative elite. In this context, the senior civil service is not only restricted to the task of public policy implementation but it is also actively involved in their formulation.

The French case highlights the importance of the political history and of the institutional balance in each regime to an understanding of the different forms of politicisation affecting the relationship between the administrative and the political sphere; the current situation is in

many ways the result of a veritable sedimentation of the practices inherited from previous regimes. After the turmoil of the French Revolution and the experiments with different regimes in the nineteenth century (Empire, presidential system, restorations of the monarchy), the republican tradition has eliminated the mechanisms of direct politicisation and has broken with all practices of purge in the administration with the generalisation of competitive recruitment. The strengthening of the executive under the Fifth Republic, and the strict separation between the legislature and the administration have, in turn, led to the establishment of diverse mechanisms of politicisation.

The relations between the parliament and the executive under the Fifth Republic thus led the parliamentary administration to diversify their tasks and to perform a second opinion oversight role as independent advisors to the deputies, without, however, contesting the principle of neutrality and of the strict separation between the administrative and the political sphere.

On the contrary, within the executive, the development of the ministerial cabinets falls under a logic of redundant politicisation comparable to Westminster-type systems; the necessity to balance the increased powers of the executive with the tradition of civil service neutrality has led to the development of structures at the interface of the administrative and the political authority. The French specificity in this matter lies in the demographic composition of the ministerial cabinets: they are mainly composed of senior civil servants who then return to an administrative career or who consequently embrace a political career. It can thus be noted that there is a combination of the logic of redundant politicisation and of the logic of professional politicisation as described by Guy Peters. This professional politicisation does not imply, as it does for instance in Germany, that leadership positions in the senior civil service are almost exclusively occupied by civil servants who have pledged allegiance to a political party; the principle of the neutrality of the civil service is respected. The cabinet, on the other hand, has the role of a career booster for the civil servants in the executive and presents to them a point of entry into the world of politics, which explains the over-representation of senior civil servants in French politics.

Notes

1. Article 6 of the Declaration of the Rights of Man and of the Citizen 1789.
2. Article 15 of the Declaration of the Rights of Man and of the Citizen 1789.
3. Article 3 of the Declaration of the Rights of Man and of the Citizen 1789

4. Birnbaum Pierre (1982), op. cit. 31

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8
Civil Service Reform in Slovakia and Hungary: The Road to Professionalisation?

Katarína Staroňová and Gyorgy Gajduschek

Introduction

A professional civil service is the cornerstone of an effectively performing public sector. Politicisation is generally seen as the primary impediment to successful administrative development (Verheijen 2001; Pierre and Peters 2001), as it runs contrary to the principles of merit, professionalism and permanence that are essential foundations of a functioning civil service. The transition of Central and Eastern European countries into modern democracies in the past two decades brought a lot of questions and problems connected with institutional redesign, including questions regarding the clear division between political and administrative officials. This interaction between elected politicians and permanent career civil servants is a central theme of institutional politics. The relations between these two actors at the centre of government affect the capacity of governments to make and implement policies to the extent expected from modern political systems. The relationship between politicians and civil servants is of particular relevance for the new EU member countries from Central and Eastern Europe.

In the last years prior to EU accession reforms were conducted in candidate states to bring about the formalisation of politico-administrative relations and compliance with the 'principles of the European Administrative Space'. These principles of European public administration were developed by the EU and Sigma[1] as part of the EU's attempt to develop an overall public administration reform policy (SIGMA 1998,

1999), which could help applicant countries to meet the Copenhagen and Madrid criteria.[2] Generally, these reforms have progressed slowly and although measures have been introduced that would hinder the politicians to appoint and dismiss senior officials at their will in most CEE countries (Verheijen 2006; Malíková and Staroňová 2005), the civil service systems in CEE countries remain incompatible with the principles of professionalism and neutrality.

There had been very little change in the period after the accession in 2004 in the overall situation, and even those progressive measures often seem to be short-lived. A recent SIGMA study, which examined CEE civil service reforms, concluded that there is: 1) continued politicisation; 2) an ongoing failure to create a professional merit based system; and 3) a lack of effective measures to improve the quality and stability of staffing through appropriate recruitment remuneration, promotion and career development arrangements.[3]

This chapter describes and analyses the civil service system of Hungary and Slovakia. These countries have been chosen as they depict different routes of civil service reforms – in Hungary starting gradually with regime change while in Slovakia starting rapidly, mainly under pressure from the EU. Still the outcome is the same; the degree of politicisation is increasing. Most of the features depicted below on the two countries at hand could be also found in other post-communist EU member countries (Meyer-Sahling 2011; Dimitrova 2010). We approach the issue at hand both from a diachronic and a synchronic point of view. First we try to sum up the most important facts on the two countries. Then we analyse the facts and try to identify how attributes of the civil service system differ from most of EU-15 countries, that can be characterised with limited politicisation, irrespective of if they follow a classical career or a position system.

In this chapter we define politicisation as any type of intrusion into the civil service system that enforces anything else than merit. A merit system is a form of civil service system that is designed to assure professional and politically neutral personnel in public offices. In negative terms: a merit system is designed to block potential intrusion into the civil service of factors other than professional neutrality. Modern merit systems assure this mostly but not solely with a detailed legal regulation. Please note that our definition is explicitly wider than that of provided by Peters (Chapter 2). Most importantly, we include patronage into the concept. Moreover, we include any personal decision that is based on any criteria other than

merit. Thus nepotism, favouritism and cases of pure corruption that influence the personnel system of government are included into our definition of politicisation. Peters' terminology may assist us to make relevant distinctions among civil service systems of the 'Western World'. However, by using the same, intentionally narrower concept in our, greatly different, context may result in missing the answer to our basic question: Why non-merit practices are so widespread in East-Central European countries?

Historical development and administrative tradition vis-à-vis politics

The purpose of this section is to review the structure and history of civil service formation and to discuss politico-administrative relations in a historical context of Hungary and Slovakia so that the impact of cultural influences can be later identified. Then we present the features, profile and data of the civil service in the two countries as of today.

Historical characteristics of civil service in Hungary and Slovakia

In the historic development of civil services of both Hungary and Slovakia, three significant periods can be distinguished that are closely connected with general changes and transformation in the society as a whole. The first period runs to 1918 when both Hungary and Slovakia were part of one monarchy. The second is the, inter-war period of 1918–1939, when the monarchy was broken up into national states, with Slovakia as part of the Czechoslovak Republic. The third period relates to the totalitarian regime when the Communist Party became the ruling party in both countries: from 1948 to 1989 in Slovakia and from 1949 to 1989 in Hungary. The post-1990 period is tackled separately.

The beginning of both the Hungarian and Slovak national Civil Service goes back to the Habsburg monarchy, when both countries formed part of it and when the Austro-Hungarian state was formed in 1867. The monarchy followed the Prussian-German model of state administration, and a well-protected and professional Civil Service emerged. By all means, the Habsburg administration brought with it modern administrative techniques including the merit based civil service system. Nevertheless, the monarchy kept its autonomous local government system which had evolved from the feudalist autonomies. Indeed, that the Hungarian ruling elite kept and defended the old, county-based institutions against centralising modernisation, as the

guarantee of their privileges, had a strong impact on recruitment of state servants. The local administrative institutions were filled in by pauperised Hungarian noblemen whose only income came from their offices, which was unprofessional and largely corrupt. In the Slovak territories, citizens considered this local government, filled with Hungarian noblemen, an instrument of suppression. The result was a highly politicised administration with a certain level of patronage that survived the historical changes. The tension between the Hungarian local administration and the central government expressed the general conflict of modernity: the 'modern', efficient and well-functioning system is alien, the 'own' is outdated and ineffective.

After the First World War the Austro-Hungarian monarchy broke up and nation states were created, among them Hungary and Czechoslovakia. In Hungary, a merit system formed with feudalistic features under very strong, and basically negative, influence of the noblemen. Slovakia, as a part of Czechoslovakia on the other hand, revealed perhaps the most developed administrative system of the region, with a relatively strong merit system (Malíková and Staroňová 2001). In both countries most of the basic features of the Austro-Hungarian system of civil service such as respect for the established hierarchical authorities, observance of purely bureaucratic procedures and bureaucracy as an honourable profession, became the basis of the public administration system in the period after the First World War. Nevertheless, the bureaucracy of the first Czechoslovak republic managed to reform and reorganise administrative units in a way that elected political bodies emerged on national, regional and municipal levels with bureaucracies based on a merit system. This did not happen in Hungary, where reform movements were blocked by the above-mentioned noblemen.

After the coup d'état in 1948 in Czechoslovakia and in 1949 in Hungary, both countries' civil service systems became greatly similar until 1990. Both countries became part of a very uniform system of Soviet type administration which had to be copied largely by all allies of the Soviet Union (Gajduschek 2007). The ideology behind this system was that in a communist regime public servants should not and must not be alienated from the masses as happens in bourgeois systems. Civil servants have to be employed under the same condition as clerks at a company or even as physical workers. Thus, equal legal conditions for every kind of employment became the basis for the Labour Code that also regulated the employment of civil servants. Everybody became the employee of the state, wages and salaries were equalised.

In this system the Communist Party became the ruling party and thus the decision-making body in both countries and the government apparatus operated as an adjunct of the party, carrying out its decision. Consequently, at all levels of administration there were party and government bureaucrats in parallel hierarchies that partly overlapped. The formal relation between senior administrators and the party politicians was also regulated by the nomenclature system. This represented political control over the recruitment and promotion process which in practice meant that no appointment and promotions within the public administration could happen without the agreement of the competent party bodies. Thus, this system required the civil servant to be the servant and representative of the working people and the Communist Party and thus civil servants had to be loyal to the political regime of the Communist Party structures (Malíková and Staroňová 2001).

This system could be described as a classical spoils system, as all positions depended on the decisions of the Communist Party and its leaders. However, the system here differs from the spoils system known from the nineteenth-century United States in that there were no regular elections. Thus, some negative aspects stemming from the fact that in such systems the personnel is completely replaced from time to time could be avoided. Knowledge and necessary skills could be accumulated during the work experience. As the communist system consolidated, these advantages became evident. The case of Hungary is a good example for this trend. Administrative positions were filled in by inexperienced and undereducated persons when the communists took power in 1949. As statistical data reveals (Gajduschek 2007) even high-ranking managerial positions were filled in by persons who had not completed elementary education and had no administrative work experience. From the 60s on, however, the work experience and the education level of these civil servants increased. By the 70s most managerial positions were fulfilled with professionally capable candidates. (A similar trend could be detected in Slovakia and most East-Central European countries.) Meanwhile, scholars of Public Administration tended to advocate the merit system by reviewing its advantages over the politically dominated personnel system.[4] The merit system as an ideal gained ground in Hungary first in academia, later among civil servants and from the 80s even among the political elite. Several elements of a merit system had appeared from the late 70s in the legal framework and everyday administrative practice. Slovakia in this regard stuck more tightly to the classical communist personnel system.

Post-1990s Reforms in civil service

After the fall of communism, there was a need in both countries to replace the previous unified soviet system of public administration. Here, we can identify different trajectories: in Hungary, establishing a merit system has been a largely endogenous initiation, whereas in Slovakia it was a purely exogenous one.

In Hungary, the notion of a depoliticised civil (and public) service system became a major value in itself by 1990 and was a central tenet in the democratic transition. This may explain why Hungary was the forerunner in the region adopting a comprehensive and detailed civil service act. The main manifest goal of the law was, as it is expressed in the preamble of the Act 23/1992 On the Legal Status of Civil Servants: to assure that '…public affairs are dealt with by politically neutral, highly professional, impartial civil servants that follow strictly the legal regulations'. Later on, political intrusion, though it happened regularly and with increasing measure, was generally considered a negative phenomenon; it had to be denied or explained in political communication.

Slovakia followed a different line. The Soviet-style personnel system was largely followed, with no relevant forces advocating an alternative merit system. After 1990, the civil service had not been a major issue on the political agenda until EU membership became a priority after the 1998 elections and building a merit system became a necessity for that, as expressed by EU requirements. In fact, during 1994–1998 era of Mečiar rule[5] not only was no effort for the introduction of laws that would affect the behaviour of state employees made but the politicisation of the civil service increased (Malíková and Staroňová 2005). Even with the change of government in 1998 to a more democratic and pro-EU coalition did not immediately bring needed reforms to the civil service. It took years more until the new laws on civil service were passed in 2001 and even that happened thanks to the EU pressure, when it warned that Slovakia's entry chances could be hurt if the reform was not passed. At this point it has to be stressed that as an overall reform laggard in the region, the new Dzurinda government of 1998 had different reform priorities than civil service (basically everything else required reform).

Civil service systems in transition

In this section we try to show the general picture that has been characteristic for the past 20 years. Meanwhile we attempt to emphasise

some general, overarching features that may be drawn from the hectic historic events and which seem to be quite similar in the two countries at hand.

The main problem in both the Hungarian and Slovak public sector is that there is no over-arching strategy or action plan for administrative and civil service reform. In Slovakia, as previously noted, the reform in this field has been mainly driven externally by EU requirements, though fiscal constraints also had a significant impact on the design of the reform process, most notably with the 'audit' (functional review) of the central state administration in 2000. As a result, the instruments (the Civil Service Law) and the institutions (the Civil Service Office[6]), established in haste to satisfy the EU, have never taken root. Only two years after entry to the EU the law has been substantially changed and the Civil Service Office (CSO) has been abandoned. It has been justified on the grounds that the CSO was expensive, cumbersome and ineffective. In reality, it lacked political support and could not overcome the autonomous tendencies of the ministries (Staroňová and Brown 2006). In Hungary, various cabinets pledged to support the merit system in the 1990–2006 period. In practice, however, several decisions taken by these cabinets contradicted the official proclamations. From 2006 on, the merit system was officially denounced as non-efficient, whereas some decisions clearly reinforced merit features (e.g., introduction of a merit-type recruitment system). The Orban cabinet that got into power in 2010 again advocated the merit system. At the same time it abolished or terminated several existing merit-like features, like systematic recruitment and tenure. Below we will provide a detailed description of these hectic changes in the two countries.

In Slovakia, public administration reform aimed at professionalising the public sector by introducing two separate provisions in 2001: the Public Service Law, which defines the public service and covers services such as health and education, and the Civil Service Law, which regulates the civil service in state administration bodies. In 2003, the former law was substituted by the Law on Employees working in Services of Public Interest. The attempt to establish a professional and neutral civil service was not without difficulties (Malíková and Staroňová 2005). The main problems were diverging views on key issues, such as conditions for tenure or pension and the health insurance rights of civil servants, and most importantly the degree of flexibility in hiring and terminating civil service positions.

The Civil Service Office was established by the law in 2002 to play a crucial role in recruitment, appointment and some other Human Resources (HR) decisions, most of all in career decisions. Recruitment was planned to be centralised and based on objective criteria and examination with all posts to be advertised openly. A system was introduced that allowed a relatively automatic career path based on seniority and at some steps passing certain exams, as well as an appropriate 'grade' on the annual appraisal. The salary table (originally with 9, later with 12 salary categories and salary classes within each category) was in accordance with the career system and reflected the education level, seniority and responsibilities in the given position. Dismissal of civil servants was largely limited by the law. In reality, the civil service office never had a crucial word in the recruitment of civil servants since by the next year (2003) this task was delegated to line ministries and only some types of recruitment (nominated and fast-track recruitment) was left to central coordination.

The most fundamental amendment was a package adopted in 2003 (coming into effect on 1 January 2004) regulating the status, recruitment and remuneration of civil servants, that brought innovative elements into the civil service system, such as performance appraisal, fast-stream recruitment and *nominated civil service,* which was to reward top officials with specific salaries (a 50% pay increase) and job protection in the form of tenure. It was expected that approximately 1,000 civil servants would be part of the 'nominated service' with tenure. These innovative elements were to strengthen the capacity to attract and retain good calibre staff at all levels, since the previous delays in the adoption of the Civil Service Law led to a situation where ministries were overstaffed, as those that remained in the administration were generally not interested in changing jobs, while new posts were unable to attract staff (Staroňová and Láštic 2012). This created problems in particular for new functions, such as policy analysis posts, project management, reform implementation and civil servants dealing with EU matters. The methods of fast-stream recruitment (including nominated civil service) into the civil service were not very successful in terms of the number of successful candidates and their placement. The biggest problem lay in the hybrid position-based and career-based system which had developed. Although candidates had the opportunity to be 'parachuted' into higher positions (salary class 7–11 in the pooled recruitment system and top civil service with tenure for nominated civil service), the whole system was not suited for this

as there was no formal career planning system in place, but rather a position-based approach. Thus, the rigour of the examination process in the fast-stream system did not correspond to the real career opportunities of the successful candidate. Moreover, the centralised exams of the fast stream were more difficult than regular (decentralised) entry exams for vacancies and the ministries were reluctant to employ the successful fast-stream applicants since they had their own system of recruitment.

The 2003 reform included measures to reduce the emphasis on length of service to make the system more open for the young; changes to the grading system to increase pay at middle and senior levels; and informal arrangements to allow ministries to pay bonuses out of special funds created from reductions in staff numbers. In order to reduce the 'rigidity' of the pay system, tenure and seniority were abolished as a factor to be taken into account. That decision practically terminated the 'automatic' career that is a major element of merit/career system. The 2003 package of changes introduced a first step towards a new system of job evaluation and appraisal – the so called 'performance based points system'. Each civil servant was to be evaluated annually by his or her superior using a points system that could bring him or her raises in salary (up to 3% annually) or lead to the termination of employment. Furthermore a personal bonus was established that could be as high as 100 % of the basic salary. Each ministry was to decide internally on the amount and mechanism of the payment of bonuses for its civil servants – information not made public on grounds of data protection.

However, fundamental changes introduced in 2006 abolished most elements of the merit system.[7] The Civil Service Office was terminated, and its functions were largely decentralised to the ministries or simply ceased to exist (e.g., the entry examinations became simple job interviews). In the absence of central direction the system carries significant dangers; bonuses granted at the discretion of managers have become a major part of take home pay and some ministries have proved to be in a better position to make use of the flexibility than others (Staroňová and Brown, 2006). The changes have also introduced a number of major uncertainties into the system, not least the removal of job security for civil servants. Efforts to create a special cadre of highly qualified civil servants by external and internal recruitment (so called 'fast stream system') have failed because of poor implementation (Staroňová and Brown 2006).

In 2009 a new Law on Civil Service was prepared that abolished all innovative elements from 2003 reform (performance appraisal, fast-stream recruitment and nominated civil service), however it did not solve the existing confusion between a career-based and a position-based system.

In Hungary, a law establishing a merit system in the civil service was adopted in 1992. Since then, several amendments have been adopted. Major reforms took place in 2001, 2006–2008 and in 2010. In 2001, a performance appraisal system was introduced for all civil servants and salaries could be shifted from the pay table by ± 20% (that is 40%) – an NPM-like solution, taken to an extent unknown anywhere in Western Europe. The most important element of the 2001 reform was that civil service wages were significantly increased. With that, the wage gap started to decrease between the private and public sector. Furthermore, a senior civil service body, intended to be the civil service elite, was created. However, the selection was made by the prime minister personally; some persons were appointed into this body who had no civil service experience, and in some extreme cases no work experience at all (freshly graduated). Overall, however, the 2001, reform strengthened the professional capacity of the system most of all by significantly increasing civil service wages generally. Thus, public employment again became competitive on the labour market; whereas previously there were hardly any appropriate applicants for vacant positions, higher wages now made most positions attractive to some well-qualified candidates. The reform introduced the reserve list, as well, which theoretically allowed the replacement of civil servants from one abolished position to another civil service position instead of laying-off the person.

Irrespective of what various Hungarian cabinets had done in practice, all of them declared their devotion to a merit system until 2006. In 2006, a new civil service policy was adopted with the declared aim to get rid of the rigidities of the 'old' merit system and to move towards the NPM direction that offers more performance incentives and more leverage to managers. The performance bonuses thus grew to 50% of the total salary in some cases. On the other hand, this course – seemingly contradicting its own declared purpose – strengthened merit features at several points. Whereas NPM reforms typically advocate decentralisation and deregulation, in Hungary, a new central HR unit was created with relatively strong political and legal position. A compulsory entry exam was introduced as a condition to apply for civil service positions. Further,

the new course introduced for the first time a systematic recruitment procedure with some tasks carried out by the central unit independent from the heads of offices, with standardised selection tools, etc. The selection of managers became similarly more formalised and objective. The law ordained that all vacant civil and public service positions had to be advertised on the website of the central HR unit (the only decision still in effect) and that preference has to be given to those on the reserve list (at that time a legally existing but not practically functioning institution). Some of these decisions were revoked in 2008 under pressure from ministries that opposed centralisation and were largely supported by the ruling party's Parliament faction.

In 2010, the new cabinet led by Viktor Orbán, just as it got into power, introduced the largest changes in the civil service system since 1992. Among other policies the cabinet introduced and applied with retroactive effect were new arrangements for the termination of civil servants across the board. Civil servants could now be laid-off without stating the reason, with a two-month notice (previously the civil servant was placed on a reserve list for six months with a full salary) and a severance pay not higher of ca. €7200, irrespective of the arrangement laid down previously in law and contract. This arrangement is actually worse than that guaranteed by the Labour Code for all workers in the private sector. At the same time, all previous, objective selection procedures (entry exams, etc.) were terminated for an unspecified interim period. Seemingly, the cabinet aimed at replacing the administrative elite with persons whom the new political elite personally trusted. All rules that hindered this effort were suspended or terminated. Meanwhile the new cabinet declared its devotion to strengthening the merit system.

In sum, there is no clear direction regarding the civil service arrangement in Hungary. There are no long-term visions implemented by concurrent cabinets. It is rare that one cabinet follows a clear direction throughout its term and achieves that by carefully taken steps. Rather, decisions are made on an ad hoc basis, and the direction may change even within the same election period. Civil service wages have been increased, though somewhat hectically, during the past decade and now approach wages in the private sector.

In Table 8.1, we attempt to sum up the most important features of the civil service systems of the two countries analysed. First we address some overarching issues and then review subsystems of civil service.

In brief, we have found major similarities in the two countries, which in turn greatly differ from that of a neutral, merit-based civil

Table 8.1 Main features of the civil service systems in Hungary and Slovakia

Aspect	Slovakia	Hungary
Legal basis for the civil service	2001 (coming into effect in April 2002) and 2009 (replacing the former one) Civil Service Acts	1992 Act on the Legal Status of Civil Servants
Overall HR policy/strategy	Does not exist. HR policy-level decisions react to specific circumstances and do not follow general directions / consistent policies. Policy directions (if any) may, and frequently do, change 180°.	
Structural arrangement/ operative decisions General	There is no strong, central unit or it has no political support (leadership is missing). Decentralised decisions. Major HR decisions are made, in both countries, by the 'heads of service offices' with limited or no regulation. Heads of offices are responsible for HR management, who are – directly or indirectly – political appointees themselves. Thus political pressures can 'flow down' in the hierarchy.	
Structural arrangement/ operative decisions Country specific	A politically independent Civil Service Office existed from 2002 until 2006 and was abolished before it started to work effectively.	The HR department was part first of the Ministry of the Interior, and later the Cabinet Office – usually lacking strong political support.
Regulation	No stability and predictability. Civil service laws frequently change: twice a year or more. Major elements of the regulation may be changed unexpectedly, without any systematic deliberation, analysis of expected results or negotiations or discussion with the stakeholders.	
Recruitment	Largely a subjective decision of the heads of service offices. No detailed rules on the selection criteria and selection procedures. No standardised, objective selection tools. Advertised positions frequently tailored to the preferred candidate.	
Advertising of vacancies	Since 2002 vacancies must be advertised in the media	Vacancies had to be advertised on a central website in the period of 2006–September 2010.

Entry exam	Formally in existence from 2002 to 2006. However, aimed at the re-examination of the existing ministry staff into newly established civil service, and thus no general formal entry exams existed. Some type of entry exam were reserved solely for nominated civil service and fast track recruitment (only 3 rounds took place altogether, system abolished in 2009)). Since the termination of the Civil Service Office in 2006, all HR related tasks were formally handed over to line ministries (in reality the task of recruitment was delegated to line ministries in 2003).	General, objective, written entry exam existed between 2008–July 2010 for all positions (not before and after that)
Selection	Throughout the past 20 years, there have been no strict rules for selection. The subjective preferences of the heads of offices are decisive. Since the introduction of the Civil Service Law, Committees had to be established for interviews.	
Career system	A built-in, programmed career system based on seniority (and a few exams) has been in existence since the Civil Service Law was passed in 2001, however, its elements (seniority and tenure) were abolished in 2003. Appraisal and performance-related pay system was introduced into the system in 2003 but abolished in 2009. Currently a hybrid system. Except for a short period, career decisions (most importantly the appointment of managers in a unit) have been left to the subjective preference of the head of office. Generally, higher wages may be earned in positions to which the selection is made by the head of office.	A built-in, programmed career system based on seniority (and a few exams) has existed since 1992. Appraisal hardly plays any role in career progression. Tenure has been a crucial declared element of this system, though in practice there were several loopholes in the regulation. Except for a short-period career decisions (most importantly the appointment of managers in a unit) have been left to the subjective preference of the head of office. Generally, higher wages may be earned in positions to which the selection is made by the head of office.

Aspect	Slovakia	Hungary
Remuneration	Low wages in civil service; huge wage gap between private and public sphere in the 1990s.	
Wage level	The reform of the pay system in 2003 abolished some rigid elements and has introduced innovative elements for attracting and motivating staff that decreased wage gap on top levels and in some ministries (base pay remained similar as before but there is more flexibility in bonuses).	Since 2001 the wage gap has decreased but is still present in more qualified positions.
Unified, systematic remuneration system	A pay table exists that sets up the base salary (seniority has been abolished). Further elements of the salary (management and performance bonuses) are also regulated by the Civil Service Law. The 2003 reform brought personal bonuses that could be as high as 100% of the base salary and which were up to the manager to determine.	A pay table exists that sets up the base salary. Further elements of the salary are also regulated in the Civil Service Law for ordinary civil servants. Managers' salary does not depend on seniority but solely on the position.
Loopholes in the system	The pay table is applied for 'ordinary' civil servants. There are several – and surprisingly similar – techniques in the two countries to overcome the 'rigidity' of the pay table. Specific rules allow higher wages in posts of 'superior importance'. Performance pay and/or personal bonuses also serve such purpose. Advisory positions (including political advisors) are also entitled – by the legal regulation – for position-specific pay. Sometimes civil service regulations are overcome by a contractual arrangement. Elevating someone to a managerial position with higher wages is also a way to 'fight rigidity'. These decisions are only vaguely regulated and are left largely to the subjective choice of the head of unit. The practice is restrained by budgetary means only: the overall personnel budget is set up and cannot be exceeded. This limits the number of 'specific' jobs but does not influence who is rewarded with them.	

Performance pay	Part of the system since 2003 (so called performance-based points system) that was abolished in 2009. It could increase or decrease salary by up to 3% annually. In addition, personal bonuses exist which be as high as 100% of the basic salary. Heads of offices decided internally on the amount and mechanism of the payment of bonuses for their civil servants and this information was not publicly available on the grounds of data protection.	Part of the system since 2001. All civil servants' performance must be appraised and that may have a relatively large 10–50% impact on wages – regulation has changed greatly over time. Performance appraisals are carried out by the immediate supervisor.
Termination of service	2006 reform brought the possibility to dismiss civil servants without giving reasons. Previously, civil servants were dismissed on the basis of reorganisation; unfairly dismissed employees could appeal to the Civil Service Office.	Civil servants may be laid off for the same reasons as workers of a private enterprise: reorganisation, cut-off of the personnel, termination of the unit, or of the function carried out by the civil servant, of the division or of the unit, etc. This has been valid since the Act On the Legal Status of Civil Servants adopted in 1992. The law allows the termination by the mutual agreement between the civil servant and the administrative unit. Originally, civil servants were fired on the basis of reorganisation. As the decisions were appealed at courts, and courts often judged that the 'reorganisation' was not valid, the practice has changed to 'mutual agreement' – requiring large sums of severance money to be paid out. In 2010 the regulation was reversed, and it became possible for anyone to be laid-off without explanation, with two month's severance pay.

service system. There is no central, depoliticised body responsible for the major HR decisions. Attempts to set up such a strong, politically supported and thus functioning body failed in both countries. Practically all major HR decisions are left to the subjective choice of the heads of offices. These persons are themselves typically politically appointed (sometimes formally/officially, more typically informally/practically). Recruitment, major career decisions, and the provision of higher wages depends most of all on these office heads (who typically change with elections). This enables them to express political or personal preference towards civil servants. There is hardly any significant barrier that would prevent the disliked civil servant from being laid-off. The guarantees that exist in all merit, and some non-merit, Western civil service systems, against arbitrary decisions, especially regarding the termination of employment, cannot be found in the two countries examined.

Another common element of the trajectory is its really dynamic nature. Changes in the civil service – as noted above – are quite frequent. These transformations are not small, fine tuning-like exercises. Large changes, shaping the position of most or all civil servants, happen almost every year. Revolutionary transformation of the complete civil service system may happen about every third year. For instance, in Slovakia a merit system was adopted in 2001, and the organisational structures were set up for that. In 2003, seniority and tenure, a crucial element of a career system was eliminated from the regulation (career, pay). In 2006 the merit system was officially replaced by another arrangement, inspired clearly by ideas of New Public Management (NPM). Staroňová and Láštic (2012) describe the changes between 2000 and 2006 as follows: 'the law has been amended nineteen times and seems to have performed a complete 360 degree turn, from complete political influence on public administration, through a neutral civil service guaranteed by law and central state administration body – the Civil Service Office – to ending up once again with a heterogeneous system of civil service regulation with no politically independent central authority.' In Hungary, between 2005 and 2010 the declared preference for a merit versus a 'less rigid' system has changed twice, whereas practical operative decisions have frequently collided with manifested preferences. If there is any tendency among the hectic changes in the two countries that is the increasing level of politicisation in both countries.

Driving and blocking forces of politicisation

In this section, we try to systematically sum up those forces that may hinder and those that may increase politicisation. As for the blocking forces for politicisation usually the culture and values, the legal regulation as well as other institutional arrangements are mentioned. Why cannot these institutions effectively block politicisation in this region? We first address this question briefly and then turn to those forces that may explain why politicisation took place in the region.

Models of civil service vs. reality

A blocking force of politicisation in both countries could be that merit system appears as a kind of ideal – somewhat exogenous in Slovakia and quite endogenous in Hungary representing a major departing point from communist regime. The general public in both countries also expects that the civil service is run on a professional basis and that political influence is minimal.

However, everyday politics requires a different attitude. The normative mind-set in Civil Service models (like 'European principles') tends to be both politically unfeasible and impractical from a policy point of view. In both countries, as elsewhere in CEE, there is concern about high turnover rates (Staroňová and Brown 2006, Láštic 2010) with particularly serious losses of qualified staff in a changing labour market which offers more opportunities in the private sector and abroad (World Bank 2006). There are several issues here: a) need to attract young and qualified staff in an increasingly sophisticated labour market, b) need to attract professionals from practice to conduct reforms for a limited period of time, c) fiscal constraints. Thus, the development of incentive systems that would make the public administration a sufficiently attractive employer for talented staff remains a key issue, even after EU accession.

Several features of a classical career system – seniority and job security – do not seem to be feasible in these contexts. Under these principles, salaries would remain low but compensation comes in the form of gradually increasing wages and tenure. The tenure principle has been eroded owing to increasing levels of politicisation, while seniority holds little attraction for the young workforce in these countries. Fiscal constraints make an overall increase in wage levels virtually impossible. Gajduschek (2007a, 357) argues that if wages are so low in

the public compared to private sector, as it is/was everywhere in the Central Eastern European region (Verheijen and Kotchegura 1999, 332; Bossaert and Demmke 2003, 60; Láštic 2010, 149), it is impossible to find enough, if any, qualified candidates for certain civil service positions. A study of the World Bank (2006) on the administrative capacity of the new member states pointed to the same problems. Therefore, in both countries, the introduction of an incentive system was a focus of reform efforts and innovative experiments.

Since wages were low, the pay-table could not be applied to professionals who are paid much better in the private sector. Even with the reforms in pay-tables, the desired compression ratios did not materialise (remaining approximately 1:3, well below the 1:6 benchmark of the World Bank). Thus, exceptions from the general pay rules had to be made in order to fill important positions. This was exactly the main argument for 'loosening' the rigidity of the merit system in Slovakia that was introduced under the pressure of EU accession just months after the accession was over. Consequently, the institutionalisation of discretionary salary systems (see also Meyer-Sahling 2011) emerged in both countries for officials with managerial or other 'special' tasks. Slovakia, to illustrate, used budgetary flexibility to allow for performance bonuses. Staroňová and Láštic (2012) report that personal bonuses may be as high as 100% of the basic salary and are decided internally by each ministry, supposedly after a performance evaluation. In reality, however, it is typically negotiated between the civil servant and his/her employer (director general and then approved by the head of service office), and the negotiations take place *before* the actual assessment period. This kind of bonus effectively becomes a part of the fixed salary. As a result, in both countries, a hybrid system exists: the basic classification system is for the general civil service, while position-based for top officials with negotiated salaries for that position.

Moreover, ministries often need to bring in specialists 'from the field' for the period of reform activities, whom they could have hardly recruited from the labour market as wages and other employment arrangements are much more favourable in the private sector (Staroňová and Brown 2006; Verheijen 2006). Thus, although these specialists are politically nominated, they are employed to conduct the requested tasks linked to reforms in a limited time period and return back to professional life afterwards. It has been reported that this particular feature is badly needed and highly appreciated (Staroňová and Brown 2006;

Verheijen 2006).[8] The question therefore arises whether the appointment of outsiders (professionals), conducted by politicians, is politicising the senior civil service?

Severe financial austerity connected with reforms or the joining of the Euro-zone has resulted periodically in significant reduction in the number of public employees. Whole public administration organisations and/or whole segments of public sectors have been abolished and/or privatised, and large-scale staff reductions conducted. Fifteen to twenty per cent of civil service staff is cut periodically (Gajduschek 2007a). Whereas employment security, a sine-qua-non of merit systems, can be assured in 'normal periods', it is both politically and financially impossible in the circumstances of CEE countries.

Seemingly it is difficult to find a balance between the desire for flexibility and the need for stability, the political need to fulfil policy and other political needs and a professional civil service.

A note on the 'original sin'

Politicisation in the new, democratic political system may have been started from the formation of the first democratically elected cabinet. We may call this the 'original sin' of transition. Though replacement of 'communist officials' took place in different forms and time periods (Meyer-Sahling 2004), it happened in almost all post-communist countries. In Hungary, where the transition was peaceful and planned as a result of long talks between the party elite and the opposition, the process was smoother. Some leading officials left public administration well before the newly elected government got to power. Quite a few of them found employment in the private sector. Others were dismissed by the new government as they were related too strongly to the previous regime. In Slovakia on the other hand, where the transition took place in a more revolutionary way, the replacement was more radical and a systematic lustration took place, with those who took a relevant position in the suppressing apparatus of the communist regime systematically dismissed.

The new democratically elected governments replaced the 'communist officials' – especially those in higher positions – with new civil servants whom they could trust. 'Trust', in this case meant, on the one hand, that the new officials were not communist and the government need not fear that the civil service was working for the restitution of communist system. On the other hand, 'trust' meant that the newly appointed people were supporters of the new government, its goals and its policy.

In other words, the inescapable replacement of officials happened via appointments based mostly on political criteria. Reasonably, the governments elected in the next elections did not regard these officials as neutral, career civil servants but rather as political appointees, who had to be replaced in order to govern efficiently.

Subsequently in both countries, each incoming government tried to place its own people into all key positions (sometimes even two or three layers down in the hierarchy) which produced a politically dependent system with significant changes at the top and middle level positions in the administration, with political affiliation being the main reason for changes.

Weak coordination systems vs. strong drive for autonomy of line ministries

A merit system requires a relatively unified HR system in the administration, with rules valid in various ministries and agencies. This is ensured either by generally applied and very detailed regulation or, more importantly, by horizontal coordination systems on key issues, usually manifested in a strong, politically independent central oversight body.

Using the Metcalfe 'Policy Co-ordination Scale', policy coordination in both countries is assessed generally between level 2 (information exchange) and level 3 (active consultation). The scale ranges from 1 to 9, where a ranking of '1' implies that governmental organisations are acting independently, failing to pursue the same 'grand' policy objectives across all levels and functions and a ranking of '9' suggests that all are working consistently (Metcalfe 1994). Coherence in policy design and effective policy implementation in areas that involve several government institutions, including in the implementation of HR policies, require coordination systems of at least level 5 (bottom-up search for agreement) or 6 (arbitration of differences). This, however, is not present in these countries.

Verheijen and Kotchegura (1999, 330–332) and Láštic (2010, 153) also emphasise weak coordination as one of the most typical features of post-communist countries. The development of policy coordination systems – a civil service agency or other central HR unit – failed in both Slovakia and Hungary. Staroňová and Brown (2006) report that ministries in Slovakia strongly opposed the establishment of a central Civil Service Office that would have taken most of their HR responsibilities, that is: decision opportunities. The same happened in Hungary, when, in 2005, the HR functions of ministries were planned to centralise in

one single body. Though this solution enjoyed an exceptionally strong political support, the unit was set up in a way that ministries kept their HR units and most of their functions. Later ministries gradually gained back practically all HR functions. Clearly, this is an example of 'administrative politics', not party politics. Still, this force is crucial in blocking a unified merit system. Verheijen (2006) concludes in his comparative assessment of CEE countries that any efforts to build up horizontal coordination systems on key issues such as HR management (HRM) are exacerbated by its general roll-back: removal of civil service agency in Czech Republic, Poland and Slovakia or with no central authority to guide civil service development in place as in Hungary and Estonia. The lack of horizontal coordination systems has led to a general erosion of merit principles and has opened the door to increasing levels of politicisation of senior appointments.

In brief, missing tradition, the lack of an adequate administrative and political culture and the lack of real political will and the administrative 'politics' all prevent the establishment of a depoliticised civil service in these countries.

The role of law and pseudo-merit systems vs. strategic approach

The other main reason for the failure of the attempted reforms to HRM is that they focused solely on formal institutions and legislation rather than on putting in place the tools for the strategic management of resources (see also Verheijen 2006, 331–333). In other words, depoliticisation is identified in these countries with detailed legal regulation; other means of depoliticisation have not been considered. Thus, the civil service agency in Slovakia (Staroňová and Brown 2006) and the central unit in Hungary in particular are viewed as having focused on the wrong issues.

The approach to depoliticisation in these countries follows a very simple logic.

There are several potential reasons for the strong preference for regulation. First, these countries fall in the German-Weberian administrative tradition that always emphasised the role of regulation; law is a central tenet in administrative theory and practice. Second, the EU accession process strengthened the role and importance of laws and regulations in these countries, as several studies prove (e.g., Meyer-Sahling 2011; Verheijen 2006). However, all official reports focused and investigated the level of adoption of EU laws rather than true implementation and functioning of the system. Although official reports typically noted that the countries advanced more on the adoption of legal texts than

on the actual implementation of them (implementation gap), the latter was more difficult to detect and measure.

Nevertheless, while law in these countries has an exceptional importance its function and functioning may be different from both the German and from the Anglo-Saxon ones. We cannot analyse this difference here in detail. Dery's (2002) account provides a good starting point of understanding. The most important attribute is perhaps that laws are not necessarily made for implementation. The implementation of laws in post communist countries is quite frequently negotiable. Laws could be used as arguments that something should or should not be done. Among these circumstances strange forms and functions of laws may take place. Laws may not be intended to determine behaviour (as one would expect from norms) but to serve as substitute for expected behaviour. Dimitrova (2010) reaches a very similar conclusion: formal and informal rules could be quite different. What is done in reality depends greatly on 'strong players', such as, in our case heads of offices.

Furthermore, it seems quite frequent that laws form institutions by using the term without real content; the institution is there but without its real function. For instance, in Hungarian law a 'competitive entry exam' existed but was in fact just a conditionality, not a selection mechanism for becoming a civil servant; there is a well elaborated appraisal system but hardly anything depends on its results; the institution of reserve list exists, but it hardly saves anyone from being laid off, etc. In other words, symbolic elements of merit systems appeared, and continue to appear, in the law but not as functional elements that are designed to assure professionalism and neutrality.

Verheijen (2006, 331–333) sensed well the precarious status of laws in these countries when urging for a new way of thinking, a need to think in terms of strategic approaches rather than legal rights and obligations. He also expressed doubts if the old EU models could fit the realities of the New Member States – at least at this stage in their development. This is not to say that a full laissez-faire model should be introduced but rather that the purpose and nature of legal and institutional frameworks needs serious reconsideration.

Other potential blocking forces

We have seen that the legal regulation in its present form and culture is not really in favour of a depoliticised personnel system. Performance-based systems – suggested by NPM – may prevent politicisation even in absence of norms. Application of precise performance standards and measures simply do not allow for the employment of incapable

personnel on political basis, as those people will not be able to achieve the standards. However, setting up measurable performance indicators requires a certain administrative environment (surely not of a legal-Weberian type) and also a relatively longer period. Both prerequisites are missing in the analysed countries. As a result, the initial efforts that were present in the countries were either neglected or abolished after few years if introduced without clear guidance or training. At the same time, there are successful ad hoc cases where performance based systems not only actually worked as intended, thanks to committed (political) leadership, but also prevented politicisation due to highly motivated and performing staff, such as the Ministry of Finance in Slovakia (Staroňová and Brown 2006) where the all levels of staff remained unchanged even during the complete change of government in 2006 and 2010. In brief, NPM techniques, that may even lead to quite pervert[9] outcomes in the region, usually do not provide feasible blocking forces of politicisation for these countries, although ad hoc exceptions do exist.

Conclusion: the form of 'politicisation'

In Part I, Peters (Chapter 2) differentiated between various types of politicisation: (1) direct politicisation; (2) professional politicisation; (3) redundant politicisation; (4) anticipatory politicisation; (5) dual politicisation; and (6) social politicisation. Below are rough assessments of what kind of politicisation can be found in Slovakia and Hungary – relying on Peters' classification.

Direct politicisation. When applying this category to the cases of Hungary and Slovakia, it is undoubtedly the one of direct politicisation that is by far the most widespread. As we have indicated in this chapter, direct politicisation has been widespread and has conquered more and more administrative positions. Peters himself emphasises that this type of politicisation is especially widespread in post-communist countries.

However, this type of direct politicisation is more apparent in the political nomination of heads of independent regulatory offices and in the local state administration than at the central level where patterns of patronage are more common. This situation is to be attributed to the new laws that came into effect in Slovakia since EU accession, which on one hand decreased politicisation in central offices but at the same time increased the number of political nominees in all area offices, along with regional offices within other ministries' jurisdiction. This has increased the influence of political parties over regional and local administration. Each incoming government uses this opportunity and replaces

the heads of around 80 per cent of area state offices across the country (e.g., elections in 2006 and 2010). In contrast to the civil service, these political appointees are not selected according to the selection procedure and do not have to fulfil obligations in regards to the civil service, such as second earnings restrictions, restrictions on entrepreneurship, etc. There is not much research available on this (except Meyer-Sahling 2004 and Meyer-Sahling 2011), but a case study in Slovakia by Beblavý (2009) documents the replacement of the director and top management in the Agricultural Paying Agency. He explains this replacement by the interest of the Ministry 'in reclaiming part of their policy-making powers over the only major financial instrument in their hands – funds flowing through APA' (934). Thus, personal nominations for directors of directly managed divisions and institutes, deputy chairpersons of agencies and local state administration became routine.

Professional politicisation. Peters' second category of professional politicisation appears to a lesser extent and in a certain way in both countries. The newly elected government frequently chooses new appointees to lower and middle level managerial positions from the existing set of civil servants. Since 1990 it became more typical for higher managerial positions such persons are chosen who already served in the administration of the party's previous government.

Redundant politicisation. The central role of ministerial cabinets and political advisors both in Slovakia and Hungary is a sign of redundant politicisation, which increasingly plays an important role. In Slovakia, a new type of service was introduced, temporary state service, which was to bring professional experts close to the ministers into the government, aiming to attract young qualified candidates for the civil service. The maximum amount of service time is five years, and it applies to professional specialists whose temporary appointment is necessary in order to perform certain civil service tasks, to political positions and to ambassadors. This arrangement succeeded in tackling the problem of advisers who often did not fall under the civil service and thus did not have to follow any rules, such as conflict of interest, disciplinary arrangements, etc. Also, it enabled the ministries to bring specialists 'from the field' for the period of reform activities. A similar legal arrangement has been introduced into the Hungarian Civil Service Act in the early 2000s. Political advisors are appointed for the election period and the law determined which paragraphs of the civil service law are obligatory and which ones do not apply to them. Still, several advisors are employed on a contractual basis, that is, completely outside of the civil service system.

Anticipatory politicisation. Anticipatory politicisation appeared on a large scale at the time of transition. However, both in Slovakia and Hungary we also detect this type of politicisation before elections, when it is clear that the opposition will form the new cabinet. In this case, some managerial positions (typically those personally related to the head of office) are terminated, with an individually determined (high) severance pay, naturally paid from public budget. Although it is difficult to detect this type of politicisation with statistical methods, interview surveys in both Slovakia and Hungary reveal that this type of politicisation is relatively widespread, especially among higher level managers, if the new government seems to be especially hostile towards the previous one.

As Peters mentions, anticipatory politicisation may also dissuade individuals from joining the civil service. However, it is impossible to assess how much this is the case in Slovakia and Hungary. As questionnaire surveys suggest, relatively low wages deter capable people from the civil service most of all. However, politicisation also means that better paid managerial positions can be achieved by political decisions only and security of service (a major appeal of career system) does not exist because of political intrusion. These facts may significantly decrease the number of candidates interested in the civil service.

Dual and social politicisation. We could hardly find signs of dual and social politicisation in Slovakia and Hungary. As in these parliamentary systems the majority in the legislature forms the cabinet, we did not expect dual politicisation. It is generally agreed that NGOs, non-profit and civic organisations are quite weak in the region and quite a few of them are related to political parties. Thus, the region may be the last where one could reasonably expect social politicisation.

Overall, the politicisation of civil servants has resurged in both countries since their accession to the EU, which has led to a great deal of uncertainty among civil servants. It contradicts the spirit of the civil service laws passed before accession. As stated before, the abolition of the Civil Service Office in Slovakia and dismissal of the coordinating unit in Hungary, the shift of the heads of service from apolitical to political positions in both countries together with liberalised rules on termination of civil service employment relationship have been the driving factors in this increased politicisation. As a result, in each electoral cycle the directorial level, and sometimes the positions below that are affected in the ministerial hierarchy, as well as the leading positions of agencies subordinated to ministries.

Many times, it is practically impossible for the external observer to determine the purpose of politically initiated or influenced HR decisions. There could be several reasons for a 'political appointment' to a position that is considered a professional one. It may be a 'favour', returning past favours or expected future ones (political or personal). This would strengthen the position of the leader by filling crucial positions with appointees personally loyal to him. Alternatively, it may aim at building a reliable 'elite' group in the organisation, excluding officials who are in close relation with the opposition party elite and who may leak 'confidential' information to them. In brief, reasons of political appointments are seemingly more colourful than one could find in West European democracies. This is exactly why we used a wider concept of politicisation than that of Peters' by including any action in civil service that is driven by factors other than merit.

What may be noted on a general level is that 'merit-based criteria in the selection, retention, promotion and disciplining of members of the public service' (see Chapter 2) is quite frequently substituted by other criteria. These other criteria, however, are quite frequently not political ones (even if they are exercised by politicians). This especially holds if we use Peters' narrower concept. Personal, less formalised and institutionalised, frequently illegitimate reasons and mechanisms may be hidden in the background. For instance, the position of permanent state secretary in the Hungarian ministries, intended to assure continuity throughout several election cycles, is filled by a person for two years on average, whereas a cabinet term is four years. In practice permanent state secretaries are replaced not only when a new party gets into power but every time a new minister of the same party is appointed, as ministers appoint officials whom they personally trust and who are personally loyal to them. Similar trends can be observed in Slovakia.

In brief, non-merit practices typically serve other than purely political purposes. Rather, these practices often intend to build a network based on personal trust and interdependence in order for politicians to control and operate the organisation. In other words, most of the cases when politicians apply non-merit aspects in personnel decisions may not fit into Peters' enlisted six categories. It seems that post-communist countries are difficult to capture by concepts and 'laws' that work well for Western countries. Verheijen and Kotchegura (1999, 336) concluded similarly when found that the conceptual framework that generally seem to work well is 'difficult to apply to Central and Eastern European states because it is somewhat "Western-Centric".'

Post-communist countries could be described by uncertainties and even by contradictions.

The merit system is openly cherished and politicisation denounced by governments that in fact act in the opposite direction. The official preferences change frequently and do not have much to do with real intention, let alone with actions. The role of legislation in the civil service is strongly emphasised, but laws are not necessarily implemented. Forces blocking the establishment of a real merit system stem not only from political sources but from administrative ones also (opposing coordination). Finally, the 'transition paradox'; transition was expected to lead from the spoils system run by the communist party to a merit system of a consolidated, democratic political arrangement. However, it seems that the specific circumstances of transition have been a major obstacle of the establishment of the merit system.

Notes

1. Sigma is a joint initiative of the OECD and the European Union, principally financed by the EU. SIGMA supports European Union candidates, potential candidates and European Neighbourhood Policy partners in their public administration reforms.
2. In 1993, at the Copenhagen European Council, the Union took a decisive step towards the fifth enlargement, agreeing that 'the associated countries in Central and Eastern Europe that so desire shall become members of the European Union.' Thus, enlargement was no longer a question of 'if', but 'when'. Concerning the timing, the European Council states: 'Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required.' At the same time, it defined the membership criteria, which are often referred to as the 'Copenhagen criteria'. The Madrid European Council in December 1995 stressed that membership criteria also require that the candidate country must have created the conditions for its integration through the adjustment of its administrative structures. While it is important that European Community legislation is transposed into national legislation, it is even more important that the legislation is implemented effectively through appropriate administrative and judicial structures.
3. The Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years After EU Accession, SIGMA (2009).
4. For instance the book published in 1980 (Fonyó 1980), summing up result of a large research project on civil service carried out in 1975–1978, in its 50-page introduction argued that the merit system: (a) does not contradict the communist ideology (19–23, 37–40); (b) it is possible to successfully introduce it in socialist countries and (c) to some degree it had already happened by the late 70s (24–28, 50–54, 70–74). The author concludes that (d) some elements of the merit system must be introduced in the socialist Hungary.

5. Vladimír Mečiar was the prime minister and leader of HZDS party in the government of 1994–1998 which had semi-authoritarian elements in his rule and allienated Slovakia from international circles.
6. Civil Service Office is a central state administration office that issues secondary service regulation (e.g., human resource management) and has the responsibility of ensuring professional, politically neutral and efficient performance of the state's tasks by civil service.
7. The reform happened just few weeks before elections in 2006 with official reason provided that the Civil Service Office was inefficient and costly. Its demise meant that there was no central control whatsoever over civil service management and that the development of the civil service was given to the hands of individual ministries. At that point, however, it was clear that there will be government change and this provision opened the space for better coalition formation.
8. In Slovakia, this need was solved by introducing a new type of civil service, the so-called *temporary state service*, to bring professional experts close to the ministers into the government, aiming to attract young qualified candidates for the civil service. This arrangement succeeded in tackling the problem of advisers who often did not fall under the civil service and thus did not have to follow any rules, such as conflict of interest, disciplinary arrangements, etc.
9. As Verheijen (1997) and several other authors of the CEE countries report NPM frequently lead unintended and even dysfunctional effects in the region. E.g., the greater managerial discretion is frequently the basis of corruption; privatisation, PPP and other NPM techniques provided only fashionable façade to fill private pockets with public money, etc.

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9
Civil Servants and Politics in Germany

Ulrich Battis

Introduction

The relationship between civil servants and politics in Germany is very particular. It goes back to a long tradition where civil servants were permitted to be involved in political activities. Today politics is still very present in the German civil service, both through patronage as through a system of institutionalised political civil servants. For these reasons, this article begins with an abstract of German civil servants history, dating back to the eighteenth century. This is followed by a description of the neutrality of the civil servants systems, the duty of loyalty to the constitution, and the duty of moderation and restraint. In this context the question of whether the German system has a senior civil service with a political function is raised.

The article refers to several forms of politicisation including patronage, institutionalised political civil servants and civil servants with party membership.

History of the German civil service

In Germany, in contrast to other countries like Great Britain, civil servants are traditionally entitled to political activity. Therefore, civil servants have been over-represented in the German parliaments during the nineteenth century. A specific example is the so-called *Professorenparlament* of Frankfurt/Main in the year 1848, which received its name from the high proportion of professors among its members. Although professors are not the most typical civil servants, as a group they do serve as a manifest example of civil servant over-representation in German parliaments. However, how to limit the political activity

of civil servants in order to ensure the integrity of the civil service has always been a controversial issue. There have been broader and closer limitations in different eras of the German history.

During the eighteenth century, civil servants were not an autonomous part of government but subordinate servants who followed directions instead of acting independently. They were strictly obliged to serve the monarch (Bull 2009). The roots of this duty to personal loyalty go back to the seventeenth century when servants were employed on a feudal basis. In that time, there had been no distinctions between personal and governmental domain.

Concerning the political rights of civil servants, the Prussian Reform movement, beginning in 1807, was a unique period in Prussian history. After the state had almost been destroyed by Napoleon, King Friedrich Wilhelm III entrusted executive power to leading civil servants. As the King was weak, statesman Karl vom Stein (1757–1831) was able to introduce political reforms which were continued by his successors, e.g., Karl August von Hardenberg (1750–1822). They established a body of highly qualified staff to support the reformation of politics. Civil servants of that time developed a programme of state modernisation inspired by the Enlightenment and Liberalism (Bull 2009). They started a process of integrating the monarch into an official bureaucracy and, thus, enabled the rise of Prussia. In 1809, for example, the Humboldt University was founded by Wilhelm von Humboldt, department head for education in the Ministry of the Interior.

Particularly in Prussia, the following period of *Restauration* (beginning about 1848) represented a return of the administration to the executive branch, headed by the King.

This practise continued in the German Empire (from 1871), when civil servants had a duty of loyalty and allegiance to the person of the monarch. The status of civil servants, especially their rights and duties, was regulated in detail by law. Civil servants had to swear an oath covering loyalty, political restraint and neutrality. The requirement of political loyalty had the function of excluding members of groups being anathema to the current government from higher offices or even from civil service at all. Affected were Jews as well as social democrats, in Prussia Poles, Danes, Guelphs, and – in many cases – Catholics (Battis 2009).

During the Weimar Republic, personal loyalty to the Crown was abandoned in light of the downfall of the monarchy. According to the Constitution of the Weimar Republic, the idea arose that the civil service system had to serve the people as a whole and not a party. It was

theorised that the civil service system represented the idea of a nation – civil servants were regarded as servants of the nation. The civil service system, a neutral authority guaranteed by the constitution, ensured that civil servants could make legal decisions autonomously and independently – only bound by political decisions that were directed to them in legislation (Günther 2009).

The Constitution of the Weimar Republic already contained rules concerning the civil service system. It included a command to take an oath and, based on that, the duty to loyalty imposed by ordinary law. When out of office, civil servants were free to voice their opinions.

Later on, the Weimar Republic was attacked by right-wing and left-wing extremists. Assassinations took place; among the victims were Erzberger, member of the German parliament (*Reichstag*) and Chancellor of the Exchequer, and Rathenau, Foreign Minister. To avoid further political assassinations, bureaucratic duties were amended. Now, civil servants of the German Reich had to defend the constitutional representative authority when in office. During their free time civil servants were asked to show political restraint.

With the seizure of power by the Nazis (*Machtergreifung*), a renaissance of duty to individual-related loyalty took place. From then on loyalty to Hitler was demanded in the place of loyalty to the constitution of the Weimar Republic. Well-known theorists who had once postulated neutrality of the civil service system now started justifying the state of Hitler, claiming that an 'idea of nation' was not even conceivable.

The oath also was no longer taken on the constitution but on Hitler personally; civil servants had the duty of loyalty to Hitler till death. They had to serve the system of National Socialism without exception. Neither freedom of opinion nor freedom of association existed during that time, neither in office nor in free time. Supporting a different party than the NSDAP (National Socialist German Workers' Party) was against the duty to loyalty, because all other parties had quickly been forbidden. It was even discussed whether leaving the NSDAP should be subject to disciplinary measures!

After the unconditional surrender of the Third Reich to the Allies on 8 May 1945, all civil service appointments were terminated. This was remarkable, because the public administration remained in existence, albeit governed by the Allies. The German Constitutional Court confirmed this dissolution with the justification that civil servants had sworn their official oath to the leader Hitler, not to the state.[1]

In the post-war period, the reintroduction of the civil service system was a controversial issue. The Allies and some of the German *Länder*

demanded the implementation of a uniform public services law on the basis of labour law, making no distinction between civil servants and other public servants. On the other hand, the Southern German *Länder* demanded the perpetuation of the traditional civil service system as it had been guaranteed by their constitutions. The conflict was finally solved by maintaining the dual civil service system in the tradition of the Weimar Republic, now codified in section 33, paragraph 4 and 5 of the German Constitution. Every German citizen has the same civic rights and duties. To gain admission to a public office as a public servant only one's qualifications and competences are of importance. Nobody may be discriminated against at appointment to a public office because of their ideology or religious affiliation (section 33, paragraph 3). The exercise of official duties is function of the civil servants, who are appointed in a public service (section 33, paragraph 4).

Germany is not unique in this regard, some countries have a dual civil service system and some do not. France, for instance, has government employees as well as employees of public corporations. In Denmark the majority of public employees have civil servant status (Andersen et al. 2008). On the other hand, in Great Britain (Hogwood 2008) and the Slovak Republic (Bercík and Nemec 1999), little distinction is made between civil servants and other employees concerning their status.

Another demand of the Allies was the complete reversal of the right of civil servants to stand for election to parliament. This claim encountered resistance because such ineligibility was contrary to the German legal principle of the compatibility of civil office and political mandate. The eligibility to stand for election is principally possible even for civil servants. However, though the right of civil servants to stand for election may not be negated in general, section 137 paragraph 1 of the German Constitution holds that the right to stand for election may be restricted by law in specific instances. There are a many such laws in the German legal system. One example is §§ 5 ff. AbgG. which stipulates that a civil servant has to leave his public office temporarily vacant while having a mandate in the German *Bundestag*. The principle of separation of powers (section 20 paragraph 2 of the German Constitution) determines that a person working in the executive branch may not be his own supervisor in parliament at the same time.

As one can see, changes and breaches are typical features of the German civil service system's history. Independence in the era of Prussian Reform was revoked in the time of *Restauration*. While the duty of personal loyalty to the king could be overcome during the time of the Weimar Republic, civil servants experienced an ever stronger

renaissance of this duty in the Third Reich with the duty of loyalty to Hitler.

Generally, the civil service is independent from the government and thus also from any national crisis, as long as the state remains the centre of legal reference. Following the traditional understanding, even a revolution would not necessarily affect the status of civil servants. There has been a general consensus on this thesis for a long period of time and it is still widely regarded as valid today.

The last two important milestones in German history could not have been more different regarding their influence on the civil servants. As mentioned above, all civil service appointments were terminated after the unconditional surrender of the Third Reich to the Allies in 1945. The German administrative body remained in existence, with most of its employees, but governed by the Allies. On the other hand, when the German Democratic Republic (GDR) joined the Federal Republic of Germany in 1990, contracts between both states directed that, in principle, all labour contracts were taken over by the Federal Republic of Germany (exceptions were made for employees of the state security service and diplomats). Although no special civil servant system existed in the German Democratic Republic but only a system of salaried public employees, they nevertheless agreed to continue the employment contracts of people employed by the GDR (not only those people working in the administration but also those working for companies owned by the State).

The decision for continuation was completely in contrast to what had happened in 1945. Then, the state did not remain in existence while the employment of its officials did continue by and large. After the German Reunification, the organisation of bureaucracy was established in the former GDR by transitional rules. The process of transformation in the former GDR and other ex-communist states in Europe stand as examples for other countries, especially in Asia where planned economies are being replaced by market economies. New civil service systems are being developed, sometimes, as in the case of China and Vietnam, under guidance of German consultants. The installation of these new civil service systems is part of the formation of new state systems. The civil service system is a balancing and consolidating factor that contributes to nation-building, but not necessarily to democracy.

Neutrality of the civil service

The German Basic Law mentions both the political decision-making process (art. 21) and the law-based civil service (art. 33). In accordance

with paragraph 2, article 33, the appointment of a civil servant is made on the criteria of aptitude, qualifications and professional achievements. This legal stipulation is a manifestation of the general rights of equality for all citizens. In paragraph 4 it is established that status, service and loyalty are important qualifications for the exercise of an office as civil servant. According to civil service law, the traditional principles of the professional civil service shall ensure that the traditional and institutional fundaments of the civil service law will be retained, though incorporating the new principles of the civil service, paragraph 5.

According to section 7 paragraph 1 of the German Federal Officials Act (*Bundesbeamtengesetz*), civil servants have to be nonpartisan. This denotes the duty of every civil servant to be at the disposal of every constitutionally created government. As the alternation of government is an essential feature of parliamentary democracy, the operation of civil servants must be transposable. Regardless of the civil servant's personal political opinions, he or she cannot act in a biased manner. The constitutional principle of neutrality has to be reckoned as neutrality towards parties as well as towards all social interest groups for the sake of public welfare interests.

The civil service system is strictly bound by constitutional law. Thus, according to the German Federal Constitutional Court, it is a legal institution based on expertise, professional performance and loyalty, ensuring a stable administration and therefore an element of balance in politics.[2] However, a politicised bureaucracy is widely accepted in German law (see below). The Constitution establishes a balance between the way the government acts and the neutrality of the civil servants system. Although civil servants have to be appointed in a neutral way, in senior positions they have to be placed in a manner responsive to the changing political balance of power. Otherwise the work of the government would be blocked.

The neutrality of the civil service system must not be misunderstood as an anti-party ideology or as a violation of principles of democracy. As the public administration serves the political aims of the government and has to put them into effect, its performance standard is judged by different criteria, according to diverse interests, including the political, and therefore may be regarded as political in a broader understanding. Civil servants must find their role in balancing an unpolitical bureaucracy and a state system burdened with political patronage (see below). Additionally, without neutrality the practice of lifetime appointment to the civil service cannot be justified. Especially towards citizens,

neutrality is only credible on the basis of a consensus that all demo-cratic political actors share.

All European countries request civil servants to show neutrality in the sense that they have to serve every government that was created consti-tutionally. As has been pointed out elsewhere, in the former communist states, for example Poland and the Czech Republic[3] efforts were made to change a civil service system which was loyal to the former political regime into 'a more or less independent politically neutral administra-tion, implementing the political agenda of the parliamentary majority' (Torres-Bartyzel and Graszyna, 1999) (see also Chapter 8, by Staroňová and Gajduschek in this volume). Moreover, in European countries civil servants are not allowed to discriminate against citizens on the grounds of their political preference.[4]

According to section 7, paragraph 1 of the Federal Officials Act, civil servants shall serve the people as a whole. This provides a guideline for the general sense of ethic and duty ('Amtsethos') that is bound by democracy and public welfare. Civil servants shall take part in the func-tions of a state by serving the general public in a nonpartisan manner. This orientation to public welfare distinguishes civil servants from the private sector. As the ongoing discussion reveals, especially in times of modernisation and a partial reorientation of public authorities, conti-nuity is needed to assure balance.

The neutrality of the civil service system is burdened with a patronage system. It is informal practice to appoint civil servants depending on their party affiliation in order to ensure that the interests of this party are being represented. This practice violates the German constitution (section 33 paragraph 2), by breaching the principle that appointments to office have to be based only on expertise and professional perform-ance. Though the patronage system is definitely unconstitutional,[5] it is used on a grand scale by all political parties (for further information Voßkuhle, 2009). So, the patronage system breaks the constitutional law in section 3 paragraph 3 of the German constitution but at the same time is part of the German political culture, intended to promote confidence, to elect friends into office or to rally like-minded people to the political project.

The most effective instrument against the formation of a patronage system is the possibility of each discriminated applicant to file a compe-tition suit (*Konkurrentenklage*). This is because the right of equal access to any office is not only an objective principle but also a subjective right of every applicant. However, as there is also the principle of 'consist-ency of offices' (*Grundsatz der Ämterstabilität*), a final appointment

cannot be revoked, even if fault is found with the appointment process. Accordingly, a subsequent suit cannot succeed.

To address this problem, a highly effective temporary legal protection has been established. This legal protection is used in an increasing number of cases as an alternative to the competition suit. It offers the possibility for an applicant to sue for a fair application proceeding. The application in question has to be appraised on appropriate criteria like expertise and professional performance only. As long this legal action is pending, the employer is not allowed to appoint an applicant irrevocably for this specific position. Furthermore, the plaintiff has the right to timely access to relevant information such as the names of the other candidates. Moreover, a further position has to be held open for the suing applicant. Also of high procedural importance is a shift of the burden of proof to the benefit of the plaintiff. Even after an opponent has been appointed, the rejected applicant can continue pursuing their claim of fair application proceedings in a subsequent constitutional complaint. If the administration can be proved to be culpable, the unlawfully rejected applicant is entitled to compensation (Battis 2009).

Duty of loyalty to the constitution (*Verfassungstreuepflicht*)

Serving the general public fairly and impartially, while considering the common good, is only possible if there is a common political understanding among all civil servants in spite of their different political opinions. The importance of a minimum of consent was shown during the time of the Weimar Republic with its inner conflicts. Therefore, civil servants, who serve the people as a whole, are duty-bound to be loyal to the free and democratic basic system of government as defined in the Basic Law. This duty refers to their behaviour while in service as well as during their time off.

The duty of loyalty to the constitution is part of the general duty of allegiance and, thus, a necessary condition to qualify for a position in the civil service; it is thus a criterion for exclusion from the appointment process of civil servants. This demand for loyalty to the constitution is consistent with the European Convention of Human Rights.[6] But, on the other hand, freedom of opinion and freedom of association can supersede the duty of loyalty to the constitution in some cases.[7]

What does loyalty to the constitution mean? Well, a civil servant does not have to canvass the constitutional values and does not have to opine current political sentiments. But, in critical situations in which

the free and democratic basic order is in danger, a civil servant may not keep silent but must defend its values. Their behaviour in such circumstances must demonstrate that they do not accept such attacks in their presence. However, the requirements for dutiful behaviour differ among the various official positions.

The duty of loyalty to the constitution does not mean civil servants cannot be members of political parties. However, this political right is limited to membership in parties which are not regarded as unconstitutional and do not follow unconstitutional aims. The limitation is clear in cases where parties have been banned as unconstitutional by the German Constitutional Court (section 21 paragraph 2 Basic Law). However, there are other cases where civil servants were removed because of membership of parties which were held to be unconstitutional by the government. This jurisdiction of the German Constitutional Court and the German Federal Administrative Court has been approved by the European Court of Justice (ECJ)[8] and the European Court of Human Rights (ECHR).[9]

Duty of moderation and restraint

As civil servants have to ensure the trust of people in the integrity of civil service, they must maintain moderation and restraint when acting politically or expressing political opinions. Several authors regard this duty primarily as a limitation of civil servants' basic rights, i.e., the freedom of personal opinion and the freedom of association. On the other hand it is essential that the duty to moderation and restraint is an official duty, even when covering private behaviour. It is a duty of each person in office; it is even possible it will become an official duty with relevance for the basic rights at some point in the future. As the duty mainly concerns the credibility of an impartial and fair public office with a common value-orientation, the civil servant is primarily affected as a member of the administrative body and not as an individual.

When performing official acts, civil servants have to completely abstain from expressing their personal opinion. The reason for this is that when representing the state, civil servants act as person in office ('Amtswalter') and not as private persons subject to basic rights. A directive or instruction may affect the basic rights of an official representative of the state only as an exception, e.g., to protect human dignity. In particular cases, changing public opinion may alter the requirements of official behaviour over the years.

Generally, applicants may not be disadvantaged due to their religion. On the other hand, this aspect becomes important when professional qualification requires a certain religious denomination, e.g., Religious Education teachers or teachers at denomination schools. Teachers at state schools, contrariwise, have to be religiously neutral at school. For instance it is highly controversial whether an appointment of a female teacher as a civil servant on probation may be refused if she is not willing to remove an Islamic headscarf during class. Even the German Constitutional Court was split: While the majority of five judges rejected a prohibition of headscarves without a special law, the other three judges regarded the prohibition as an essential feature of the state's neutrality which automatically limits the basic rights of civil servants.[10] In consequence of this judgment, some of the German *Länder* passed special regulations concerning this topic in their education code while others did not. In France, however, secularity has a huge impact: wearing a headscarf is prohibited for teachers as well as for students. In the UK, on the other hand, headscarves are tolerated due to a long tradition of immigrants coming from Commonwealth states. In the Swiss canton Geneva, according to the secular tradition, a primary school teacher is not allowed to wear a headscarf during classes. The ECHR held that this restriction neither violated the freedom of religion nor the non-discrimination-rule.[11]

Political expressions of opinion when in office are only allowed as private discussions among colleagues that affect neither job performance nor working atmosphere. Wearing party membership buttons while at the office may be forbidden, particularly if the trust of people in the nonpartisan civil service system is endangered, but not in general. The duty to moderation does not prohibit superiors to voice a political opinion when in discussion with subordinates.

During leisure time, the freedom to express political opinions is only limited by the duty of loyalty to the constitution. Further, as mentioned above, the ECHR has ruled that freedom of opinion and freedom of association can take precedence over the duty of loyalty to the constitution.[12] Furthermore, different measures apply when expression of opinion takes place in private life or in public – e.g. if a public official is open about his office in the context of a political party meeting. While the latter is illegitimate, private expressions of opinion may only in exceptional cases violate the duty of civil servants. Prohibition of political activity for a whole professional category is unconstitutional. When political opinions are expressed in private, the level of limitation depends on the duties of the civil servants' position and on the

relation between the opinions expressed and the office. For example, if the construction of a mosque is under discussion, a civil servant of the building control department has to act with more restraint than a civil servant employed by the tax department.

Of course, duties to moderation and restraint are different for political civil servants. In German law a political civil servant is a civil servant who is based at a high commission and facilitates the peer-to-peer connection between the permanent administration and political office holders. As political servants, they include classified under-secretaries of state, heads of department in a ministry, or civil servants of the German Intelligence Service. This special group holds functions that require an enduring agreement with the basic political ideas and aims of the government. The purpose of these institutionalised political civil servants is to assure a smoothly transfer between the political head and the civil service hierarchy. Political civil servants act at the threshold of politics. Therefore one can find them in the range of government, parliament, political parties and the administration. Basically, they are the first reference points of the politicians. As political civil servants are regarded as part of the government, both by members of the government and by the public, they have the function of devolution; accordingly, the government must be able to completely confide in them at all times.

The institution of political bureaucracy reflects the assumption that responsible government is a necessary consequence of a constitutional liberal-democracy. Each political civil servant is dependent on the respective democratic balance of power. Because of their political responsibility, political civil servants have to respect the balance of power arising from the constitutional liberal democracy to a special degree. This also embodies the principle that despite of neutrality of the governmental bureaucracy, civil servants are allowed to be members of political parties. People opposing the institution of political bureaucracy overestimate the ability of civil servants to reorientate to changing political circumstances and underestimate the importance of the alternation of government in a parliamentary democracy.

To ensure a close mutual trust between government and political civil servants, a basic principle of German civil service law is breached: the principle of lifetime appointment, which makes it impossible to transfer civil servants into retirement against their free will except in cases of their reaching the age limit or for health related issues. Even then, of course, transfer to retirement is no disciplinary measure and lifetime pension is granted.

Though there is a long tradition of political civil servants in German civil service law, the transfer of civil servants into temporary retirement is not a basic principle for the entire bureaucracy. Indeed, only political civil servants may be transferred into temporary retirement at any time. Basic principles are only those that are of essential importance for the character and the existence of the entire bureaucracy. So the case of political civil servants is a special exception of the basic principle explained above. The institution of political bureaucracy is not a primary institution, even though these civil servants fulfil an important role. As you can see from the German state Bavaria, where state secretaries are members of government instead of political civil servants, bureaucratic organisation in Germany is also possible without political civil servants.

Modifying a traditional civil office into a political office is possible as well as dismissing the officeholder, who was initially appointed for life, when the political mandate ends.

Political civil offices are to be distinguished from top civil service jobs that are initially filled on a trial basis, to ensure the principle of appointment by merit. In the second case, there is no special mutual trust required between the appointees and governmental officials – a special characteristic for political civil servants. However, the borders between these distinctions may be fluid. In some German *Länder*, in contrast to the Federal administration, leading positions may also be granted for limited periods of time.

New empirical data gathered by the classic Comparative Elite Studies on German federal high public officials show that party politicisation decreased by the 2005–2009 grand coalition in Germany. Party politicisation here means civil servants that are members of a political party. On the other hand, functional politicisation increased (Ebinger and Jochheim 2009). Functional politicisation is when a single politician and his function in the state become more and more important than the party he is a member of. This is mostly the case if there is a grand coalition, what is not the rule.

Public administration has always also been personnel policy; the outcome of this is a process of self-politicisation and extrinsic politicisation. Public sector recruitment and human resources strategies have always been ways for political parties to filter and advance loyalists. Professional politicisation in Germany is very significant. The upper echelons of the public sector are filled by political loyalists, but they are also highly professionalised.

Conclusion

Summarising, the appointment of a civil servant in Germany is based on the eligibility criteria aptitude, qualifications and professional achievements, a manifestation of the general right of equality. Furthermore, the constitutional principle of neutrality of civil servants is one of the important principles of public office. Civil servants also have the responsibility to avoid fraud, mismanagement and nepotism. Though the patronage system breaks this principle, political officialdom is a part of the German political identity. Therefore, one has to separate political civil servants from civil servants appointed through a system of patronage. The most effective instrument against the formation of a patronage system is the possibility of each discriminated applicant to file a competition suit. Although in all systems there is some special kind of political appointment at the top of the administrative hierarchy, political bureaucracy in German civil service law has a long tradition. In Germany, the senior civil service is highly professional, but it is also political. Political public officials are widely accepted in German law, they establish a balance between the way the government acts and the neutrality of the civil service system.

However, though civil servants have to be appointed in a neutral way, in senior positions they are placed with political motivations in order to be responsive to a regularly changing political balance of power. Otherwise the work of the government would be blocked. Therefore one has to make the distinction between the institutionalised political civil servants, who are a positive phenomenon since they provide the bridge between the administrative and political level and make sure that changing public political preferences are taken into account into the policymaking process and the patronage system. Politicised civil servants have to be considered a direct consequence of German constitution and are therefore part of the representative democracy while the patronage system is a result of unfair preference.

Looked at from the framework of Guy Peters' contribution 'Politicisation: What is It and Why Should We Care?', politicisation in the German civil service has some structural elements but also some elements of choice by political leadership (Peters, Chapter 2 in this volume). Sitting between the two extremes of extremely neutral or entire politicised, one can describe the situation in Germany as professional politicisation: high level civil servants are often politically appointed but at the same time highly professional. They are the connecting link

between political direction and administration. Without any doubt ministerial bureaucracy concerning the higher civil servants is a very important part of the political decision-making process. The ministerial bureaucracy operates as a kind of interpreter in the political process. In a traditional way it is understood as a supporting institution of the political direction. The ministerial servants elaborate drafts of laws and provisions and administrate law decisions. In this way they release the political decision-making process but they also endanger the democratic basic principle of publicity and responsibility.

Annexe

Basic Law for the Federal Republic of Germany ('Grundgesetz')
Section 137 [Right of state employees to stand for election]

(1) The right of civil servants, other salaried public employees, professional or volunteer members of the Armed Forces, and judges to stand for election in the Federation, in the *Länder* or in the municipalities may be restricted by a law.
(2) […]

German Federal Officials Act ('Bundesbeamtengesetz')
Section 60 [Basic duties]

(1) Civil servants shall serve the people as a whole, not a political party. They shall carry out their tasks impartially and fairly and shall consider the common good in exercising their office. In everything they do, civil servants must affirm the free, democratic basic order within the meaning of the Basic Law and work to uphold it.
(2) When engaging in political activity, civil servants shall maintain the moderation and restraint required by their status relative to the general population and by their consideration for the duties of their position.

Section 7 [Requirements for civil service employment]

(1) Persons may be appointed to the civil service who
    1. […]
    2. guarantee that they will at all times support the free and democratic basic order as defined in the Basic Law; […]

British Civil Service Code[13]
[...]

Impartiality

11. You must:

• carry out your responsibilities in a way that is fair, just and equitable and reflects the Civil Service commitment to equality and diversity.

12. You must not:

• act in a way that unjustifiably favours or discriminates against particular individuals or interests.

Political Impartiality

13. You must:

• serve the Government, whatever its political persuasion, to the best of your ability in a way which maintains political impartiality and is in line with the requirements of this Code, no matter what your own political beliefs are;
• act in a way which deserves and retains the confidence of Ministers, while at the same time ensuring that you will be able to establish the same relationship with those whom you may be required to serve in some future Government; and
• comply with any restrictions that have been laid down on your political activities.

14. You must not:

• act in a way that is determined by party political considerations, or use official resources for party political purposes; or
• allow your personal political views to determine any advice you give or your actions.

[...]

Code of Civil Servants of the Hellenic Republic, Law 2683/1999
Section 27 [Civil Servant's Conduct]

(1) A civil servant, both in and out of service, must behave in such a manner as to be worthy of the public trust.
(2) A civil servant, in the performance of his duties, must behave with propriety to the administered persons and to serve them in the dispatch of their cases.
(3) A civil servant, in the performance of his duties, is not allowed to make discriminations in favour or against the citizens, on the grounds of their political, philosophical or religious beliefs.

Section 45 [Freedom of Expression]

(1) The freedom of the expression of political, philosophical and religious beliefs as well as scientific views and in-service criticism of the acts of the supervising authority constitutes a right for civil servants and is warranted by the State. [...]
(2) Civil servants are allowed to participate in the country's political life pursuant to the provisions in effect.

Staff Regulations of Officials of the European Communities[14]

Title II: Rights and obligations of officials
Article 11 (96)
An official shall carry out his duties and conduct himself solely with the interests of the Communities in mind; he shall neither seek nor take instructions from any government, authority, organisation or person outside his institution. [...]

Article 15 (96)

1. An official who intends to stand for public office shall notify the Appointing Authority. The Appointing Authority shall decide, in the light of the interests of the service, whether the official concerned:
   (a) should be required to apply for leave on personal grounds, or
   (b) should be granted annual leave, or
   (c) may be authorised to discharge his duties on a part-time basis, or
   (d) may continue to discharge his duties as before.

2. An official elected or appointed to public office shall immediately inform the Appointing Authority. The Appointing Authority shall, having regard to the interests of the service, the importance of the office, the duties it entails and the remuneration and reimbursement of expenses incurred in carrying out those duties, take one of the decisions referred to in paragraph 1. If the official is required to take leave on personal grounds or is authorised to discharge his duties on a part-time basis, the period of such leave or part-time working shall correspond to the official's term of office.

Notes

1. German Federal Constitutional Court, 17 December 1953 – 1 BvR 147, BVerfGE 3, 58.
2. German Federal Constitutional Court, 17 October 1957 – 1 BvL 1/57, BVerfGE 7, 155, 162.
3. Section 22, paragraph 1 of the Czech constitution.
4. Paradigmatic section 27 paragraph 3 of the Code of Civil Servants of the Hellenic Republic, Law 2683/1999.
5. German Constitutional Court, 28 May 2008 – 2 BvL 11/07.
6. European Court of Human Rights, 28 August 1986 – 4/1984/76/120 (*Glasenapp v. Germany*); 28 August 1986 – 5/1984/77/121 (*Kosick v. Germany*).
7. European Court of Human Rights, 26 September 1993 – 7/1994/454/535 (*Vogt v. Germany*) – contrary to the German Constitutional Court who rejected the constitutional complaint.
8. European Court of Justice, 28 June 1984 – Rs 180/893.
9. European Court of Human Rights, 28 August 1986 – 4/1984/76/120 (*Glasenapp v. Germany*); 28 August 1986 – 5/1984/77/121 (*Kosick v. Germany*).
10. German Constitutional Court, 24 September 2003 – 2 BvR 1436/02.
11. European Court of Human Rights, 15 February 2001 – 42.393/98 (*Dahlab v. Swisse*); European Court of Human Rights, 29 June 2004 – 44.774/98 (*Leyla Sahin v. Turkey*).
12. European Court of Human Rights, 26 September 1993–7/1994/454/535 (*Vogt v. Germany*) – contrary to the German Constitutional Court.
13. http://www.civilservice.gov.uk. This Code applies to all Home civil servants. Those working in the Scottish Executive and the National Assembly for Wales, and their Agencies, have their own versions of the Code. Similar Codes apply to the Northern Ireland Civil Service and the Diplomatic Service.
14. Now: European Union.

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Part III

Supranational Bureaucracies and Consequences for Administrative Players

10

Commission Civil Servants and Politics: De-Politicised Bureaucrats in an Increasingly Political Organisation

Michael W. Bauer and Jörn Ege

Introduction

Max Weber was the first to systematically theorise about the nexus between the political and administrative sphere of public bureaucracies. He predicted that bureaucratisation would remain a defining feature of our societies – as long as industrial transformation and division of labour progressed. However, Max Weber and the twentieth-century public administration theorists following him focused exclusively on administrative developments *within* nation states.

Bureaucratic structures which emerged in the meantime *between* states, i.e., at international level received comparatively little attention. Although academic interest in (what could be called) a 'comparative international administrative science' has recently increased,[1] our knowledge about administrative features of international bureaucracies rests theoretically as well as empirically on precariously thin grounds. Such neglect is odd for at least two reasons. First, there is a global trend of an ever increasing number of international organisations (IOs) throughout the last century (Wallace and Singer 1970, 277; Pevehouse et al. 2005, 13) and their bureaucratic apparatus as well as their substantial competences have increased considerably, too (Barnett and Finnemore 2004; Mayntz 2002).[2] Second, the transformation of government to governance, in particular in its multileveled version, stresses the importance of technocratic expertise as a crucial resource in policymaking and can thus be taken as encouragement to revisit questions concerning the

relationship between politicians and bureaucrats especially at the international level (Kohler-Koch and Eising 1999; Benz et al. 2007; Rhodes and Bevir 2010).

We want to add to this discussion by analysing the politics-administration nexus within the European Commission. The concepts of direct and professional politicisation serve as theoretical point of departure for our empirical enquiry. Generally politicisation has been defined as 'the substitution of political criteria for merit-based criteria in the selection, retention, promotion and disciplining of members of the public service' (Peters, Chapter 2; see also Rouban 2003, 313). Direct politicisation can be conceived as the top-down ability of political superiors to decide about recruitment and promotion by considering non-merit characteristics of officials (in particular at the higher echelons of the services); such direct politicisation has obviously important implications in terms of steering capacity of superiors since it helps assuring bureaucratic compliance. Professional politicisation, by contrast, should be understood as the degree of bottom-up responsiveness of bureaucrats towards the political requirements of their job; meaning officials attempt to anticipate policy position of those whom they serve mainly in order to enhance their individual career perspectives.[3]

When studying these forms of politicisation at the international level, the Commission comes close to a most similar case for at least three reasons: first, in size and organisational-structural diversification, the Commission already resembles a state ministerial administration, and the EU system in which the Commission operates comes close to what we usually expect from a national polity; second, as an international bureaucracy, the Commission is general-purpose, i.e., responsible for a huge variety of tasks and policies (as opposed to most other international organisations that are single-purpose); third, its national constituencies are relatively homogeneous making it conceivable that ideological and cross-country party-political cleavages have an impact within the Commission.[4] In sum, if studying politicisation in an international bureaucracy is to be meaningful, the European Commission certainly constitutes the 'prime suspect'.

Apart from such analytical considerations, there is also anecdotic evidence that indicates interesting tension in the relationship between the Commission's administration and its political top. In October 2006, for example, the Commissioner for Enterprise and Industry, Günter Verheugen, publicly criticised top Commission officials for being arrogant, condescending and equipped with far too much power, making them hardly controllable by their political leaders. More such examples

could be added.[5] Such allegations may be justified or not, at least they suggest that the relationship between bureaucrats and politicians within the Commission merits closer scrutiny.

The chapter proceeds as follows. After this introduction we put the Commission in its institutional context and discuss particular trends of presidentialisation and the changing role of the European Parliament (section 2). In section 3 we summarise the major lines of arguments put forward about the Commission from a public administration perspective. Sections 4 and 5 provide empirical data[6] to assess the Commission bureaucracy's degree of direct and professional politicisation. We conclude by discussing the implication of our findings. In a nutshell, we show that the Commission's bureaucrats though they are highly sensible for the political side of their job, are less 'politicised' today, i.e., after the Kinnock reform, than in the past (Bauer 2008a, 2009). While the political top of the Commission appears to have indeed become more politically dependent, the Commission's bureaucracy remains highly autonomous, i.e., rather less than more directly politicised.

The changing role of the Commission within the political system of the European Union

The Commission is both at the same time the most important European-level administration (in form of its Directorates-General and other services) and an influential political body (in form of the college of Commissioners including the Commission president). Its exclusive right of initiative makes the Commission one of the most innovative institutions the European integration has created. The centrality of the Commission's position within the EU stems from its role of providing leadership, the proposing of legislation and the managing as well as the execution of policies (Docksey and Williams 1994).

In recent years, however, it has been argued that the Commission has sustained a considerable loss of power accompanied by an increasing importance of the European Parliament (EP) as a legislative actor and supervisor of the executive as well as a Council that defines in ever greater detail the political agenda of the Union (Bauer 2005; Duff 1994). To be sure, the Commission still holds the initiative monopoly in growing number of policy areas but the EP is now a more important veto-player and co-decision maker (Wille 2010a; Benedetto and Hix 2007). The shift of power is perhaps more subtle, but in the eyes of many observers not less pervasive (Peterson 2008). When analysing the implications of such a shift in powers, two developments bear particular importance for

our research question. First, the EP was given a larger amount of control and scrutiny powers vis-à-vis the Commission induced by changes in the comitology system and increased reporting requirements. Second and in addition to its right to censure the Commission, the Parliament has gained an important say in the inauguration of the Commission's political leaders.

Even though the EP has always been criticising comitology (Corbett et al. 1995, 253; Bradley 1997; Hix 2001), the changes made to the procedure in 1999 (intended to increase executive transparency and accountability) provided the EP with a larger amount of available information – something the EP has long fought for.[7] In 2006, the role of the Parliament was further strengthened by the introduction of the 'regulatory procedure with scrutiny' into the comitology system (Bradley 2008).

Despite the expectation that more information would automatically enhance the control capacities of the parliament (see Héritier 2003; Huber 2000), the increased amount of information does not mean that the EP has used it to better control the Commission in a day-to-day basis (Brandsma 2010). Nonetheless, comitology stands for a trend of strengthened power of the EP vis-à-vis the Commission (Franchino 2000), charging the Commission with stronger information delivery and justification duties.[8] With the Treaty of Lisbon, the comitology procedure is replaced by a new system of delegating legislative powers to the Commission. Within this new constitutional framework the EP is now on the same footing as the Council since both institutions have available strong scrutiny and veto power over the delegated acts (see Consolidated Version of the Treaty on the Functioning of the European Union, Article 290 2. (a) and (b)).[9]

Secondly, the EP also became more involved in the appointment of the Commission President and individual Commissioners. Since Maastricht (1992), the term of office of the President of the Commission is aligned with the term of the EP in order to allow the EP to recognise the will of the European citizens when appointing the president. Furthermore, the reform of the investiture procedure established in the Amsterdam treaty (1997) resulted in the formal right of the EP to approve or veto both the Council's nominee for Commission president and the team of Commissioners (Scully 2010, 165; Wonka 2007, 171).[10] The right to censure the Commission as a whole is another powerful instrument at the hands of the EP. Even the EP has never used such a motion, the threat to do so can be argued to have effectively led to the resignation of the Santer Commission in 1999. As a consequence, the new Commission under Romano Prodi proved increasingly sensitive to the

questions and concerns of the EP in the committee hearings, where each Commissioner-designate had to make a statement and answer questions from Members of European Parliament (MEPs) (Hix 2005, 61).

Against the backdrop of increasing importance of the EP (see also Majone 2002), it is not surprising that this trend had an important impact on the political leadership of the Commission. First, the College under Barroso became more 'politicised' (used here as a synonym for 'politically dependent') and moved further away from the neutral and rather technocratic role envisioned by Jean Monnet.[11] A further indicator of increased political dependence of the Commission is the fact that both the figure of the Commission president and individual Commissioners are more and more political heavy weights that previously occupied important government positions in their member state (MacMullen 2000; Hix 2005, 45, Wille 2010b).

Second, the Commission under Barroso became more presidential and centralised in order to guarantee the adequate political leadership required by the Commission's increasingly political role (Peterson 2008). The president's role is often described as being a 'first among equals'. It is he who sets the political guidelines of the work of the Commission and decides about the portfolios and the organisation of the services. The president has veto power over the appointment of the other commissioners and on his request individual commissioners can be forced to resign (though the majority of the college has to back this request). Despite his consolidated position, however, the president cannot guide and take action against the will of the college. Since 2005, however, the President has assumed greater control over Commission policies. This trend is particularly visible if one looks at the transformation of the role of the Secretariat-General from an instrument of the College into a service and power base of the President (Kurpas et al. 2008, 42). With the introduction of the 'Strategic Planning and Programming tool' in the framework of the Kinnock reforms, the Secretariat-General now occupies a more pivotal role in the internal coordination process of Commission proposals (Hartlapp et al. 2010). As powers within the Commission became more centralised and SPP finally unfolded its effects, Barroso appears increasingly able to steer the process of proposal development at a very early stage. The enlargement is also argued to have strengthened the President's role (Peterson 2008) and Barroso moved from being a 'primus inter pares' to a 'primus super pares' (Kurpas et al. 2008, 32).

In sum, three interrelated trends can be highlighted in the recent literature on the Commission's role in the political system of the EU.

First, the Commission is subject to increased scrutiny by the European Parliament, effectively reducing its powers and autonomy within the inter-institutional triangle. Second, the Commission's leadership is being pushed towards a more political role in the sense that it has to take into account a variety of political interests that more and more interfere with the rather neutral and technocratic aspects of policy initiation and implementation. Third, the powers within the Commission College became more centralised under the Commission president. Since the concept of politicisation of the Commission bureaucracy, to which we now turn, is in essence relational, it is important to keep in mind these overall trends that affect the Commission as part of the central supranational power triangle (Commission, Parliament and Council).

The Commission as a public administration

The Commission always received huge attention as a political actor at the supranational level. The academic interest in the European Commission as a supranational *administration* however has rather been scarce. Early works (Michelmann 1978; Coombes 1970) did not produce a sustained research perspective. After a longer period of academic dearth in the 1980s, administrative research on the Commission gained momentum only in the 1990s – when leadership problems (Ludlow 1991) and an internal management or implementation deficit (Metcalfe 1992, 1996, 2000; Laffan 1997, 1998; Levy 1997; Bauer 2001) were diagnosed. It was the dramatic resignation of the Santer Commission in 1999 and the subsequent 'Kinnock reform'[12] that increased the interest in the Commission as a bureaucracy (see Bauer 2007). The most important changes introduced by the reform concern two different management dimensions, i.e., strategic planning and human resource management (see Bauer 2008a). The reform chapter on 'Strategic Planning and Programming' was a first cornerstone of the administrative modernisation project. The intention was to replace the traditional way of administrating with strategic priority setting (on the basis of updated information about what exactly is done in the Commission and by whom), respective resource allocation, process monitoring, evaluation and – inherently related to these – redistribution of financial and personnel resources on the basis of this programming cycle. All in all, output-oriented steering and 'management by objectives' were introduced to replace some of the apparently inefficient aspects of the principle of Weberian organisation (characterised by input management and a strict division of labour). The personnel chapter was the second

centrepiece of the modernisation blueprint, given that budgeting, programming and coordination aspects have personnel implications, which, almost by definition, are the core determinants of a shift in the degree of direct politicisation as we will later argue.[13] The linearisation of careers and the new pension regime aimed to keep staff motivated until very late into their individual careers (more but smaller promotion steps) and to keep the costs for salaries and pensions in check. Another core aspect of the new personnel strategy was an extended, decentralised leadership role. The top management was empowered to vertically set priorities and to monitor (and intervene, if necessary) early on in horizontal coordination and in the entire administrative policy production process. This also means that lower layers in the hierarchy have to provide (much more rigorously than in the past) the necessary information in a continuous and comprehensive way in order to enable senior managers to analyse, assess and potentially intervene with greater precision and effect. This development is exemplarily visible if we look at the new role of the Head of Unit who turned into a key figure within the process of implementing the new personnel policy and received much more management responsibilities than before.

To sum up, the Kinnock reform was not the first, but the first *serious, far reaching and coherent* endeavour to modernise the Commission.[14] Owing to the changes in strategic and personnel management, the relationship of bureaucrats and politicians as the focal point of this chapter appears to have changed significantly and thus necessitates an empirical assessment of how the reform impacts on the politicisation of the Commission administration. Despite substantial analysis of the process, scope and implementation of the reform (Kassim 2004a, 2004b; Cini 2004; Levy 2004, 2006; Stevens and Stevens 2006), *the effects* of administrative change, however, are so far not sufficiently understood (Bauer 2009, 2).

With respect to the structure of the Commission's bureaucracy, it is organised similar to national ministries (Egeberg 2010, 133; see Table 10.1). While the political leadership (the College of Commissioners and their Cabinets) are subject to parliamentary scrutiny (see section 2) and collectively agrees on policy initiatives, each of the 27 Commissioners assumes oversight and policy responsibility for the work of his/her Directorate-General (DG). There are more than 30 such Directorates-General and other services, responsible for agriculture, cohesion policy, environment to legal service and translation. More than 40,000 officials and non-permanent staff are working in Brussels (and to a limited

Table 10.1   Total staff by category

		Staffing	% of total staff
Commission staff	Officials (EUCIQ population)	23,024	56.35
	Temporary agents	1,998	4.89
	Contract agents	6,040	14.78
	Special advisers	57	0.14
	Local agents	3,087	7.56
	National law contracts	230	0.56
	Trainees	1,600	3.92
	Subtotal (Commission staff)	36,036	88.20
External staff	Seconded National Experts (SNE)	1,164	2.85
	Service providers	3,002	7.35
	Interim staff	657	1.61
	Subtotal (external staff)	4,823	11.80
	Total	40,859	100.00

Note: Data as of 31 December 2009.

Source: *Human Resource Report 2010 (Commission 2010, 9).*

extent in Luxembourg and the other sites of the Commission) forming what we call the Commission's bureaucracy.

To pin the Commission bureaucracy against the Commission leadership might seem empirically simplistic (Hooghe 2001, 197–201). However, it analytically helps to focus the relationship between the two sets of actors (Hix 2005, 40f, see also Mayntz 1985, 60f). While the hybrid character of the Commission as an organisation is acknowledged in many studies (see Peterson 2006, 80–82), it should be highlighted that the Kinnock reforms appear to have altered the relationship between politicians and civil servants further. In this regard, a recent study concluded that 'what is perhaps most distinctive about the "new" [Barroso I] Commission is how far the two halves of the hybrid had drifted apart' (Peterson 2008, 767).

In sum, it should have become clear that whatever is produced by the Commission in terms of policy proposal, management or implementation supervision, it is its staff that collects information, prepares policy drafts, implements political directives from the College. It is thus of great concern whether and to what extent one can detect politicisation within its bureaucracy. With the help of the concepts of direct

and professional politicisation, we now attempt to shed light on the crucial relationship between the administrative and political parts of the European Commission.

Direct politicisation within the Commission

Direct politicisation can be conceived as the substitution of political criteria for merit-based criteria in the selection and the promotion of members of the public service (Peters 2011). Of particular interest is in that context how promotions into top jobs of the bureaucracy are handled. In theory, the purpose of direct politicisation is to assure compliance of the service with the political preferences of its political leaders.

What might be 'political criteria' with respect to the European Commission administration? First, given our discussion of the role of the Commission in the EU system and our diagnosis of increasing politicisation of the College, it might well be that similar ideological or party politicisation also affects the Commission services. Second, given the sensibilities of the supranational institutions for (particular) national positions, it may well be that within the Commission nationality politics occupies the role that in national civil services is usually hold by party politics. Do we find evidence for either?

Asked how important is party affiliation or sympathy in the Commission, 74 per cent of the interviewed middle and senior Commission managers say that 'party affiliation is not important' or even that 'it does not play a role at all'. Only 5 per cent think 'it is important', while 21 per cent of the managers say it may 'sometimes be important and sometimes not'. Party membership is even more alien to the European civil servants. Only 9 per cent of our sample said they are an active or passive member of a national political party.[15] Compared to the top-level ministerial bureaucracy of Germany, for instance, this is a very low value.[16] In relative terms, thus, one can say that with respect to party membership and party affiliation, the Commission appears much less directly 'politicised' than any central administration of the EU member states (see Figure 10.1).

Can we take this as evidence for the irrelevance of party-politics for the work of Commission officials, or should we suspect underreporting in our survey due to a social desirability effect (i.e., that officials would not report their party membership for privacy reasons)? Our online survey contained a question which we can use as 'control'. The officials were asked about the basis of their professional network within
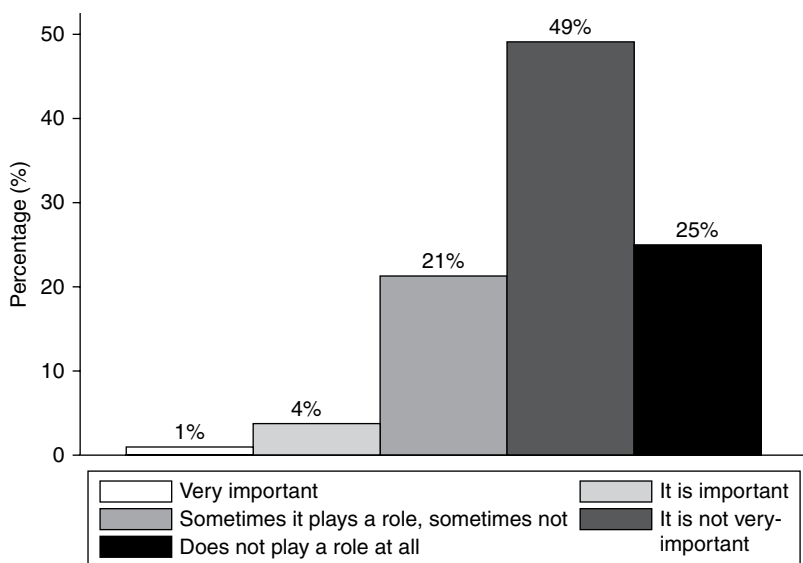
Figure 10.1   Perceived party politicisation within the Commission administration: 'how important is party affiliation or party sympathy for Commission officials?'

Note: Heads of Unit, Directors, Deputy Directors General, Directors General (n = 108).

Source: EUCIQ; see Annexe Q1.

the Commission (see Suvarierol 2008). Party-political contact ranked low. Only 19% said that ideology or party affiliation would play a role in their individual networking.[17] Thus our data (directly and indirectly) indicates that party politics is of little relevance in the daily life of Commission officials. However, what came out to be more as twice as important than ideology and party affiliation for the individual networking was nationality (52 per cent). Hence, the irrelevance of party-politics is supported, but can it be that nationality politics in the Commission became what party politics is for national civil services?

In contrast to party politicisation, the intra-organisational handling of staffs' nationality is a highly disputed aspect of human resource management in the Commission. This is mainly because member states demand that 'an appropriate' number of their citizens are employed within the Commission civil service. Similar to what classically has been discussed under the heading of 'representative bureaucracy' one reason for this demand is certainly that in way of such 'representation' national cultures and positions are assumed to be taken into consideration.[18] The

underlying dilemma of administrative neutrality on the one hand and member states' desire for (passive) bureaucratic representation on the other hand has often created frictions between international organisations and their constituents (Beigbeder 1988; Weiss 1975, 62–68). This applies also to the European Commission (Egeberg 2006).[19] In the EU administrations (not just in the Commission) the national concern of appropriate 'bureaucratic representation' has always been recognised in Commission's Staff Regulations. Article 27 determines that

> [r]ecruitment shall be directed to securing for the institution the services of officials of the highest standard of ability, efficiency and integrity, recruited *on the broadest possible geographical basis from among nationals of Member States of the Communities.* No posts shall be reserved for nationals of any specific Member State (Commission 2004, I – 14; emphasis added).

So, there is a formal encouragement (though no fixed quota) that nationality is taken into consideration. The question then is do we find evidence that 'the broadest possible geographical basis' leads to a purposeful substitution of merit criteria for nationality criteria? Proper empirical data to answer this question is difficult to find. However, if in selecting and promoting civil servants nationality is taken as unjustified political criteria, this should leave 'observable' traces in our survey – as career civil servants are probably unhappy with this. And indeed, the acceptance of the geographical balance principle among Commission staff is relatively weak. Only 35 per cent of the 1658 respondents (distributed about equally to hierarchical ranks) indicate in the online survey that they actually agree that posts in the Commission should be distributed on the basis of geographical balance. Forty-eight per cent are opposed to such a distribution while 17 per cent are indifferent.[20] So, we can say that the problem as such is of some concern to the Commission staff. Face-to-face interviews however showed overall acceptance of the principle of geographical balance – with the condition that *merit should come first*, i.e., that geographical balance is not the *sole* criteria for selection or promotion.

Moreover, interviewees admit that national governments do indeed 'lobby' for their national candidates to get into top positions; however, national governments can only do so where the right 'constellation' opens (i.e., an appropriate national candidate is available and the direct environment of the vacancy does not already contain too many 'own' nationals). In other words, it is very difficult for a national government to

orchestrate Commission promotion procedures according to their preference in order to achieve exploitable strategic gains. To have chances to be 'successful' national governments have to support well-qualified candidates in promising constellations and they can rarely afford to just follow their actual political interests and personnel preferences. In sum, the 'remoteness of Brussels' and the fact that national governments can only indirectly try to influence important promotions sets a natural limit to the systematically exploitable substitution of merit criteria for political criteria.

We can cross-check the robustness of this finding of low salience of nationality politicisation with another question from the survey. The civil servants were asked whether they think it problematic for Commission officials to manage dossiers of special interest to their 'own' member state. More than half of the respondents (51 per cent, no major differences between hierarchical ranks) think it is *not* problematic if civil servants handle dossiers of special interest to their home country. Just 34 per cent have some concerns that there might be conflict of interest.[21] In face-to-face follow up interviews, we confronted the senior and middle managers with these results and asked if this picture was a surprise to them. Most of them said they were not surprised and emphasised the advantage when civil servants dealing with dossiers of their country of origin – especially if that country has a rare language and yet little organisational memory about its institutional set-up exists within the Commission. These are conditions which do obviously apply to many countries from recent enlargements. Furthermore, respondents often argue that the rules supporting multi-nationality in the DGs, i.e., shared responsibility for a dossier and the monitoring and reporting practices, make potential national bias a negligible issue. There are also rules – introduced in recent years – that aim at 'defusing' the perils of nationality politicisation, i.e., a new Director-General cannot have the same nationality than their predecessor and a Commissioner's cabinet has to be decisively multinational (Egeberg and Heskestad 2010).

In sum, nationality in Brussels just seems to lack the cohesiveness that party-political ideology produces (and usually makes it utilisable) in national administrative environments. Even if the concern for geographical balance substitutes in some cases merit criteria, there is in the Commission the feeling that nowadays this is of much less strategic importance and considerably less connected with attempts to systematically steer the Commission civil service than this has been the case before the changes brought about by the Kinnock reform.[22]

Party political affiliation and nationality thus appear of little use for steering the Commission civil service; however, it may still be the case that the substitution of merit criteria for political ones serves the organisational top of the Commission to get their political programs implemented (apart from direct party-political or national links). In such a formal (i.e., non ideological or nationality) sense politicisation would allow the organisational leadership to select and promote individuals of their trust to strategic positions within the Commission hierarchy to properly execute whatever the political agenda of the organisational top is. There is no doubt that in the past such formal politicisation was common in the Commission. The success story of the presidencies of Jacques Delors is usually explained by just this: his determination to put 'his' people to the right positions (Grant 1994). Recently however Neil Kinnock's reform of human resources management appears to have changed this picture.

Back in the 1980s, the recruitment and selection of, for example, Directors and Directors-General was characterised by low formalisation and hence a high degree of discretion at the hands of the individual Commissioners and their cabinets (Coombes 1970, 157; Stevens and Stevens 2001, 82–84; Lequesne 1996, 405; Rogalla 1973, 338). With the implementation of the Kinnock reforms and the release of the new staff regulations in 2004, individual Commissioners still hold the right to appoint the senior management within their DG, but they have significantly lost discretionary powers since 'Consultative Committees of Appointments' (CCA) have gained an important say in the (pre)selection of qualified candidates. While the CCA are trying to guarantee the aforementioned balanced geographical distribution, the merit principle and the application of a competitive selection procedure have largely replaced the rather informal appointment practices of the 1980s. Even though Commissioners are not bound to shortlisted CCA candidates, they accept about 95 per cent of the proposed candidates (Egeberg 2006, 38).

Prior to the Kinnock reforms, also for normal career civil servants seniority and nationality appear to have been more important factors for promotion than the individual performance (Davies 2002, 178; Spence 1997, 75). Although the new system is highly contested within the Commission, one result seems to be that the politicisation of the new procedures has been reduced. At least, the fact that most senior staff now come from within the Commission can be taken as evidence in that direction (Wille 2007, 41; see Figure 10.2).
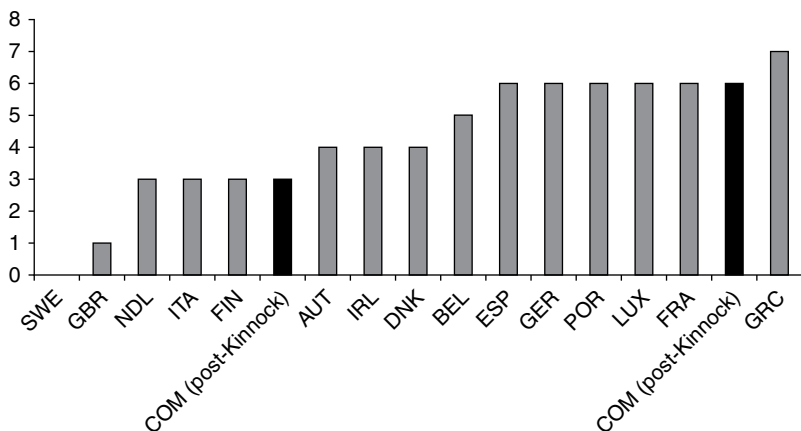
Figure 10.2   The politicisation of senior civil servants: the EU-15 and the change of the Commission

Notes: SWE = Sweden, GBR = Great Britain, NDL = the Netherlands, ITA = Italy, FIN = Finland, COM (post-Kinnock)= European Commission after the Kinnock reforms, AUT = Austria, IRL = Ireland, DNK = Denmark, BEL = Belgium, ESP = Spain, GER = Germany, POR = Portugal, LUX = Luxemburg, FRA =France, COM (pre-Kinnock) = European Commission in the 1980ies, GRC = Greece.

Source: authors' own modification to Balint et al. (2008: 685).

It is possible to quantify recent changes in the formal politicisation of the Commission by means of an additive index using existing formal organisational rules (see Balint et al. 2008). Following a scheme based on previous work of Kai-Uwe Schnapp (2004) the degree of politicisation of promotion and selection procedures within the Commission can even be compared to that of national public administrations.[23]

One may criticise the selection of the indicators and the attribution of particular values, but the observable trend appears solid: the post-Kinnock Commission's recruitment and promotion rules leave less room for the substitution of merit criteria by political preferences of the superiors than in the time before.

In sum, with respect to direct politicisation within the Commission, we conclude that party-politics (as could perhaps be expected) plays hardly and nationality politics little role. Formally pure top-down politicisation has been strong in the past (compared to other European national civil services). It has however been considerably decreased in the wake of the Kinnock reform. If anything, with respect to direct

politicisation the Commission administration appears considerably depoliticised.

Professional politicisation of Commission officials

Direct politicisation assumes that partisan, ideological or national considerations have an impact top-down, i.e., from the leadership to the lower levels of the bureaucratic echelons. Politicisation can, however, also work the other way around. Those working in the civil service are usually responsive towards the political requirements of their job, i.e., they take seriously the preferences of those who formally guide them. Civil servants may be responsive to their leaders out of a working ethos, conviction or opportunism, but in effect most of them follow in their daily work directions 'from above'; they follow the better the clearer the directions are and usually if they have none or no clear ones they try to guess what the directions of the current leadership might be (Manytz 1985, 173–180). Such professional politicisation has been described else-where – under the heading of functional politicisation – as implying

> a greater sensitivity of civil servants for considerations of political feasibility, and institutes a kind of political self-control of top bureau-crats through their anticipation of the reactions of the [domestic] cabinet and of parliament to their policy proposals and legislative drafts (Mayntz and Derlien 1989, 402).

What evidence do we find for such functional, professional or anticipa-tory politicisation in case of the European Commission?

A first observation is that because of the Commission's responsi-bility to initiate policy drafts into the decision-making system of the EU, Commission officials at all levels are *ex officio* involved in EU poli-cymaking. After all the Commission does not produce number plates, passports or a particular service to citizens, but complex political goods like policy program, management of financial responsibilities of the EU, supervising joint implementation and so on. It may sound trivial, but it should be restated that the Commission is a political organisa-tion. Working in the Commission means you are exposed to politics, although the degree of this exposure may vary. As Figure 10.3 indicates, senior officials are both aware of this political side of their job and the large majority perceives this as a particularly enjoyable aspect of their work.
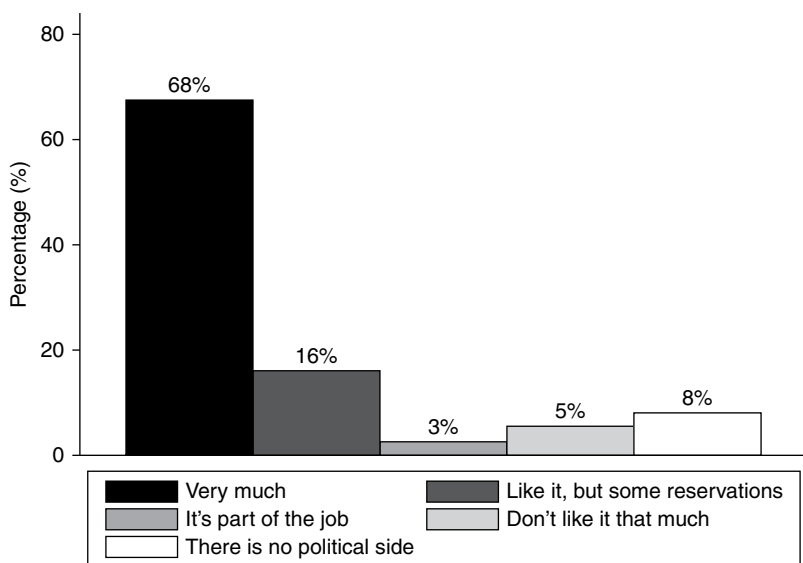
Figure 10.3   Political involvement of Commission officials: 'how much do you like the political side of your job?'

Notes: Question asked from Directors and Directors General only; n=37.

Source: EUCIQ, see Annexe Q6.

In brief, to the extent that they work on politically contested issues the Commission officials can be viewed as 'political' bureaucrats and they like it.[24] Especially senior officials in the Commission are thus similar to higher domestic civil servants who work in close contact with the political leaders and who, due to their substantial engagement with the world of politics, naturally deviate from the ideal-type of a purely instrumental bureaucrat (Aberbach et al. 1981, 4–6) that merely executes what the political rulers have decided. The question is however in what way precisely and to what degree are Commission officials 'hybrids' – to use the notion of the classical analysis of Joel D. Aberbach and his colleagues? We raise essentially two questions to find out: The first one concerns loyalty of Commission officials towards both the politically agreed content and the political leadership as such. Second how do Commission officials perceive their own role within the politico-administrative system of the European Union?

Asked whether they think it is the responsibility of the services to support the politically agreed position of the College (see Tables 10.2

Table 10.2 'It is the responsibility of the services to support the politically agreed position of the college'

		Agree	Neither nor	Disagree	Total
Senior	n	97	3	1	101
management	%	96.04	2.97	0.99	100
Middle	n	362	18	9	389
management	%	93.06	4.63	2.31	100
Administrators	n	792	105	56	953
	%	83.11	11.02	5.88	100
Total	n	1251	126	66	1441
	%	86.69	8.73	4.57	100

Note: For further information, see Annexe Q7.

Table 10.3 'Commission officials work for their Directorate-General first, then for the Commission'

		Agree	Neither nor	Disagree	Total
Senior	n	31	12	58	101
management	%	30.69	11.88	57.43	100
Middle	n	106	55	224	385
management	%	27.53	14.29	58.18	100
Administrators	n	329	164	474	967
	%	34.02	16.96	49.02	100
Total	n	466	231	756	1453
	%	32.07	15.90	52.03	100

and 10.3), the expressed agreement among Commission civil servants is very high, nominally increasing from rank and file, to middle, to top management.[25] The self-commitment of the service to College decisions is exemplary, on average 87 per cent; certainly a good value of the overall bottom-up loyalty prevailing within the Commission services.

Liking the political part of their job and demonstrating great loyalty to political decisions from the top makes Commission officials perfectly fall into the conceptual category of 'image II' bureaucrats, i.e., demonstrating a clear ability to distinguish between a power-based and a policy-based understanding of political work (Mayntz 1984, 201).[26] It fits to this picture that only one-third of Commission officials asked whether their departmental loyalty overrides their organisational loyalty put the DG interest ahead of the organisational interest in their work.[27] Hence, this

data is no proof for an outspoken 'silo'-mentality, i.e., of parochial culture and lacking inter-departmental cooperation within the Commission.

In order to capture the role understanding of Commission officials, we used the categories that Aberbach and colleagues developed in their classical study of national civil servants (1981). An overview of the roles is displayed in Table 10.4.

Our results (see Table 10.5) indicate that the self-perceptions of technical problem solvers (role 1), representatives of the EU (role 5) and brokers that mediate between diverging interests (role 4) are seen as the most accurate descriptions of the work of top-level European civil servants. By contrast, Commission officials see themselves least as agents pushing for a particular or partisan aspect of their job (role 2 and 7).[28] Compared to the average role understanding of domestic civil servants in the seven countries reported by the Aberbach team (1981, 89), the results of our survey are quite similar. However, both the broker role (25 percentage points more) and the representative role (22 percentage points more) are much more pronounced in the European context. This difference underlines that Commission officials do still perceive themselves as brokers between different national and inter-institutional interests as well as representatives and servants of the greater good of the European project.

Table 10.4 List of (non-exclusive) roles that middle or senior officials may consider part of their job

	Role	Role description
1	Technician	Solving technical policy problems and applying specialised knowledge
2	Advocate	Fighting for or representing the interests of a social group, class or cause or protesting against injustice
3	Legalist	Focusing on legal processes or legalistic definitions of one's responsibilities
4	Broker	Mediating or resolving conflicts of interest and political conflicts
5	EU Representative	Representing the European Union
6	Facilitator	Protecting the interests of specific clientele groups or constituents
7	Partisan	Focusing on the political or partisan aspects of the job

Note: For the fifth role we used 'Representing the EU' instead of the trustee role ('Representative of the state') (Aberbach et al. 1981: 87). Owing to non-applicability, we omitted the role of an ombudsman and did not ask about the policymaking aspects in our survey.

Table 10.5   Role perception of Commission officials

	Role	Percentages	Ranking of ECS's roles	Role perception of ECS in comparison to DCS
1	Technical	77	2	+ 8 (role is *more* important for ECS than for DSC)
2	Advocate	8	7	– 12 (role is *less* important for ECS than for DSC)
3	Legalist	34	4	– 2
4	Broker	63	3	+ 25
5	Representative	78	1	+ 22
6	Facilitator	12	5	– 17
7	Partisan	8	8	+ 1

Notes: The different roles are non-exclusive categories and the three most accurate/ important roles are considered per respondent. ECS = European civil servants; DCS = domestic civil servants.

Source: EUCIQ (n=73, see Annexe Q9); data on DCS are taken from Aberbach et al. (1981, 89).

In sum, the average Commission official is very sensitive to the political side of her/his job; s/he is however interested in problem solving more than in pursuing a particular ideological policy solution; s/he goes a long way to assure a pragmatic solution for whatever problem s/he is confronted with; her/his loyalty lies with the official leadership whose directions s/he is happy to follow as s/he has a clear notion of the difference between political and politics. When interviewing Commission officials in this regard, the answer we got most of the time is perhaps best summarised in a comment of a director:

> …Working for Europe is my first point. We do initiate, but achieving concrete results is my goal. I have to cover a wide range. It is about what you manage to achieve and results, not the impact that happens in the future. The real job of the Commission is to listen, to the Council, to the Parliament, to the people and then make the synthesis trying to make the best proposal and then spend your life negotiating.

Conclusion

The main aim of this chapter was to assemble empirical evidence and use this as a basis to assess the degree to which the European Commission civil service is politicised and thus how one should understand the

relationship of Commission bureaucrats and the politics surrounding them.

Our first observation was that the Commission as a supranational institution is more dependent upon its European level peers than it was in the past; especially the power-maximising Parliament claims greater scrutiny and control over the European Union's 'administrative apparatus'. While the European Parliament (as any parliament over the world) lacks capacities and (perhaps also) incentives to go into executive minutiae, the Council has been traditionally leading – in programmatic terms – the Commission, and the Lisbon treaty appears to have consolidated its central position. At least, the recent institutional changes (EU foreign minister and permanent president of the European Council) add to the fusion of executive and legislative logics (that is so characteristic for the EU) and appear to strengthen the Council further. The point we want to make in this context is that the Commission's dependency upon Parliament and Council has increased; hence, the College as a political body is thus less autonomous today than in the past.

The second point is that within the Commission important changes have been taken place, too. The College has become unwieldy large so that the idea of an *aréopage* of equals is now clearly illusionary. The college logic has been supplanted by a hierarchal logic embodied in the growing powers of the Commission president. Moreover, the Commission president politically and the Secretariat-General organisationally do indeed use their new top-down management powers.

The third point is to restate that in terms of professional ethos, the Commission civil servants appear politically sensible, but hardly political-ideologically pro-active. They seem politically self-controlled, guided by considerations of political feasibility with sound capacity of anticipating reactions of the consequential players. They are – in Aberbach et al.'s sense – 'image II' bureaucrats who are political but little politicised. What is more is that despite the multinational context of EU policy-making, there is little evidence that the missing party-politicisation of the Commission civil service has been replaced by something like nationality politics.

The paradox is now that at the same time as the Commission as a supranational institution becomes politically increasingly dependent upon the Parliament and the Council, the Kinnock reform *reduces* the possibilities of its superiors to 'steer' by means of direct politicisation. Furthermore, this observation is even more precarious as the members of the Commission College become increasingly subordinated to the Commission president. Our fourth point therefore is that the

Kinnock reform *makes it more difficult* for the organisational top to steer the house by using personnel politics of the kind of direct politicisation. The Commission civil service, in other words, has become in this crucial respect more independent and more autonomous.

We thus see an ever less politicised civil service, in an ever more politicised organisational context. At first sight this may be taken as good news since depoliticised civil servants are thought to more likely execute and to deliver what they are asked for by their superiors. At a second glance however problems arise. Because those who should steer the bureaucracy are under greater political pressure, but at the same time they have fewer means than before to direct their apparatus in a top-down way. It thus appears that the separation between College and Commission service intensified. With the autonomy of the service further enhanced, the production of suitable policy programs and problem solutions will depend to a great extent upon the 'bottom-up' political sensitivity and sensibility of the bureaucracy. The question however is: will 'bottom-up sensitivity' be enough to make the Commission deliver? As long as outside political demands are diffuse, this system may work; once political demands become more consistent, frustrations appear unavoidable. It thus will be interesting to see what are going to be the effects of a further depoliticised bureaucracy operating in an increasingly politicised institutional structure.

Annexe

Survey questions (in order of appearance in the chapter)

	Method	Topic	Exact wording of the question	Available answer categories	Rank of respondents	n
Q1	Face-to-face, semi-structured interviews	Party politicisation	"Past studies of national civil services – particularly in Europe – have found that the party affiliation or party sympathy of top managers is often important. How important is the party affiliation or party sympathy of officials in the Commission?"	1: Party affiliation is very important 2: It is important 3: Sometimes it plays a role, sometimes not 4: It is not very important 5: It does not play any role at all	Directors, Deputy Directors General, Directors General Heads of Unit	108
Q2	Face-to-face, semi-structured interviews	Party membership	"If you don't mind us asking, do you belong to a political party?"	1: No, never 2: In the past, not anymore. 3: Yes, but I am not active. 4: Yes, and I am still active	Directors General, Deputy Directors General, Directors, Heads of Unit	110
Q3	Online survey, mainly closed questions	source of informal network	"We are interested in your views about how formal or informal are interactions within the Commission. In your experience, what are the most important bases for informal networks in the Commission?" [Only results for nationality and ideology/party affiliation are reported]	Respondents could agree or disagree to each of the following categories: 1. Nationality 2. Ideology or party affiliation 3. Personal 4. Language group 5. Regional identity 6. Educational background 7. Other; 8. None	Directors General, Deputy Directors General, Directors, Heads of Unit, [Administrators excluded]	497

Q4	Online survey, mainly closed questions	perception of national balance	"We would like to know your views on the recruitment of officials to the Commission and who should do specific jobs. Some argue that posts in the Commission should be distributed on the basis of geographical balance. What is your view?"	1: Disagree 2: Neither agree nor disagree 3: Agree	Directors General, Deputy Directors General, Directors, Heads of Unit, Administrators	1658
Q5	Online survey, mainly closed questions	conflict of interest	"Some think that it is problematic for Commission officials to manage dossiers of special interest to their own member state. What do you think?"	1: Disagree 2: Neither agree nor disagree 3: Agree	Directors General, Deputy Directors General, Directors, Heads of Unit, Administrators	1656
Q6	Face-to-face, semi-structured interviews	perception of the political side of the job	"Senior managers in the Commission by definition are involved in policy making. This inevitably involves contact with the world of politicians and of politics. Could we ask how much you like the political side of your work?"	1: I like it very much 2: I like it, but have some reservations 3: It's part of the job 4: I do not like it that much 5: There is no political side	Directors General and Directors	37
Q7	Online survey, mainly closed questions	loyalty towards position of the College	"We are interested in relationships between different parts of the Commission and categories of Commission official (Please think generally; not just about your own – or your Commissioner's – DG). It is the responsibility of the services to support the politically-agreed positions of the College."	1: Disagree 2: Neither agree nor disagree 3: Agree	Directors General, Deputy Directors General, Directors, Heads of Unit, Administrators	1441

	Method	Topic	Exact wording of the question	Available answer categories	Rank of respondents	n
Q8	Online survey, mainly closed questions	Loyalty towards DG vs. Commission as a whole	"Commission officials work for their Directorate General first, then for the Commission"	1: Disagree 2: Neither agree nor disagree 3: Agree	Directors General, Deputy Directors General, Directors, Heads of Unit, Administrators	1501
Q9	Face-to-face, semi-structured interviews	Role perception	"Here is a list of roles that middle or senior officials may consider to be part of their job. The list has proven useful in comparative studies to describe how national or international public servants perceive their role. Are there any with which you decidedly do not identify? Could you rank the top three in order of your priorities?"	1: Solving technical policy problems and applying specialised knowledge 2: Fighting for or representing the interests of a social group, class or cause, or protesting against injustice 3: Focusing on legal processes or legalistic definitions of one's responsibilities 4: Mediating or resolving conflicts of interest and political conflicts 5: Representing the European Union 6: Protecting the interests of specific clientele groups or constituents 7: Focusing on the political or partisan aspects of the job	Directors General, Deputy Directors General, Directors, Heads of Unit	73

Notes

1. See for instance Egeberg 2006; Trondal et al. 2010; Trondal 2010, Bauer 2008b and the contributions in the special issue of the *Journal of European Public Policy* (vol. 15, no. 5) published in August 2008.

2. It actually depends a lot what definition of IOs one uses. Some scholars see a decline in the overall number (a 2.9 % decrease in IO number between the end of the cold war and 2004) but still an increase in IOs bureaucratic apparatus and competences (see Volgy et al. 2008: 847).

3. For a further differentiation of a top-down and bottom-up understanding politicisation, see Clifford and Wright 1997 and Peters and Pierre 2004.

4. This third expectation is based on the fact that the EU as a regional organisation with a territorially restricted membership structure suffers less from collective action problems caused by a large number of highly heterogeneous principals (see e.g., Hooghe et al. 2006; Pollack 1997). Even though the recent 2004 and 2007 enlargement of the EU may weaken the argument, the EU is still distinctly different from many other international organisations whose members come from various continents and therefore politicisation phenomena (as we attempt to study them) are likely to be overshadowed by cultural and socio-economic diversity.

5. The book 'The Life of a European Mandarin: Inside the Commission' published in 2007 by current MEP Derk-Jan Eppink is another recent example of serious criticism against the illegitimate rule of Brussels' 'Eurocrats'. Building on his own professional experience as a cabinet member of Commissioner Bolkestein (1999–2004) and Kallas (2004–2007), the author describes instances where high-ranking civil servants have intentionally overloaded apparently weak Commissioners with unimportant work just to keep them out of the way. More generally, the author considers turf wars, insufficient inter-departmental coordination and weak political leadership as the crucial pathologies of Brussels' bureaucracy.

6. Our empirical section draws on data collected as part of the 'European Commission in Question' (EUCIQ) project conducted by Hussein Kassim, John Peterson, Michael W. Bauer, Renaud Dehousse, Liesbet Hooghe and Andrew Thompson (see Kassim et al., forthcoming). For further information, visit http://www.uea.ac.uk/psi/research/EUCIQ. The data used here is the result of an online survey, where we surveyed 1901 permanent Commission officials. In order to enhance reliability and validity of this quantitative data, the online questionnaire was supplemented with 119 semi-structured face-to-face interviews with the senior and middle management of the Commission. A compilation of relevant survey questions can be found in the Annexe to this chapter.

7. Under advisory, management and regulatory procedures of comitology, the Commission has to provide the EP with a large amount of information, ranging from the technical aspects of the draft measures (if the legislative act was passed under co-decision) to detailed minutes of meetings, list of participants and final decisions (Hix 2005, 55).

8. For example, the President of the Commission needs to present the annual work program of the Commission to the EP and throughout the year Commissioners and their management staff must appear before EP committees to report on the Commission's work (progress).

9. See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:FULL:EN:PDF (accessed 14 January 2011).

10. The recent confirmation of Barroso as president of the Commission was the first one to where the EP voted on party-ideological lines and not in 'grand coalition' between the European People's Party and Socialists.

11. To be sure, increasing politicisation of the Commission College could already be observed under the leadership of Jacques Delors (Drake 1995; Ludlow 1991) but then lost momentum under its later presidents which nurtured the fear among MEPs that the Commission could retreat to its previous, largely bureaucratic role (Christiansen 1997, 77).

12. It must be kept in mind, however, that the 'Kinnock reform' is actually a bundle of sometimes disjointed measures that have been implemented to different degrees and many of which have been the subject of intensive re-reforming.

13. For an overview of the changes in HR management relevant for our analysis, see Figure 10.2 and footnote 21.

14. For an overview of other less comprehensive attempts, see Bauer 2007.

15. For further details, see Annexe Q2.

16. In 2005, 48.5% of the 132 German top officials interviewed report to be a member of a political party (Schwanke and Ebinger 2006, 239). Party affiliation seems to be an important factor in France, too. Rouban reports that when the conservative government of Jacques Chirac took power in 1986 this led to the replacement of two-thirds of the department heads in the administration of the National Education Ministry, the Interior Ministry and the Culture Ministry (Rouban 1996; 2004, 87).

17. In order to secure comparability with question Q1 and Q2, we restrict the calculation of percentages to the responses of middle and senior management. For further details, see Annexe Q3.

18. Kingsley was the first to write about bureaucratic representation. He argues that in order to prevent a bias in the making and implementation of public policies members of the bureaucracy should be drawn proportionally from the major layers of the population (Kingsley 1944). Mosher (1968) further specified the original concept by distinguishing between passive and active representation. Whereas passive representation refers to the fact that the origin of civil servants should simply mirror the different layers of society, active representation highlights that civil servants are actively pushing for the interest of 'their' social class (Mosher 1968, 11). The principle of 'the broadest geographical basis' can thus be understood as a means to guarantee at least passive representation of member states in the Commission bureaucracy and increase the merits associated with representativeness such as legitimacy, responsibility and responsiveness to the needs of European citizens. The question of whether or not active representation can also be expected, however, is far from clear in the case of the Commission bureaucracy.

19. Liesbet Hooghe (1999) called this the tradeoff between consociational and Weberian principles in the Commission's handling of staff multi-nationality.

20. See Annexe Q4. It is not completely clear though if all respondents interpreted the question in a coherent way. The results of the semi-structured follow-up interviews indicate that some respondents may have understood

the word 'distributed' in a formal sense (i.e., that there should be fixed quotas and flagging of posts for certain nationalities). Thus, our results may overestimate the negative perception of geographical balance.

21. Online survey; n=1656. For more information, see Annexe Q5.

22. As one interviewee put it: 'Those times when the Director-General of DG Agriculture was 'naturally' of French nationality, and no one not French could ever aspire to have this post, are times of the past.'

23. The politicisation index is created by adding up seven dichotomous items. Each item is coded as '1' (i.e., politicised) if the condition in the brackets is satisfied. 1. Senior staff is usually recruited from the administration itself (no); 2. Senior staff is recruited through formal procedures prior to the appointment (no); 3. Senior staff can be dismissed by the minister without cause (yes); 4. Senior staff can be replaced when the government changes (yes); 5. The incumbent minister can appoint senior staff (yes); 6. A formalised cabinet system exists (yes); 7. The appointment of cabinet staff is formalised (no). As regards the Commission, change towards less politicisation is due to changes in the indicators 1, 2 and 7 which are all coded '0' after the Kinnock reforms.

24. These results are quite similar to the results of interviews conducted with 130 senior civil servants in Germany in 2005, where 61% reported to like the political side very much. (Schwanke and Ebinger 2006, 244).

25. By reporting more commitment to political goals with increasing hierarchical rank, Commission officials display similar characteristics as national civil servants (see Steinkemper 1974: 95–97; Putnam 1976, 213).

26. Aberbach et al. (1981, 4–23) distinguish four images that vary in their degree of overlap between the 'worlds' and tasks of politicians and bureaucrats. Image I assumes that the tasks of politicians can be clearly separated from bureaucrats. Whereas politicians decide on public policies, civil servants are not active in policymaking and merely administer. Image II acknowledges that both set of actors are active in policymaking. While civil servants contribute facts and knowledge, politicians bring in interest and values. In Image III, both set of actors are concerned with politics but 'whereas politicians articulate broad diffuse interests…, bureaucrats mediate narrow, focused interests of organised clienteles' (Aberbach et al. 1981, 9). Finally Image IV, which refers to purely hybrid bureaucrats, assumes that the roles of politicians and bureaucrats become completely blurred and cannot be distinguished anymore.

27. For more detailed information, see Annexe Q8.

28. This is a further indication that Image III is not an accurate description of Commission officials.

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11
The European Parliament's Administration: Between Neutral and Politicised Competence

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Introduction

The European Parliament (EP) has followed an impressive trajectory from being a non-elected assembly of the European Coal and Steel Community to a full-fledged co-legislator with the Council of Ministers (Council). The main instrument of Parliament's legislative competences, the co-decision procedure, was introduced in the Treaty of Maastricht (1993) and by the beginning of this millennium was extended to 44 policy areas. Furthermore, the Lisbon Treaty has transformed co-decision into the 'ordinary legislative procedure (OLP)', which now covers areas as sensitive as agriculture and fisheries, freedom, security and justice and commercial policy.[1]

The impact of these developments is discussed primarily either in terms of altered balance in the interaction between the legislative players (e.g., Rasmussen and Shackleton 2005; Farrell and Heritier 2003; Schulz and König 2000; Häge and Kaeding 2007) or in the normative implications of increased democratic input into the policy-making process (e.g., Rittberger 2005). Against this background, the impact of the extension of Parliament's legislative powers on its internal organisation and on patterns of interaction between political and administrative players within the institution remain largely eclipsed in the academic debate (for an exception see: Neunreither 2006 and Winzen 2011).[2]

It goes almost without saying that increased competencies and power of the EP lead to an intensification of legislative activities and an increased workload for Members of the European Parliament (MEPs). The need for information, qualified expertise and technical assistance

are key concerns of legislators in a modern policy-making process. The general literature on administrative governance (Peters 2009; Ball and Peters 2005; LaPalombara 1967) prompts that such support may be delivered for the most part by civil servants working in either the Secretariat-General of the EP or assigned to political groups and private 'cabinets' of MEPs. The importance of administrative support is reflected in a number of decisions aimed to boost the efficiency of the EP as a co-legislator. As a part of the Secretariat-General's reorganisation, policy departments were introduced in the structure of the newly created Directorate-Generals (DGs) for internal and external policies. Operational since 2004, these units were charged with the single task of providing more expertise to the members of the chamber (Parliament 2009a). Furthermore, regulation passed at the end of 2008 upgraded the employment conditions of assistants. On the other hand, evidence of growing politicisation of the Parliament's administrators, presented by the media and even by MEPs themselves – exemplified in tensions around the so-called Staes report[3] of March 2010 – demonstrates that tighter cooperation between officials and deputies is not a process without hurdles (see e.g., *European Voice*, March 2010).

These considerations lie at the centre of a research puzzle, which will be addressed in this chapter: Do officials stay 'neutral' in providing expertise to their political masters or do they have their own interests in a particular policy or decision? It is difficult to examine the inter-action between bureaucrats and politicians throughout the EU policy process or even within the co-decision procedure in particular. Diverse actor constellations and institutional arrangements play a dominant role at different points of the procedure, making it less homogeneous. Therefore, the focus here will be directed toward a specific stage of the legislative process: the negotiations in the Conciliation Committee (CC). This committee is convened in order to resolve legislative disputes between the EP and the Council and can exert significant influence over the legislative bodies.

While the CC is important, this element was not the driving force behind our selection. We believe that the CC is best-suited for this analysis since most of the issues under negotiation in the conciliation committee quite politically sensitive for Member State governments for which it is not easy to find a political compromise (otherwise the issues at stake would have been agreed during first or second reading). Topics such as the environment, protection of consumer rights and employment conditions are subjects that are typically dealt with in

conciliation and regularly draw firm dividing lines between stake-holders (Parliament 2004a; 2009a). This, in addition to mediatisation, has interesting repercussions for the interplay between policymakers and administrative staff within the EP. Moreover, opting for the CC allows for a process-oriented perspective. This implies a shifted focus from the general hierarchy of power among actors to specific detailed interactions *between* them. Finally, in comparison to first and second reading of the OLP, the institution of conciliation is under-researched.[4]

In this vein, the chapter is structured as follows: we start with a discussion of the concepts and analytical categories, where *inter alia* we present a model of bureaucratic 'politicised competence'. This is followed by a brief analysis of the role that administrative actors play within the EP in general and in the legislative process in particular. Furthermore, the patterns of interaction between MEPs and civil servants throughout the conciliation procedure are investigated. The examination is enriched by empirical examples from specific legislative files which were handled in the CC. The chapter is wrapped up by way of concluding remarks about the politicisation of the Parliament's administration.

Analytical framework

Given the universal nature of the relationship between political leaders and administrative subordinates, scholars tend to invest considerable time and effort into building upon theoretical models that may best explain its dynamics. A general paradigm of political-administrative interactions, stemming from the Weberian tradition, is centred on a doctrine of separation of political and administrative roles. Whereas politicians are seen as responsible for the broad formulation and general direction of policy, bureaucrats are regarded as executives who implement politicians' objectives. While the practical applicability of this paradigm is questioned by many (Carboni 2010; Aberbach and Rockman 2006; Mulgan 2008), it is based on an important normative assumption, which is our starting point for grasping the phenomenon of politicisation, central to this book.

A clear division of labour between political and administrative actors implies the neutrality of civil servants. In democratic political systems the ideal of a neutral civil service became a source of their legitimacy and a main criterion for evaluation of bureaucratic performance. As Aberbach and Rockman argued, the neutrality of civil servants is 'the ability to do the work of government expertly,

and to do it according to explicit, objective standards rather than to personal or party or other obligations and loyalties' (1994, 461). Even though government cabinets may change frequently, civil servants represent the 'organisational memory' of their respective departments and must be able to serve any government with equally neutral support (Peters 2009). Separation of administrative and political posts, however, does not assume an overarching bureaucratic independence. Speaking in terms of hierarchy and authority, civil servants are always agents that implement their political masters' demands. In the literature on public administration (Aberbach and Rockman 1994; Eichbaum and Shaw 2010) this phenomena is also called the 'responsive competence' of the civil service, which refers to 'the readiness of public servants to do what government ministers want' (Mulgan 2008, 345). Thus, the Weberian paradigm of political-administrative interactions contains mutually exclusive concepts of neutrality (independence) and responsiveness.

Our understanding of politicisation comes from this interplay. Politicians may value responsive competence of their subordinates more than their neutrality. The instruments (e.g., incentives, sanctions) that politicians use in order to bring civil servants into their orbit of interests and preferences define the process of politicisation. In other words, politicisation of officials is perceived here as a reflection of a shrinking distance between politicians and civil servants, as a distorted balance between bureaucratic independence and responsiveness (Eichbaum and Shaw 2010). In a politicised setting the prescribed borderline between policy formulation and policy implementation is blurred, with civil servants contributing to the generation of ideas and the interpretation of interests.

In the empirical analysis of the EP's administration we focus not on the process of politicisation when it comes to the *appointment* of officials but rather on its *outcomes,* which in the literature on public administration is conceptualised as the 'politicised competence' of bureaucracy (Gailmard and Patty 2007). The argument departs from a fundamental distinction between two types of administrative players. As Gailmard and Patty (2007) explain, one group of officials are those civil servants who are indifferent to the policy problems they deal with and have no concerns about policy solutions. The second group of bureaucrats is, however, constituted by policy motivated officials, which are concerned with policy choices. These civil servants – described as 'zealots' in the model of Gailmard and Patty – share fundamental interests when it comes to translating their policy preferences into policy

expertise and advice, which may or may not be in the interest of politicians. The 'politicised competence' of administrators requires not only a high degree of personal commitment but also some incentives from the institutional environment such as job tenure and bureaucratic discretion (875).

It is interesting to note that the position of politicians is quite ambiguous in this model. On the one hand, they are keen on officials developing policy expertise with subsequent utilisation of this knowledge for their own purposes. On the other hand, by investing in the politicised competence and enlarging bureaucratic discretion, principals risk encountering an agency problem, since there is no guarantee that the policy preferences of the agents will evolve in a way which would not contradict their own. Gailmard and Patty's model, therefore, makes an important link to the literature on agency theory, which focuses on a number of *ex ante* and *ex post* political mechanisms (e.g., procedural requirements, direct oversight, budget strings, manipulation and playing administrative players off against each other) that mitigate bureaucratic shirking (Eisenhardt 1989; Hammond 1986; Huber 2000; Pollack 2003).

A fundamental feature of this conceptual framework is the perceived endogeneity of bureaucratic expertise (Gailmard and Patty 2007, 874). In contrast to the systems where the politicised competences of bureaucracy are exogenous, and it is a duty of the politicians to identify them and select respective individuals, policy expertise in our case is induced by incentives within the system. Thus, in the empirical analysis of the EP's administration, we do not concentrate on bureaucratic appointments but rather focus on day-to-day interactions between MEPs and civil servants. Furthermore, it must be stressed that at the core of the concept of 'politicised competence' lies the policy preference and policy advice of the bureaucracy rather than their political party affiliation or membership. The concept is important in the context of the EP, where MEPs might lack the expertise to adopt political decisions and are forced to resort to internal (civil servants) or external (lobbying groups, experts) resources. Some differences notwithstanding, this model fits the analytical framework of this volume drawn up by Guy B. Peters. Indeed, the model of 'politicised competence' may best resemble the concept of 'professional politicisation' which shares the idea of officials acting as policy experts (Peters, Chapter 2 in this volume). Yet, before proceeding with the empirical analysis and delving into these concepts a general overview of the Parliament's administration will be presented.

The European Parliament's administration: an overview

The EU's bureaucratic system was built according to French traditions and conceptions, where the backbone of this system is the recruitment of civil servants on the basis of general competition (the so-called *Concours*), a high degree of tenure and, most importantly for this chapter, impartiality (non-politicisation). But, as Neunreither points out, establishing rules is only one side of the coin; to become a truly non-partisan service is another (Neunreither, 2006). A number of factors contributed to such a development. Before the first direct elections to the EP in 1979, the chamber was an unelected assembly composed of delegated members of the national parliaments who had to divide their time between their Member State and the EP. This provided for considerable independence of members of the secretariat during MEPs' absence. After the direct election in 1979 the EP doubled in size, with most MEPs now in this function full-time. Gradually, they had to become familiar with the functioning of the EU and with policy issues. This developed mainly by MEPs working within a committee, but civil servants still had considerable room for discretion and influence (Dobbels and Neuhold 2012).

The political hierarchy in the EP facilitated the development of a three-level structure of administrative machinery: at the level of MEPs (individual assistants), the level of political groups (political groups' staff), and the level of the EP itself (General Secretariat). Furthermore, the conditions under which certain civil servants are employed lead to a distinction between permanent staff, temporary staff, contract agents and accredited parliamentary assistants.

Permanent staff of the Parliament are assigned to the General Secretariat (GS) and belong to the highest level of the administrative machinery. The number of officials working in the GS is estimated to comprise around 5,000 people and has grown along with the upgrade

Table 11.1 Number of civil servants working in the General Secretariat of the EP

Year	Number of civil servants
1970	532
2003	4,960
2010	4,497

Source: EU Financial Report and EP General Secretariat 2010.

of the EP as a co-legislator from around 2000 after the direct elections in 1979 (Corbett et al. 2007, 193 and Corbett et al. 2011, 226).

The staff of the Secretariat are subject to the same requirements as are civil servants working in other European institutions. According to Article 11 (96) of the Staff Regulations of Officials of the European Communities (2004), 'an official shall carry out his duties and conduct himself solely with the interests of the Communities in mind' (I-8). The article continues with an introduction of the 'Weberian standards' of public administration: '[An Official] shall carry out the duties assigned to him objectively, impartially and in keeping with his duty of loyalty to the Communities' (European Communities (2004)).

The Secretariat consists of the Legal Service and ten Directorate Generals (DGs), and comprises tasks such as communication and finances.[5] Among the DG's most important policy-making bodies are the two DG's for Internal and External Policies. The DG for Internal Policies is primarily responsible for the 'smooth running' of the legislative and non-legislative activities of parliamentary committees in the field of internal policies. It does so by providing the committees with briefings, background notes and long-term studies on all aspects of Parliament's activities within the domain of internal policies. The DG for External Policies on the other hand ensures the 'smooth running' of the Parliamentary Committees in the field of Foreign Affairs, Human Rights, Security and Defence, as well as Development and International Trade. Some of the main tasks in this context include the provision of expertise in external relations to parliamentary bodies and Parliament's President, and close cooperation with the EU institutions, including the High Representative of the Union for Foreign Affairs and Security Policy (European Parliament 2011; Corbett et al 2011, 223). As is reflected by these stipulations, the support of the civil servants in the EU policy process can be boiled down to the *facilitation of intra-institutional cooperation and the provision of information*. These stipulations are rather vague and give scope for broad discretion of interpretation in the practical political process (Dobbels and Neuhold, 2012).

Temporary agents of the EP are subject to regulation of the 'Conditions of Employment of Other Servants of the European Communities', which is an integral part of the Staff Regulations. While their contracts are identical to those of permanent staff in terms of rights, working conditions and social benefits, the main difference is that their position is not permanent.[6] Their employment may be terminated at any time, subject to one month's notice per year of service. According to

Table 11.2 An estimate of political groups staff in comparison to MEPs

Political group	Number of MEPs	Number of staff in total	including seconded officials	Ratio of staff to MEPs
EPP	265	290	39	1.09
S&D	186	215	54	1.15
ALDE	84	97	13	1.15
Greens/EFA	55	80	8	1.45
ECR	54	70	4	1.30
GUE/NGL	35	55	4	1.57
EFD	30	45	4	1.50
NI	27	19	1	0.70
Total	736	871	127	1.18

Source: DG Personnel of the Parliament General Secretariat.

Article 8 of the Conditions, 'temporal staff … shall not be engaged for more than four years … . Their contracts may be renewed not more than once for a maximum period of two years'. Like in other EU institutions, Parliament's temporary agents are recruited via competitions including oral and written tests. The competitions are broadly in line with, though not equal to, those organised by the European Personnel Selection Office for permanent staff.

It is interesting to note that a majority of temporary posts in Parliament are filled by political groups. In May 2011 seven political groups of the EP had 871 staff members at their disposition, including officials seconded from EU institutions (see Table 11.2). Each of the political groups has a different ratio of civil servants to MEPs, ranging from the lowest in the European People's Party (EPP) group to the highest ratio in the 'left' political group (GUE/NGL). In general, 10 Members of Parliament account for around 12 officials of the political groups. Additionally, one can observe a tendency of granting more posts to smaller political groups (a group of non-attached MEPs is an exception).

Contract staff are fixed-term employees who can be employed for a maximum of three years in Parliament. Their working conditions and salary scales are different to those of temporary staff as wells, which usually result in lower allowances that are contingent on the amount of professional experience of the applicant. Recruitment of contract staff is less formalised and does not require centralised competition tests. They are expected to pass one or more interviews and, according to the nature of the work, also a practical test. Just like temporary agents, contract employees are not restricted in the type of their functions

(they can for example work as clerks, administrators, translators etc.) or the areas of work (committees, political groups etc).

Accredited parliamentary assistants. The status of accredited parliamentary assistants was upgraded by way of a Council regulation in 2009, after consultation with the EP (Council 2009). Such assistants are defined as persons chosen by one or more MEPs to provide direct assistance to the MEP in a climate of mutual trust. Before the new regulation came into force, MEPs employed all their staff directly under contracts subject to national law, while recovering the costs incurred from the European Parliament (subject to a fixed maximum amount). In contrast to local assistants,[7] accredited parliamentary assistants are, now as a general rule, expatriates. They work in the premises of the European Parliament. The status of accredited assistants has been changed insofar as they are now subject to the conditions of employment of other servants of the EU. For the practical process this implies that assistants enjoy similar social benefits to those of civil servants with their salaries graded accordingly. All contracts automatically end at the end of each legislature (Council 2009). MEPs are still however entirely free in the selection of candidates they want to work for them. Normally between one and three accredited assistants work for one MEP resulting in a total number of 1,535 assistants.[8]

Overall, it becomes apparent that the tasks of civil servants in the EP are regulated but give much room for interpretation in the practical process; this will also be shown by way of a case study. In this context we will primarily focus on staff working within the Secretariat General of the EP, *inter alia* due to the fact that job tenure protection – officials' permanent status – constitutes one of the elements of our analytical model.

A case study on the role of administrators in the EP: the Conciliation Committee

It is almost conventional wisdom that the OLP – former co-decision – starts with the Commission submitting a proposal to the EP and the Council, which is then submitted to first and/or second reading in both institutions. According to the article regulating co-decision, article 294 of the Treaty on the Functioning of the European Union (TFEU),[9] the CC must be convened if the Council is not in a position to accept all the second reading amendments of the EP. It is composed of an equal number of representatives from the Parliament and the Council (after the last enlargement each delegation consists of 27 members), which

are entrusted to reconcile the positions of the two institutions within a six-week time limit (with a possible prolongation to eight weeks by joint consent). Whereas the Council delegation is fixed for all the conciliation procedures and includes one representative per member state, the Parliament delegation changes on a case-by-case basis, based on quotas for each political group.

Throughout the conciliation procedure, tripartite meetings, or trialogues, between the Parliament, the Council, and the mediating Commission take place with the aim of 'resolving outstanding issues and preparing the ground for an agreement to be reached in the Conciliation Committee' (Parliament, Council, Commission, 2007). These are meetings behind closed doors with restricted access to key negotiators from each institution. While informal trialogues occur anytime during the procedure, a formal trialogue precedes the Conciliation Committee meeting and takes place on the same day (Corbett et al. 2007). The agreement is deemed to be reached when the compromise gets the support of the qualified majority of the Council representatives and the absolute majority of the Parliament delegation (Parliament 2009b). Furthermore, the agreement, in the form of a joint text, precedes the third reading where the Council and the plenary of the EP have to confirm the results of the Committee.

Whereas the political dimension of the CC consists of the legislative delegations of the Parliament and Council, together with the negotiators from the Commission, the administrative side is made up of officials from specific units of the institutions, i.e., secretariats that deal with co-decision. The Parliament unit is called Codecision and Conciliation Secretariat (CODE) which is part of Directorate E of the Directorate General for Internal Policies of the General Secretariat. It consists of the head of unit, three administrators and three assistants.

Empirical evidence collected by way of interviews,[10] documentary analysis and literature review suggests that the officials of the Conciliation Committee perform a variety of functions. They are aggregated into three categories – *preparatory body*, *transmission belt*, and *strategic facilitator*, which are outlined below. Since our concern is with day-to-day interactions between officials and MEPs, an analysis of 'politicised competences' must inevitably follow these functional lines.

The Conciliation Secretariat as a preparatory body: a model of a 'neutral civil servant'

The conciliation secretariat as a preparatory body performs a technical role, organising and providing support for the meetings of the Parliament

delegation, formal and informal trialogues and CC meetings. It derives its strength from the awareness of procedural requirements and a necessity for the Committee to conclude within strictly defined time limits. Officials of the conciliation secretariat, when acting as a preparatory body, take care of all the procedural guidelines and formal obligations consolidated in the Treaty, in inter-institutional agreements, and in the Rules of Procedure of the Parliament.

One of the first tasks outlined in the mission statement of the Parliament Codecision and Conciliation Secretariat is 'to prepare, organise and follow up all conciliation-related meetings (Parliament delegations, trialogues and Conciliation Committees)' (Parliament 2009b, 28). The preparatory work of the CODE starts from the appointment of the Parliament delegation according to the Rule 68 of the EP Rules of Procedure (Parliament 2010). First, they inform the responsible Vice-Presidents that conciliation is imminent and that they should meet between themselves to decide who will chair the particular delegation. Second, the CODE administrators invite political groups to appoint their members of the Parliament delegation to the Conciliation Committee and their substitutes according to the quotas of each political group. For example, in the case of the Working Time Directive,[11] officials ensured the appointment of shadow rapporteur Mr Silva Peneda from the EPP as a member of the negotiating team to counterbalance political representation. All the other key positions, i.e., the chair of the delegation, the rapporteur and the chair of the committee, were filled by the socialist political group.

After initial procedural steps, the tasks of CODE officials acting as a preparatory body follows a similar pattern for all subsequent meetings beginning from the very first, or constituent, meeting of the Parliament delegation. As was described by a parliamentary administrator, *'our work mostly consists in defining the meetings, meaning to decide when the meeting will take place, reserve the meeting room, reserve the interpretation and prepare the documents. And take care that the documents go to translation and came back in time for a meeting.'* (PS1 2010). Without a doubt, this is not an exhaustive list of the administrators' tasks in conciliation. What these reflections demonstrate, however, is the officials' perception of themselves, what they consider as typical and essential elements of their work; '*We are the masters of procedural and practical matters*' (PS2 2010).

At the first meeting of the Parliament delegation it is necessary to have an initial exchange of views concerning the institution's position in conciliation and authorising the negotiating team to start negotiations

with the Council at the trialogue meeting. At this stage, administrators start to draft a so-called 'working document', which is a paper with four columns on the basis of which negotiations in the trialogues take place (see e.g., Parliament Council 2003; Parliament Council 2009). Important are the third and the fourth column that represent the Council position at conciliation, i.e., the Council's reaction to the Parliament's second reading amendments, and the Parliament's position vis-à-vis the Council's reaction. An example when the purely technical function of supplying documentation played a key role with regard to ensuring the successful completion of the conciliation procedure is demonstrated by the negotiations on the Port Services Directive.[12] In order to avoid the media getting hold of information, civil servants decided not to distribute the final compromise texts among the members of the delegation in advance, but rather on the afternoon of the very day of conciliation.

Following the members' presence at delegation meetings and their votes is another 'preparatory' prerogative of the conciliation officials. The same applies to trialogues which are the meetings of restricted access, where Parliament is represented by a small negotiating team consisting of the Vice-President (the chair of the delegation), rapporteur, the chair of the relevant committee, and, sometimes, shadow rapporteur(s). As was revealed by interviewees, there is an informal inter-institutional agreement that the number of representatives from each institution in one room may not exceed ten. Though the Commission usually follows this rule, for the Parliament and the Council delegation it is nearly impossible due to a large staff. Four main negotiators usually bring their individual assistants, the CODE is represented by four or five officials, political groups send their own staff, and, in addition, staff from the committee secretariat may attend the meeting as well.

Nevertheless, conciliation officials have to make sure that a correct number of participants in the trialogue is maintained. Indeed, the respondents mentioned some cases where the members of the delegation, which were part of the negotiating team, came to contribute to the trialogue. It is interesting that the chair of the delegation asked the head of the CODE to inform the person in question that he or she was not allowed to attend the meeting. This example demonstrates that conciliation officials not only possess distinctive procedural expertise, based on past experiences with conciliation, but that their reputation as guardians of procedural guidelines is accepted by MEPs. Also, this empirical example may be interpreted as an indicator of a harmonious and trustworthy relationship between civil servants and their political masters.

Although the traits of 'politicised competence' were not found, the empirical evidence reflects that civil servants of the CODE possess distinct procedural expertise. Their organisational memory and long-term involvement as well as the continuity in their work are paramount for the smooth proceedings of conciliation negotiations. As a preparatory body, administrators act in a rather impartial and neutral manner. Indeed, at this stage they are able to fulfil their formal obligations without significant interaction with MEPs. One of the interviewees underlined that if among the plethora of parliamentary administrative actors in the CC (Secretariat officials, political groups staff, individual assistants, etc.) one would have to point out neutral players, these must indeed be CODE officials (PS3 2011).

Nevertheless, it has to be stressed that these civil servants enjoy a wide room for manoeuvre at the preparatory stage. The fact that they possess a monopoly of procedural expertise allows them to set the scene for conciliation negotiations and this seems to be recognised and accepted by MEPs. Although a variety of formal (and some informal) procedures may not shed light on the politicised competences of administrators and do not automatically imply politicised competence, they point to a certain level of discretion granted by political superiors. As it was explained earlier, bureaucratic discretion is one of the incentives which are needed for civil servants to develop their substantive knowledge of policy issues, to then (possibly) later on be able to apply this with the practical process. For example, the mere presence, albeit not participation, in the Parliament delegation meetings, trialogues and CC meetings gives officials an opportunity to grasp and follow all the issues under negotiation. The preparatory role of civil servants involved in conciliation must therefore be viewed as a point of departure for the development of policy-related knowledge and competences.

The role of conciliation officials as a transmission belt: the transition to 'politicised competence'

The concept of a 'transmission belt' is traditionally used in the European integration literature to describe a channel of communication and information exchange (Lindberg et al. 2008; Risse 2004). In the study of negotiations on Constitutional reform, Reh (2007) conceptualised the term to describe a process when a group of officials channel national positions to the international arena, thus reducing the transaction costs of complex negotiations. A similar approach is adopted in this chapter. The conciliation secretariat acts as a transmission belt when it is a centre of information exchange and communication between

the three institutions involved in conciliation. Officials are responsible for liaising with their colleagues from counterpart Secretariats; they inform, brief, and report back to their political superiors. The administrators are also in charge of internal coordination.

Within the set of 'transmission belt functions' that parliamentary officials perform, one of great significance is the communication between the different Secretariats of the respective institutions. This is highlighted, inter alia, by the mission statement of the CODE secretariat which sees maintaining and developing 'contacts with the service's counterparts in the Council and the Commission' (Parliament 2009b, 28) as one of its functions. Such contacts are developed largely through the exchange of documentation, as well as by way of informal communication on a personal level. If the Commission wants to draw up a compromise proposal or the Council wants to familiarise Parliament with (the third column of) the working document, they do not send the documents to the members of the delegation. Instead, all the documentation must be sent to the CODE secretariat which subsequently dispatches it to the Parliament delegation. It works the same in the reverse: the Parliament delegation sends its proposals only through the Secretariat. This evidence induced one interviewee to portray the CODE secretariat as '*a focal point of exchange of documents*' (PS2 2010).

The other primary responsibility of the Parliament officials from the CODE Secretariat is to keep MEPs well-briefed. For this purpose, administrators from the CODE are present in the trialogue negotiations and take notes of each meeting. The content of the notes is described by the Parliament guide to codecision and conciliation procedures as follows: 'Before each delegation meeting, the secretariat draws up a note for the members, summarising the aims of the meeting, the situation concerning the amendments, the stage of negotiations with the Council, and procedural aspects' (Parliament 2009b, 19). It is interesting to note that such briefing documents usually include a section giving an overview of the current status of conciliation talks. In this context, officials inform members of the Parliament delegation what issues are at stake in the negotiations with the Council.

The conciliation plenary reports are of a similar informative nature. These are drawn up by the rapporteur and the chair of the delegation. Part of the CODE secretariat's mission is to assist these MEPs in drafting the report (Parliament 2009b, 28). The procedure requires the report to elaborate on the stages of the procedure and the progress of the dossier, records the votes of the delegation and outlines the main points of

disagreement and the results of the negotiations. It has the character of a recommendation, advising plenary to adopt the agreed joint text.

When CODE administrators exercise the 'transmission belt' functions this signifies a shift from neutral functions towards more politicised competences. Compared to preparatory activities, the role of the bureaucracy at this stage is not merely technical. Certainly, rules and procedural guidelines still direct their work; yet, their different structural position allows them to go beyond these confines. Being at the heart of communication and documentation exchange, civil servants are exposed to policy-related information which facilitates the development of their own knowledge of the subject. Briefing notes to Parliament delegations may serve as a first imprint of civil servants' content expertise. However, it is in their role as strategic facilitator that policy motivated CODE officials can best make use of their politicised competence.

The strategic facilitation of compromise solutions within the conciliation secretariat

The role of 'strategic facilitator' is the highest in the hierarchy of tasks of the conciliation secretariat. It comprises those responsibilities which are less of a procedural nature and requires administrators to have policy-related expertise. First, civil servants are entrusted to draft the four-column working document which is later transformed into a joint text of the Parliament and the Council. Second, officials provide 'strategic advice' to the main negotiators with regard to both the process and the content.

As it was argued earlier, Parliament officials are responsible for preparing the four-column working document. In general terms, the document is supposed to facilitate the debates during conciliation. Officials are responsible for editing the document, summarising the Commission's compromise proposals and prioritising amendments. An extreme view was expressed by one of the interviewees, which identified the working document as such an efficient tool that there may be no need for trialogues, and an agreement on a compromise text could be reached by way of the constant exchange of working documents between the institutions.

The empirical evidence, however, suggests that civil servants do not merely perform editorial functions with regard to the mentioned working document. Being masters of procedural and practical matters, officials possess a great deal of substantive knowledge of the files discussed in conciliation. Several indicators speak in support of this.

First, the CODE administrators not only deal with files in the phase of conciliation, but they also follow the dossiers throughout first and second reading, 'including through participation at committee meetings and tripartite meetings with Council and Commission' (Parliament 2009b, 28). Thus, when a particular file enters into conciliation, officials are already aware of the issues at stake and familiar with the political background of the dossier.

Second, administrators follow all the political discussions at the trialogues and CC meetings. This allows them to absorb all the information related to the substantive aspects of the dossier. In contrast to the so-called lawyer-linguists of the Parliament Secretariat, who deal with the correct legal and linguistic formulation of the clauses, officials perceive themselves as responsible for the substance of the text: '*The Parliament has a specific service ... which is a unit composed of lawyer-linguists for every language, and their actual work is to look at the wording, not to look at the substance, we look after the substance*' (PS1, 2010). Another respondent was also quite explicit: '*We have to be on the top of the subject matter during the Conciliation Committee meetings and also afterwards*' (PS2 2010). The final reports of the Parliament delegation to the plenary, drafted with support of the Secretariat, as well as briefing notes, are a good illustration of the civil servants' policy expertise.

Third, officials may be involved in suggesting compromise solutions. As was argued by a Parliament official, '*at the very least responsible for typing or printing out the rapporteur's proposal is the Secretariat, but usually we also propose alternatives to what the members want to present as their compromise. Drafting is the part of the work, but we do not have an independent role in this. We are in the service of the EP delegation*' (PS2 2010).

Fourth, administrators provide 'strategic advice' to MEPs during conciliation. This is especially relevant with regard to the Vice-President/chair of the delegation, since he or she does not follow the progress of the file prior to conciliation. The fact that the Vice-President is not very familiar with the file was also recognised by interviewed Council officials (CS1; CS2 2010). Parliamentary officials, when exposed to a 'demand' for their expertise from political superiors, see it as their duty to brief the Vice-President about the political context: the positions of the Council, of single Member States and the stance taken by the Commission. Such an advisory role also applies towards the members of the delegation: '*The Secretariat's role is there to facilitate the process, to make sure that the politicians, when they decide, are aware of what the consequences are and what are the alternatives*' (PS2 2010). Building upon strategic thinking and analytical qualities, civil servants advise what

issues are better suited to discuss first in the trialogue, what is to be included into an agreement and what is the right time for convening a Conciliation Committee meeting.

Civil servants of the Conciliation Committee – apart from being guardians of procedural guidelines – are thus in possession of substantive knowledge of the files, which allows them to participate in the process of compromise. As was argued before, the development of politicised competence is endogenous and depends on a number of incentives within an organisation. Apart from bureaucratic discretion and job tenure, a necessary prerequisite for the establishment of politicised competence is the motivation of the civil servants themselves. Empirical evidence supports this condition as well. Conciliation officials from the Parliament Secretariat are seen as bureaucrats driven by an interest in policy ('zealots') which are not indifferent to policy choices. This can be illustrated with the following remark of an interviewed civil servant: '*We have to have a grasp where the wind is blowing from and to inform members [of the delegation] how we perceive things from our point of view*' (PS2 2010). Such bureaucratic players are always concerned with the subject of negotiations and often have explicit policy preferences or judgements. Commenting on the Animal by-products Regulation[13] which was negotiated in the CC, an interviewee underlined: '*In my personal opinion, which I shared with the rapporteur and the President of the delegation, the Parliament conciliation position was better than the second reading, the second reading was not the right thing to do*' (PS2 2010). It appears that conciliation officials acting as strategic facilitators of negotiations are not indifferent to policy choices.

It is noteworthy that although officials usually provide MEPs with opinions on the whole spectrum of issues, it is up to politicians to take the final decision. Moreover, the chair and other members of the delegation may use the presence of other administrative players in conciliation (officials from other units of Parliament Secretariat, political groups' staff, individual assistants) and, when they deem it necessary, adopt a decision based on alternative opinions. Illustrations from the negotiations on specific dossiers neatly corroborate these assumptions. For example, in a situation of extreme saliency, the negotiators of the Port Services Directive were eager to conclude the conciliation procedure as soon as possible. In this situation, the advice of the officials from the Parliament's CODE unit was to continue negotiations in order to reach a better agreement for the Parliament. However, due to the sensitivity of the file, the rapporteur and the Vice-President preferred to conclude earlier and to go for a vote in plenary. In the case of the recent

conciliation on the 'Telecoms Package Directive',[14] negotiators largely relied upon the expertise of the Parliament Legal services, sidelining the role of the CODE officials (CS2 2010).

These examples display the ambiguity of the situation for politicians. As it was mentioned before, legislators face a dilemma: on the one hand, they are interested in the politicised competence of bureaucracy and are ready to 'invest' in its development through granting bureaucratic discretion; on the other hand, by doing so principals confront a risk of bureaucratic shirking. The presence of other administrative players as potential alternative advisers to MEPs in the CC may be interpreted as one of the precautionary instruments through which principals try to compensate the costs of bureaucratic discretion.

This section brings us to conclusions regarding the role of the EP civil service as strategic facilitators within the CC. If within the modes of 'preparatory body' and, to lesser extent, the 'transmission belt' the performance of officials is predominantly based on their procedural knowledge, at the stage of 'strategic facilitation' bureaucrats utilise their policy expertise. Civil servants exercise politicised competence while drafting the working document and advising the members of Parliament delegation. However, as was mentioned, foundations for the development of politicised competence also arise from the preparatory and communication prerogatives, so these stages essentially feed into each other.

Empirical evidence also shows that the conditions for the development of politicised competence, outlined in the model by Gailmard and Patty, were mirrored in the analysis of the role of CODE officials. First, bureaucrats are not detached spectators in conciliation negotiations; they have their own views on policy problems and preferences for policy solutions. Second, civil servants enjoy permanent status and protected job tenure while in office, which induces them to build up policy expertise. Last but not least, there is a 'demand' for politicised competence from the legislators, especially the Vice-President, who are eager to expand bureaucratic discretion in return for policy expertise. As a consequence, Parliament civil servants develop substantive knowledge of the legislative files throughout the codecision procedure. It seems that the role of policy experts enables bureaucrats to shape the behaviour, attitude and decisions of legislators. The concept of politicised competence thus illustrates blurred functional boundaries, meaning that the distance between politicians and civil servants erodes to the extent that the roles of policymaker and policy-administrator may not be self-evident.

Concluding remarks

This chapter aimed to examine the interplay between the political and administrative level within the European Parliament. Our approach was vested in the examination of a particular stage of the ordinary legislative procedure – Conciliation Committee negotiations – with reference to specific legislative dossiers. Furthermore, the selected process-oriented perspective facilitated the decomposition of the conciliation procedure into smaller fragments such as Parliament delegation meetings and trialogues. This micro-level research appears to be fruitful given the intention to focus on formal and informal aspects of the daily interaction between politicians and civil servants.

The empirical data shows that bureaucratic actors within the conciliation committee do indeed boast politicised competence. Based on the methodological triangulation between documentary analysis, interviews and secondary literature review, the study demonstrates how such competence of conciliation officials is developed and how it varies within the procedure. Concerned at the outset with policy problems and compromise solutions, civil servants are exposed to a number of incentives within a parliamentary system such as protection of job tenure and bureaucratic discretion, which induce officials to build up their policy-related expertise. This is especially important in the context of the Conciliation Committee where members of the Parliament delegation – for example the Vice-President chairing the mission – lack sufficient knowledge of the dossier. Thus, it should not come as a surprise that, in addition to the traditional role of the guardians of procedural guidelines, Parliament conciliation officials also act as policy experts advising the negotiators on how to achieve the best compromise solutions for the Parliament vis-à-vis the Council.

It is worth noting that the growing involvement of officials in a domain which traditionally had been ascribed to politicians raises the question of the conceptual boundaries of the civil servants' role. Some scholars have already pointed to empirical instances where the concept of civil servant may not be applicable, hence giving rise to the need for developing alternative categories (Carboni, 2010; Eichbaum and Shaw, 2010). Here the claim is that in the cases when the distance between politicians and civil servants shrinks, with a politicised competence of the latter superseding their neutrality, those officials act as 'political advisors'. Interestingly, the status of political advisors is commonly attributed to the EP administrators of the political groups which are by definition politicised.

This chapter demonstrates that the types of politicisation conceptualised by Peters also apply to the European Parliament's bureaucracy (see Peters, Chapter 2 in this volume). Indeed, the model of 'politicised competence' echoes the concept of professional politicisation which shares the idea of officials acting as policy experts eclipsing, however, their loyalties to political parties. This concept does not however apply seamlessly to the European Parliament. We thus find the traditional problem of conceptual 'stretching' (Collier and Mahon, 1993) from the national context to the supranational level.

As regards the broader conclusions of the study, one has to stress the fact that it is not easy to project the results obtained in the Conciliation Committee upon the whole parliamentary chamber. Although the phenomenon of the politicised competence of administrative players may remain unchanged throughout different stages of the legislative procedure, constellations of actors and the institutional environments of first and the second reading vis-à-vis conciliation does vary. This impediment, however, should not discourage academics from further exploring the 'black box' of the EP's administration (Dobbels and Neuhold, 2012). In order to obtain a coherent picture of the latter, subsequent research should be focused on the politicisation of the Parliament bureaucracy at other stages of the OLP. More research is needed not only in the intra-institutional context, but also when it comes to comparing the administrative systems of different EU institutions. Last but not least, the correlation between the politicised competence of civil servants and their influence on legislative outcomes should be probed into.

Notes

1. The ordinary legislative procedure now covers 85 Treaty articles.
2. Whereas Neunreither gives a comprehensive overview the role administrative staff play within the EP and provides a historical overview from the 1950s until around 2005, Winzen examines the role of Officials in the Committees of the European Parliament.
3. Bart Staes is a Belgian Green MEP who was in charge of the report about the European Parliament's spending of 2008 budget. He accused a number of high-ranking officials in the Secretary-General in trying to water down his critical report due to political considerations.
4. The existing literature on the Conciliation Committee can be divided into a part which scrutinises the institutional bargaining and the distribution of power between institutions relying upon formal methods of analysis (Crombez 1997; Kasack 2004; König et al. 2007; Kreppel 2002), another part that studies the development of the procedure emphasising its formal

and informal aspects (Farrel and Héritier 2003; Garman and Hilditch 1998; Rasmussen and Shackleton 2005; Williamson 2006), and a third part which investigates the issues of delegation in the CC (Rasmussen 2005a; 2005b; 2008). None of them, however, focuses on the role of the administrative players in the conciliation negotiations.

5. For a detailed overview of the functions of the different DGs of the Secretariat of the European Parliament, see Corbett et al. (2011), 223–226.

6. Exception are political groups staff. Their contacts are open-ended, however, linked to a duration of group's political 'life' in the Parliament.

7. Local assistants are natural persons who are to assist members in their Member States of election and who have concluded an employment or service contract with them according to applicable national law.

8. As of May 2011. Source: DG Personnel of the Parliament General Secretariat.

9. The Treaty of Lisbon establishes the Treaty of the Functioning of the European Union (TFEU), which amends and replaces the Treaty establishing the European Community (TEC). The numbering of the articles used here refer to the consolidated version of the TFEU.

10. We relied upon the technique of 'triangulation within methods' (Marsh and Stoker 2002, 237), meaning that the validity of data collected by way of interviews with CODE officials was cross-checked by information gathered through the conversations with the other participants of conciliation procedure – political groups staff representatives and Council civil servants.

11. The Proposal on Directive on Organisation of Working Time (reference number COD/2004/0209) was negotiated in the CC in 2009 and was primarily designed to safeguard workers' rights by, inter alia, by eliminating member states' opt-out from a maximal working limit of 48 hours per week. It represents the first dossier after the Amsterdam Treaty that failed to get a compromise agreement by the legislators.

12. Directive on Market Access to Port Services (reference number COD/2001/0047) was concluded in conciliation in 2003. It dealt with the issue of liberalising access to the market of port services. Although it received the (narrow) support of negotiators in the CC, it failed to secure a majority of the votes within EP's plenary.

13. Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002, laying down health rules concerning animal by-products not intended for human consumption.

14. Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services.

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Key to interviews

(PS1 2010) Interview with a Parliament official, Brussels, May 2010.
(PS2 2010) Interview with a Parliament official, Brussels, May 2010.
(PS3 2011) Phone interview with a Parliament official, April 2011.
(CS1 2010) Interview with a Council official, Brussels, June 2010.
(CS2, 2010) Interview with a Council official, Brussels, June 2010.

12
Conclusion

Sophie Vanhoonacker, Christine Neuhold and Luc Verhey

Politicisation, a concept with different shades

The relationship between civil servants and politicians is a fascinating one. Due to their mutual interdependence, both groups are required to cooperate but at the same time there is also a continuous risk of tension and conflict. Politicians might fear being overshadowed by their technical experts while civil servants are wary of being deprived of their professional autonomy. The tension reflects a broader concern in policymaking of the often contradictory demands for both efficiency and legitimacy. For reasons of efficiency it is important that the civil service has a certain degree of independence and detachment of politics. The requirement of democratically legitimate and accountable decision making, however, asks for steering and control from the political level.

While one may argue that it is, as with most things in life, a question of balance, it is far from agreed where the tipping point exactly lays. Different countries formulate divergent answers to what in their eyes is the optimal response to organise this complex interaction. In addition we see that over time, the relationship is sometimes evaluated and reorganised, either due to efforts by politicians to get a better grip on the policymaking and implementation; or on the contrary, by an attempt of the civil service to exploit their professional expertise to steer decisions in their preferred direction. Both developments are seen as undesirable. In the former case, there is the risk that policymaking may be too much driven by ideological and short-term interests. When the civil servants get the upper hand however there is a danger that this may negatively affect democratic legitimacy of policy decisions.

In recent decades the concern has been more about an increased trend towards politicisation rather than about a so-called *Beamtenherrschaft*

or bureaucratic government (Peters and Pierre 2004; see also Peters, Chapter 2 in this volume). Very often however such claims first come from practitioners directly involved in the policy-making process rather than being based on systematic academic research. Secondly it is often unclear what exactly is meant by politicisation: different authors use the term in a variety of meanings and the phenomenon can take on a wide range of shapes. Starting from an earlier definition by Peters and Pierre (2004) of politicisation as 'as the substitution of political criteria for merit-based criteria in the selection, retention, promotion and disciplining of members of the public service', this volume has tried to sharpen our understanding of this phenomenon. It has done so through a comparative mapping of concrete patterns through which a politicised relation between the two groups manifests itself. In an attempt to refine the general term of politicisation and to get a grasp of the different shapes and shades it can take, Peters (Chapter 2, this volume) has in his introductory chapter to this volume made a distinction between 6 different categories (see Table 12.1) going from direct to social politicisation (see Chapter 1). Although he recognises that these categories are not exhaustive we agree with him that they capture to a large extent the possible interaction between civil servants and politicians.

Starting from the above categorisation, the central question addressed in this conclusion is what the different case studies presented in this volume show us about the relationship between politicians and civil servants in Europe at the beginning of the twenty-first century. Has the balance indeed been disturbed and is there, as some claim, a growing attempt of the political level to have an impact on the work of civil servants? If this appears to be the case, what types of patterns can be distinguished and how can the changing relationship be explained? Is this a general trend or are there important variations amongst European countries? To which extent do we see similar developments in the EU institutions, which have developed into central policymaking bodies on the European continent? What do the new developments imply for the effectiveness as well as the legitimacy of public policymaking? How can increasing tensions possibly be addressed?

While recognising that this study is far from exhaustive and only examines a limited number of case studies, it nevertheless brings some interesting findings. A first observation is that in almost all cases the relationship between the executive and their administration is *under pressure and subject to change*. The different chapters identify a wide variety of both internal as well as external factors playing a role. This includes the introduction of New Public Management (NPM) (Woodhouse;

Table 12.1 Different categories of politicisation (Peters 2013)

Direct politicisation	This relates to the very direct attempts to have political loyalists occupy positions.
Professional politicisation	This concerns public officials who are political loyalists but at the same time are also professionals who are the products of a professional career system.
Redundant politicisation	This refers to redundant structures created by a government to monitor the actions of the career employees. Examples include ministerial *cabinets* and special advisors.
Anticipatory politicisation	This refers to a situation whereby civil servants on their own initiative choose to leave their positions when there is a change of government.
Dual politicisation	This refers to a situation where besides the political executive also the President or parliament attempts to control the bureaucracy by placing their own nominees in positions of power with the aim to exercise control over policy.
Social politicisation	This refers to the (indirect) influence of social actors (such as industry and trade unions) over the career success of civil servants.

Van Thiel); internationalisation (Verhey); the increasing attention to incidents and the tendency to look for scapegoats (Verhey); the blurring of constitutional rules about political accountability (Verhey; Woodhouse); as well as the fragmentation of the executive as a result of agencification (Verhey; Woodhouse; Van Thiel). All these developments have added to the complexity of the relationship, often leading to a distortion in the division of tasks, confusion about the rules of the game, blurring of boundaries and reduced trust between both parties. The trend towards more transparency furthermore makes that the broader public is more aware of the tensions.

While the context is similar for most of the players studied, the effect and response to the pressure varies widely. An important factor here is *historical path dependency*. With the exception of Hungary and Slovakia where there was an explicit political will and mandate for a *tabula rasa*, a clear break with the communist past, all other EU member states introduce the changes within an existing system. The traditional picture of the UK with its strong emphasis on impartiality on one side of the spectrum, and Germany characterised by the political nominations

of professionals amongst the upper ranks on the other side, remains largely intact. In none of the countries is there a major overhaul of the system. Even in Central and Eastern Europe characterised by a strong desire for a radical change and a commitment to adjust the principles of a European administrative space, it proves hard to do away with past habits and to move towards a system based on the principles of neutrality and professionalism.

The weight of the past however does not mean that the system is static. Especially in the *UK and the Netherlands*, with an important impact of *NPM*, there is a clear trend towards an increased emphasis on managerial skills, at the detriment of expertise knowledge. This has led to an increasing reliance on 'outsiders' who now account for 25% of the senior staff in the UK and 11% in the Netherlands. The NPM approach also affected the biggest European-level administration. Under the leadership of Commissioner Neil Kinnock (1999–2004), the *European Commission* undertook a major reform initiative, putting more emphasis on output and 'management by objectives'. The administrative system of the European Parliament (EP) has also undergone incremental change rather than a complete overhaul. Because the EP was only directly elected in 1979, this provided for considerable independence for the staff of the General Secretariat (Neunreither 2006). Members of the EP (MEPs) had to become familiar with the functioning of the EU and with policy issues after they took up their office full-time. Nevertheless, civil servants still have considerable room for discretion and influence, albeit under the steer of their political masters (Romanyshyn and Neuhold, Chapter 11 in this volume).

Germany and France with their long traditions of political bureaucracy (Germany) and cabinets (France) seem to have been more immune to new trends in public administration and the chapters by Battis (Chapter 9) and Baron (Chapter 7) point to continuity rather than change.

Not surprisingly the most radical changes have taken place in Central and Eastern Europe.

The case studies on Hungary and Slovakia illustrate how as part of their transition into modern democracies, both countries have, with different rates of success – tried to move towards a professional civil service, including a clear division between the political and administrative level.

Comparing different European experiences

The question of interest for this study is what the above-mentioned changes mean for the relations between political officeholders and their

administration. Do we indeed see an increased trend towards *politicisation,* and if so, which type of politicisation?

However limited our number of cases studies may be, it is clear that there is far from being a general and unidirectional trend. Germany and France, the two countries where traditionally politicised civil servants have occupied an important role as bridge between the political and administrative level, continue on the same track. Battis shows how in *Germany* with its long tradition of a political bureaucracy at the higher levels, politically appointed officials are widely accepted and fulfil a legitimising function. They provide the guarantee that the civil service takes changing public preferences into account. This positive perception can also be explained by the fact that besides having a party card, these political appointees are also professionals with a long-time experience in the administration. Battis' chapter (Chapter 9) shows that that *professional politicisation* in Germany continues to be important but there are no obvious signs that politicisation is increasing. Under the grand coalition of 2005–2009, there was even question of diminished party membership amongst high-level officials.

France continues to be the typical example of *redundant politicisation* with a key role for ministerial cabinets, composed of political loyalists. As in Germany their members are generally recruited from the senior civil service, meaning that they combine both political and professional competences and that they perfectly know the ins and outs of the administrative machinery. Upon termination of appointment, they can return to their original administration. Also here the role of cabinets is generally seen as positive. Their intermediary role allows them to make the permanent staff more conscious of changing political priorities. At the same time they also serve as a buffer, allowing the permanent officials to stick to the key value of neutrality.

The pictures sketched for the United Kingdom and the Netherlands are less clear-cut. The original expectation that NPM with its increased focus on managerial skills rather than professional expertise would lead to more clear and sharper dividing lines between the political and administrative level did not materialise. In *the Netherlands* the fact that top civil servants now run their departments in a more business-like and pro-active way, and interact more regularly with interest groups and the broader public seems even to have triggered a blurring of boundaries. Although it raises new questions of accountability, it might have had the positive effect that the administration becomes more sensitive and responsive to political demands. Pure partisan nominations continue however to be exceptional in the Dutch public service.

The long-standing tradition of consensualism whereby different parties have to cooperate in order to come to decisions makes ministers open to nominations of high-level officials with a different party affiliation. But this does not mean that candidates' viewpoints are not taken into account. Van Thiel is very nuanced in her conclusions: managerialism certainly has had an impact in terms of mobility and legal status but it did not reduce the civil service to a merely technical role; at the highest level of the civil service political allegiance continues to play a role in order to achieve that civil servants are responsive to the political priorities of their masters.

Also in the *UK*, with far-going public service reforms as from the mid-1980s onwards, there have been widespread concerns about the future role of core values such as neutrality and objectivity. Under pressure of civil service unions and parliamentary committees, a variety of new legislative documents such as the 1996 Civil Service Code, the 1997 Ministerial Code and the Code of Conduct for Special Advisors (2007; 2009) have been adopted. While all these texts strongly emphasise the continuing centrality of the traditional values, Woodhouse is careful not to draw hasty and overoptimistic conclusions: the changing context is due to have an impact upon their translation into action. At this moment it however still too early to tell hat this impact is precisely. She does not exclude that over time the changing culture and practices triggered by NPM may open up the British system for a form of redundant politicisation.

In the case of the *European Commission* the picture emerging from the analysis conducted by Bauer and Ege is more straightforward. The authors show, how as a result of the Kinnock reforms, merit criteria have gained further ground in the recruitment and promotion of Commission officials. Party affiliation hardly plays a role in the appointment procedure at the highest levels of the administration and even nationality is of limited weight. This however does not imply a lack of political responsiveness. Senior Commission officials are very well aware of the political character of their work and are highly committed to integrate the political guidelines and decisions of the College of Commissioners into their daily work. At the same time the results of the surveys also show that they define their job in the first place as one of problem solving and brokerage between different interests rather than pushing for particular ideological solutions.

When studying the interplay between political and administrative levels within the European Parliament, the authors come to different

observations. Based on empirical evidence of a particular stage of the ordinary legislative procedure, the Conciliation Committee negotiations, the respective civil servants can claim politicised competence (Gailmard and Patty 2007). First, civil servants are not detached spectators in conciliation negotiations, but have their own preferences for policy solutions. Second, civil servants enjoy permanent status and protected job tenure, which induces them to acquire policy expertise. Last but not least there is a 'demand' for politicised competence from the legislators. The analysis thus demonstrates that the types of politicisation conceptualised by Peters also apply to the European Parliament's bureaucracy (see Chapter 1). Indeed, the model of 'politicised competence' echoes the concept of *professional politicisation*, which shares the idea of officials acting as policy experts eclipsing, however, their loyalties to political parties (Romanyshyn and Neuhold, Chapter 11 in this volume).

The countries in this volume that undoubtedly have been facing the most serious challenges in terms of readdressing the balance between the political and administrative level are *Hungary and Slovakia*. The attempt to move away from a spoils system whereby processes of recruitment and promotion were in the hands of the communist party to an institutionalised merit system has been a difficult and time-consuming process with mitigated results. Staroňová and Gajduschek point to the lack of an overall reform blueprint, constant changes in direction, the lack of respect for legal regulations, a poorly coordinated HR system, and high turnover of the badly paid staff. Part of the problem is directly linked to the transformation process itself. In search of people they could trust, the first post-communist governments have appointed their own staff. With every regime change there is a need for their replacement. The result of the above developments is an increasingly widespread form of *direct politicisation*, and even patronage. Also cabinets and political advisors play an increasingly important role (*redundant politicisation*). A further interesting finding of this chapter is that the non-merit practices in the two countries not necessarily equal the use of political criteria for selection. Personal loyalty and trust play an equally if not a more important role than party membership.

Lessons learned

Following the rather divergent pictures that have emerged from the different chapters, the question arises what we can conclude more

broadly about the evolving relationship between politicians and civil servants. Do we see a confirmation of the broadly shared intuition of increased politicisation and if so, what have been the effects on politico-administrative relations? Is the permanent and neutral character of the public service under threat? What are the implications for the accountability in public policymaking?

A first conclusion of this research is that, with the exception of Hungary and Slovakia, one can definitely *not discern a general trend towards direct politicisation*. Direct attempts to nominate political loyalists at key positions remain the exception. Even in a country like Germany where there is a long tradition of patronage, preference is given to loyalists who are at the same time also career professionals. In Hungary and Slovakia, where after a failed attempt to establish a neutral and professional civil service, there is a new trend to use non-merit criteria; it is however not necessarily political affiliation but considerations like personal trust that weigh heavily when appointing new staff.

Secondly, the comparative overview shows that in places like France and Germany where there has been a long tradition of respectively *redundant and professional politicisation*, the relationship between politicians and civil servants is relatively stable. In both cases the appointment of political loyalists at the highest levels of the public service is seen as an asset rather than as a problem. One could say that the systems of these countries are relatively well prepared for the general demand for a more responsive public service and that as a result there is less pressure for change. 'Undoing' the existing politicisation and moving to a system with a more rigid distinction between the two levels would not be seen as progress but as a step backward.

The most far-reaching changes have been taking place in the UK and the Netherlands. The NPM reforms in the predominantly Weberian British and Dutch public service have been shaking up these two systems where neutrality and permanence of the civil service have traditionally been sacred. Both countries now have a substantial number of (sometimes non-permanent) 'managerial' staff at the highest levels. Closely interacting with the political level, they are highly responsive to political demands. As such this does not necessarily have to be a negative development, since such an increased attention to politics enhances the legitimacy of the policy making process. The backlash however is that it has led to the blurring of boundaries, has reduced neutrality, and has caused civil servants to start to perform political roles. In that sense

the relatively 'young' politicisation in the UK and the Netherlands has proven to be more problematic than the well-established politicisation characterising the French and German public service.

Research on politico-administrative relations in the European institutions still has a long way to go, especially when it comes to the European Parliament. It concerns relatively young bureaucracies without a clear and longstanding tradition where civil servants have to work under different conditions than their colleagues at the national level. It is however interesting to note that the questions facing these supranational bodies are to a large extent the same as at the national level. The delicate balancing act between democratic and merit values is further complicated by the requirement for a geographical balance whereby all member states are sufficiently represented.

Our final remark relates to the concept of politicisation itself. As Peters remarked in Chapter 2, it is a phenomenon that can take many different shapes. Each form has its own advantages and pitfalls and what is acceptable also strongly depends on the domestic context. This does not mean that anything goes. At the core of every well-functioning system is a delicate balance between professionalism and responsiveness to political demands. While politically nominated civil servants may be important in fulfilling a bridging function between the political and administrative level, it remains important to maintain clear boundaries guaranteeing that both politicians and the public service can each play their respective role.

As a result politicisation as such is not incompatible with the traditional idea of the separation of politics and the civil service. On the contrary, as Peters rightly points out, the concept of politicisation helps us to realise that 'while it is important that the civil service be highly competent, it may also be important that those civil servants also be interested in the success of the government'. Therefore it is not enough that civil servants are professional experts; they also must be capable of translating their knowledge into a politically acceptable outcome. In this specific way all civil servants have to be 'politicised'. But politicisation of the civil service has its limits. It all boils down to searching for the right balance between high-level professionalism and political responsiveness. In practice this is hard to achieve. Above all the result will depend on the readiness of all parties to understand and to respect the different roles politicians and civil servants have to play.

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