Chapter Ten
The Privatisation of the Civil Service

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In 1953 the Scottish legal scholar, DM Walker published an article entitled ‘The Legal Theory of the State’. Professor Walker was concerned by the lack of ‘an adequate legal theory of the State which takes account of modern social, political and economic developments as well as of the true legal position’. Although there were many philosophical and political theories of the state, his aim was to develop a purely legal one. In developing a ‘juristic theory of the State applicable to British conditions since 1947’, Professor Walker drew upon the private law concept of the corporation. According to Professor Walker, the state was ‘a corporation aggregate’ consisting of all people connected with the United Kingdom. He continued:

This corporation has ‘a managerial body’ called the Government which comprises (i) an hereditary official variously called The Queen, the Sovereign, the Monarch, the Crown, and (ii) a body of directors chosen from the legislative assembly called variously the Government, the Cabinet, or the Heads of State. The managerial body acts in the interests of the persons who form the corporation through (a) a legislative assembly partly hereditary and partly elected by the adult members of the corporation, (b) a body of executive and administrative officials with departments and subordinate staff, and (c) a number of individuals empowered to adjudicate on disputes and apply to individuals the rules of law.

For a distinguished private lawyer, the topic of Professor Walker’s lecture seemed counter-intuitive. At a time of an expanding state and an expanding public sector, it seemed curious to locate a theory of the state in a private law model which at the time was politically contestable, with some of its commanding heights vulnerable to requisition by the state through nationalisation. As social democracy was to expand in the years immediately after the article was published, it was to look even more curious. It now seems remarkably prescient. The simile of the corporation now has a very contemporary ring in an era of active privatisation and outsourcing of state activity. But it also has a contemporary ring in terms of the changes that are taking place to the process of government and to the relationship between the government and the people,
who 'have periodical opportunities to change the elected element in the legislative
assembly and such changes may result in changes in the body of directors and
in the policy of the board'.

Privatisation has been associated mainly with the
sale of public corporations, notably the utility companies. But there has been a
different kind of privatisation of central government itself, though here the
privatisation has taken a different form. The privatisation of public corporations
took the form of a series of events whereby they were sold to privately owned
companies, albeit subject to public regulation.

In the case of central government
activity, privatisation has been a continuing process. This process has seen the
adoption of private sector attitudes in which the state is viewed as a corporation
with many of the attributes of a corporation. The adoption of these private sector
attitudes has had major implications for the role of the civil service within the
structure of government, and coincides with a renewed emphasis on efficiency
and delivery. The purpose of this chapter is to document the recent privatisation
of the civil service, which has at least six dimensions. These relate to civil service
focus, civil service structure, civil service values, civil service employment
practices, civil service law and civil service regulation.

**Changing Civil Service Focus**

The civil service occupies only part of the public sector. Public sector workers
include those employed by local authorities responsible for roads, schools, fire,
police, and rubbish collection and by bodies such as the National Health Service,
said to be the largest employer in the world. Workers employed by these
authorities are not civil servants, a group who are employed directly by central
or devolved governments. The closest we have to a legal definition is to be found
in the *Crown Proceedings Act 1947* which defines a civil servant as ‘a servant of
the Crown working in a civil capacity’, though there are a number of exceptions.
The civil service has thus operated beyond the scope of transparent legal rules,
and to this day is governed by royal prerogative. It is by virtue of the
prerogative and not legislation that the Crown has authority to appoint, determine
terms and conditions of employment, and has authority to dismiss at pleasure.
But this is not to deny that there is also legislation (such as the *Official Secrets
Act 1989*) which has a particular (though not exclusive) application to civil
servants. There are now about 500,000 civil servants in Britain, representing
about 1.7 per cent of the labour force, with the public sector generally accounting
for some 18 per cent of Britain’s 24 million or so workers. The role of civil
servants varies enormously, from direct contact with ministers, to the delivery
of service in benefit offices, to the collection of taxes.

There is a growing sense in which the role of the civil servant is changing,
though this may simply obscure the fact that civil servants have historically
provided a range of functions. At one end are the civil servants engaged in
advice to ministers and the development of policy. To this end civil servants
were supposed to be politically neutral in order to provide independent advice to ministers of any political party.\textsuperscript{13} Although their legal status was one of great vulnerability, in practice civil servants enjoyed great security of tenure, designed to enhance this sense of the civil servant as a fearless provider of advice.\textsuperscript{14} There are some who would argue that political neutrality was not the same as ideological neutrality, with political sociologists contending that civil servants were part of the institutional structure of the state and one of the great forces of conservatism. As explained by Miliband, ‘[s]enior civil servants in Britain constitute a formidable bloc of power, more cohesive and resourceful than any other element in the state, with the possible exception of the cabinet, but only if the cabinet is united, and determined to have its way’.\textsuperscript{15} In recent years, many senior civil servants have become much more highly visible for a number of reasons related to the changes in the structure and organisation of the civil service. It is also the case that civil servants are now brought into the limelight as a result of investigations by parliamentary committees.\textsuperscript{16}

It is perhaps curious to encounter concerns from the Left about the loss of civil service independence and impartiality. Yet there is a growing concern about the ‘politicisation’ of the civil service at the highest level, as revealed in the following exchange between the Cabinet Secretary (Sir Andrew Turnbull) and a backbench Labour MP. The occasion was a meeting of the House of Commons Public Administration Committee, one of the scrutiny committees of the House, and earlier in the proceedings Sir Andrew had denied that the civil service was becoming ‘politically’.\textsuperscript{17} In what follows, neither side gave much ground, and in boxing terms we might say that the match ended in a draw. For the record it went like this:

\textbf{Q133 Mr Hopkins:} If I could just turn to another article in \textit{The Guardian} about the politicisation of the Civil Service. John Chapman, one of your former colleagues, wrote an article this week in \textit{The Guardian} saying that the Civil Service is so politicised that its impartiality is just a myth. Do you think that is fair comment?

\textbf{Sir Andrew Turnbull:} No, I do not think it is fair comment. I do not think things have changed. This implies that there has been some sort of sea change, that we now behave in some completely different way, but it does not feel like that. The kind of people who get to the top of departments are the same kind of people who used to get to the top of departments. Out there in the field in the work of Job Centre Plus, this whole politicisation debate just does not arise. They are getting on with their work. It is a Whitehall issue and I do not think that the change in the special adviser cadre is capable of producing the sea change that is described there.
Q134 Mr Hopkins: He goes on to describe how it works and how people have been gradually moved out and replaced, not by this broad range of views that you suggest, but actually by people whom he describes as minimalist free traders who believe in a very minimal role for Government. I think that would fit a description of your good self.

Sir Andrew Turnbull: No. The Civil Service has been expanding over the last four years. The Government are not pursuing a minimalist policy. They believe that public services can do good for society and economic performance. I just do not see where this minimalist argument comes from. Most people argue that the Government are actually too intrusive. This does not capture the reality of what is going on.

Q135 Mr Hopkins: Can I just take you back to a question I asked at a previous meeting of the Committee. When you appeared before us before I asked about privatisation and contracting out of public services where, in future, the provision of these services would be done by people in the private sector. You said that this was the way of the world and that there were just a few remaining areas of Europe where social democracy still has a little bit of a grip. That was your view and you seemed to be quite enthusiastic about it. It certainly fits in with the Government view.

Sir Andrew Turnbull: The Prime Minister has a slogan that what matters is what works and that the duty of the state is to see that certain services are provided. He adopts a quite pragmatic view of, who do we enlist to deliver on behalf of the state? If you look at what is happening in the Health Service, first of all the whole of primary care is done by enlisting private contractors. These are all self-employed people. Diagnostic and treatment centres are a mixture, some of them are profit-earning dividend-distributing companies, some of them are different kinds of NHS establishments. He is saying that, if someone will deliver education services, prison services or schools, we are prepared to look at them whether they are private sector, voluntary sector, local government or central government.

Q136 Mr Hopkins: We know the Prime Minister’s view and the drift of Government. I am concerned about the Civil Service and what John Chapman is suggesting is that, over a long period, there has been a squeezing out of anyone who has fuddy-duddy social democratic views. He uses the example of one of his friends who was moved out and he never heard of him again. Indeed, later on, he himself was offered a regional job or resignation. It sounds like Mr Malenkov going to manage a small power station in Siberia!
Sir Andrew Turnbull: I do not know who Mr Chapman is and I cannot comment on it. My experience over 30 years is that ministers are looking for people who can make things happen, they are not interested in whether you have worked with a minister of a different political persuasion in the past or what your political view is. The question is, are you capable of delivering whatever the department —

Q137 Mr Hopkins: Yes but, if I may interject, lower down the Civil Service, these appointments are not made by ministers, they are made within the Civil Service. Is it not the case and has it not been the case over a prolonged period that an ideology has taken over the Civil Service which fits in very much with the ideology of recent Governments which is for the minimal state, for the privatisation and marketisation of public services, and that anybody who disagrees with that at a lower level is gradually being moved out?

Sir Andrew Turnbull: But that is an inaccurate description of the present Government’s policies.

Q138 Mr Hopkins: I perhaps exaggerated slightly but not very.

Sir Andrew Turnbull: They do not believe in ‘big state’ either. They believe that public services contribute value in various ways to society. They have actually increased public spending. They have increased the number of civil servants and they have increased the number of public servants.

Although there are recent studies which indicate the continuing political influence of civil servants in the legislative process, this is a function which is being challenged by a number of developments. The first and most important of these is the centralisation of government, the growth of so-called joined up government, and the reduced autonomy of individual government departments as a result. In the words of Sir Andrew Turnbull,

[t]he Prime Minister wanted to create a stronger centre and also make it a richer mix of special advisers as against civil servants. That is the interesting part of the constitutional change.

Under New Labour we have seen a huge expansion of the Prime Minister’s Department staff, some of whom were previously employed by the Labour Party. According to the current Cabinet Secretary, ‘there has been roughly a doubling of the number of special advisers from 36/37 to 70-something’, with ‘most of that increase, 24 of the 36 increase’ being accounted for by Numbers 10 and 11 Downing Street. Number 10 now orchestrates the government’s agenda and sets targets and priorities for every other department. In doing so it works with the Treasury, which initiated Public Service Agreements with individual
departments. These departments are required to identify their objectives and targets on a three-yearly cycle, with accountability to the Treasury for performance. Performance appraisals are published on departmental websites. According to the former Cabinet Secretary and Head of the Civil Service, Lord Butler, ‘there is too much central control and there is too little of what I would describe as reasoned deliberation which brings in all the arguments’. Related to this is the growth in the number of Specialist Advisers to ministers, with uncertainty about the boundaries of their role: is it to advise and assist or do they operate as ‘a layer at the top of the Civil Service between the minister and the rest of the Civil Service’? Whatever the answer, this is a matter also addressed by Lord Butler who said that ‘what happens now is that the government reaches conclusions in rather small groups of people who are not necessarily representative of all the groups of interests in government, and there is insufficient opportunity for other people to debate, dissent and modify’.

These developments reflect the growing pre-occupation of government with delivery, particularly with the delivery of public services. Although associated with Blair, this is a feature of government that can be traced back to the Major years. As Bogdanor explains:

There came to be less concern with constitutional principles and procedures, the emphasis being placed instead on the effectiveness of the public sector, its output. Indeed, the dominant theme of the public management reforms of the 1980s and 1990s may be summed up in a phrase often used by John Major, the privatisation of choice. The aim was to give the consumer the same rights in respect of the public services as were enjoyed by the shopper at Marks & Spencer or Sainsbury’s.

There is a sense in which policy is developed by No 10 and the No 10 Policy Unit, and that the function of the civil service is more clearly related to delivery. This is reflected by the establishment of the Prime Minister’s Delivery Unit in June 2001, with an ‘over-riding mission’ to ‘ensure the delivery of the Prime Minister’s top public service priority outcomes by 2005’. According to the government, the Unit reports to the Prime Minister and works in partnership with the Treasury, No. 10, other parts of the Cabinet Office and stakeholder departments, to assess delivery and provide performance management for key delivery areas, and has a shared responsibility with the Treasury for the joint Public Service Agreement (PSA) target.

It is important to note here the extent to which departmental activity is subordinated to ‘ruthless prioritisation’ and the enhanced focus ‘on the Prime Minister’s highest priority public service delivery areas’. According to Downing Street,
a team of around 40 people, drawn from the public and private sectors, carry out the Unit’s work. The Unit also draws on the expertise of a wider group of Associates with experience of successful delivery in the public, private and voluntary sectors.\(^{31}\)

The influence of the private sector is one that is to be repeated as this story of change unfolds, but it takes place in an environment in which the Prime Minister is said to be ‘operating as chief executive of … various subsidiary companies’.\(^{32}\)

**Changing Civil Service Structure**

It would be fair to say that most of the preceding discussion has had little relevance for the great bulk of civil servants. They were never involved in policy development, and have always been engaged in service delivery, whether it be in job centres dealing with the unemployed or tax offices dealing with taxpayers. For them, the main change that has taken place relates not to the changing function of the civil service, but the changing structures within which they are employed. This too has implications for the senior civil service, and indeed it is at this level that the constitutional rather than the employment implications of the change are most keenly to be felt. The most important of these changes relates to the creation of the Executive Agencies following a seminal report, *Improving Management in Government: The Next Steps*, by Sir Robin Ibbs in 1988. But although it is the most important, it should be emphasised that the creation of these agencies was part of an overall strategy that saw the introduction of ‘quasi–market structures into the public services’, to be achieved by privatisation, market testing and contracting–out as well. Quoting another distinguished political scientist, WJM Mackenzie, Bogdanor claims that the basic case for these developments was ‘the simulation of a business situation’, before adding that the ‘fundamental leitmotif of the reforms was that efficiency in the public services could be achieved by adapting the methods and practices of the private sector’.\(^{33}\)

The key feature of the Ibbs Report was the recommendation that the civil service should be broken up into more manageable parts. The central civil service would continue to service ministers and manage departments, but other activity would be conducted by executive agencies that would be responsible for service delivery. Each agency would have a chief executive who would be answerable to the minister under the terms of a framework document which would be published. These recommendations were accepted with alacrity and by 2000 there were 137 executive agencies responsible for some 80 per cent of the civil service. They vary enormously in size from the Employment Service with 45,000 civil servants to the National Weights and Measures Laboratory with 45.\(^{34}\) This delegation and decentralisation of function was designed to ‘bring a new, more customer–focused approach to individual executive (service delivery) functions within government’, leaving their parent departments ‘to concentrate on policy
development’. Executive agencies remain part of the Crown, and do not usually have their own legal identity, but operate under powers that are delegated from ministers and departments. They have a chief executive who reports to the minister against specific targets. Most agencies receive their funding from their parent department and, although they are required to publish and lay before Parliament separate accounts, these accounts also form a constituent part of their parent department’s accounts.  

The delegation of function to the executive agencies has been seen to have a number of important constitutional implications, particularly in regard to the principle of ministerial responsibility. By virtue of this fundamental convention of the British constitution, ministers are responsible to Parliament for the conduct of their department, though quite what this means has always been uncertain. The principle is recognised judicially in the well known Carltona case where wartime regulations provided for the requisition of property under the authority of the Minister of Works. In this case, the letter of requisition received by the plaintiff company had been signed and sent by an official in the minister’s department, and it was argued that the order was therefore invalid. But the claim was rejected by the Court of Appeal which held that ‘constitutionally’ the decision of the official was ‘the decision of the minister’. In the words of Lord Greene,

[t]he minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority.

The restructuring of the civil service has led to questions being asked about how this principle can operate when so much of the service delivery has been hived off to agencies. How can it now be said that the civil servants are acting under the authority of the minister when they are operating at arm’s length from him or her, under the control of a chief executive? Although this may be a matter where there has been a tendency to exaggerate the practical nature of the problem, sensitivity arises because it raises matters of great constitutional significance, striking at the very heart of the fundamentals of the Westminster system of government.

There are in fact two constitutional dimensions to this question — the first is political and the second is legal. So far as the first is concerned, although ministers are responsible to Parliament for the conduct of their department, this has never entailed any sense of direct personal responsibility for departmental failures. It is only rarely that ministers have resigned because of departmental failures, and there is no sense of obligation to do so, provided the minister retains the confidence of the House. Most ministerial resignations have been for matters in a minister’s private life rather than the incompetent management of their public duties. A good example is the resignation of the Right Honourable David Blunkett MP as Home Secretary amid claims that he had misused public office for personal
benefit (or at least the benefit of his erstwhile mistress). Nevertheless, the creation of the agencies provides an opportunity for ministers to deflect responsibility to the chief executives, several of whom have been dismissed or have had to resign because of departmental failures. An early example of dismissal is the head of the Prison Service following a number of prison breakouts, and a more recent example of the former is the resignation of the head of the Child Support Agency following ‘widespread criticism’ of the organisation. Yet although the need for a scalp will make the chief executive peculiarly vulnerable to reduce the rising political temperature around the minister, it does not follow that the creation of the agencies wholly excludes any sense of responsibility to Parliament. Although not responsible to Parliament in the constitutional sense, agency chiefs are in practice accountable to Parliament through the medium of the select committees, while the minister is accountable to Parliament for his or her department, including all of its agencies.

These emerging patterns of accountability illustrate the diluted form that ministerial responsibility now takes: direct responsibility is deflected to the agency chief by virtue of his or her parliamentary accountability, while the responsibility of the minister has metamorphosed into a doctrine of accountability. But although accountability is a weaker form than responsibility, it may be that it more accurately reflects the practice not just since the creation of the agencies but since the 1950s, if not before. What is important is that ministers continue to be answerable (to use another term) for their stewardship of a department, even though that answerability may not mean a great deal when the government is supported by a large majority of mainly loyal MPs. Just as the constitutional convention has adapted at a political level, so it is likely that the creation of the agencies will be absorbed easily by the legal system. The Carltona principle is based on the civil servant acting with the authority of the minister. Although questions have been raised about agencies having the necessary authority, it is difficult to see why the agencies are not acting with such authority. But quite apart from the elasticity of the concept of authority and the ability of the courts to adapt to the dynamic nature of the constitution, such authority is surely to be found in the agency framework agreements. It is not to be overlooked that the Carltona principle extends a long way down the chain of command, so that, for example, it extends ‘to cover the exercise of the [Home Secretary’s] powers by an immigration inspector’.

### Changing Civil Service Values

The civil service has traditionally been the subject of value systems that set it apart from many other forms of employment. The first are what might be referred to as the public service values which inform the relationship between the government and its staff, based on the nature of the employment in which the staff are engaged. These values reflect the unique nature of the role which many
civil servants occupy, though it should be emphasised that the work of most
civil servants has parallels in other parts of the public sector (most notably local
government and the National Health Service). But alongside the public service
values are what might be referred to as public employment values in which it
was recognised that the state had a special responsibility as an employer to set
an example to others as a model employer. But not only did the government
lead by example, it also led by coercion. So where the government acted not as
employer but as contractor, it insisted that its contractors pay fair wages and
recognise the right of their employees to trade union membership. The first Fair
Wages Resolution was made in 1891, replaced by the Fair Wages Resolution of
1946, which set higher standards in terms of the duty of contractors to pay fair
wages to staff, with fair wages being determined by prevailing collective
agreements. In recent years these public service values have been strengthened,
while the public employment values have changed. Governments no longer lead
the market, but are led by it.

So far as the public service values are concerned, some of these values are
crystallised in the Civil Service Code which was published for the first time in
1996. This refers to the constitutional role of the civil service to serve
governments with ‘integrity, honesty, impartiality and objectivity’, and the
duty not to misuse their official position for private gain. These principles have
been expressed elsewhere in the following terms:

**Incorruptibility** — Public policy and individual decisions made by
civil servants are not influenced by considerations of personal gain,
either while they are in the service or in the form of an outside
appointment as a reward after they have left.

**Impartiality** — Successive Governments have come into office and
found a Civil Service ready to put their policies and programmes into
action from the start.

**Integrity** — Advice given to Ministers may be welcome or not, but it
is the job of the Civil Service to see that the decision making process is
as well informed as it can be.

**Independence** — Civil servants owe neither their jobs nor their
prospects to the influence of political parties, lobby groups, business or
other interests.

It has also been said that civil servants must be adaptable in the sense that
‘political priorities can change with events as much as with elections; civil
servants must be ready to implement with the same vigour a radical change to
previous policies’.

The Civil Service Code also makes clear that civil servants
owe a duty to the Crown, not to the public. This means in effect to the
government of the day: they ‘owe their loyalty to the Administration in which
they serve’. This duty was brought into sharp focus during the Falklands war when a senior civil servant, Clive Ponting, disclosed government papers to a Labour MP about the sinking of the Argentinian ship, the Belgrano. Ponting was prosecuted under the Official Secrets Act 1911, s 2 (now repealed). This provided that it was an offence to make an unauthorised disclosure of government information unless the defendant could show that it was his duty in the interests of the state to disclose the information. Although Ponting was found not guilty, this was despite an instruction from the trial judge that the interests of the state were the interests of the state as determined by the government of the day and not by individual officials.

Although s 2 of the 1911 Act has now been repealed, the sentiments expressed in the Ponting case remain intact. This was revealed most tragically in the inquiry into the suicide of Dr David Kelly, the government scientist who took his life shortly after an unpleasant grilling by the House of Commons Foreign Affairs Committee. Dr Kelly was thought to have made claims to a BBC journalist about exaggerations in the government’s published case for invading Iraq. In his report into the circumstances surrounding the death, Lord Hutton made clear that Dr Kelly had exceeded his authority by briefing the BBC in the way that he did. In doing so Dr Kelly had breached the terms of the Civil Service Code which prohibit the unauthorised disclosure of official information obtained in confidence.

Dr Kelly was perhaps the most high profile example of this reinforcement of public service values; others were to find the criminal law in the form of the Official Secrets Act 1989 mobilised against them. In these ways the strengthening of public service values paradoxically operates to the disservice not only of the individual official but also the public.

Turning to the changing of public employment values, this has taken place gradually over a number of years, as more and more emphasis has been placed on the contradictory goals of service and delivery on the one hand, and efficiency and value for money on the other. Alongside the public service values, we find the rejection of public employment values and the creep of private sector values into the lexicon and practice of civil service employment. In these ways we see the emergence of private sector management practices, private sector legal forms, and private sector problems. This is a process which is calculated to increase, being cemented in a recent Cabinet Office paper on Civil Service Reform — Delivery and Values, where the business simile is used frequently: government is a business providing services to customers to whom the civil service must respond. Thus:

- There is a need to bring people in from the private sector to provide necessary business support:

  The Civil Service has already opened itself up and must continue to do so, both by bringing in people with skills we are lacking and by making
sure that we train and develop more of our own people in those areas. This is particularly true of subjects such as project management, financial management and human resources. For too long we have failed to recognise the importance of fully professional skills in these areas, but they are central to any successful business and are too important to leave to chance — especially when the demand is rising sharply.49

- There is a need to review the concept of a job for life and to replace it with employment policies based on the requirements of the business:
  
  But in all employment sectors, the traditional concept of a career for life is fast disappearing. What matters now is the performance and potential of the individual, matched against the needs of the business. No one has a lifetime right to be a civil servant, irrespective of their abilities or the requirements of the department. But anyone who has the abilities needed by the business, or can stay ahead of a changing environment, can be confident of being valued and employed over a long period.50

- There is a need for new employment practices designed to improve productivity and performance of those employed in the business:
  
  The Civil Service has been historically poor at giving people honest, constructive feedback about their performance and ensuring that everyone, no matter how able, has a personal plan for improving this. We want a culture in which everyone is self-aware and is constantly learning new ways of doing things better.

  In particular, we need to get better at addressing performance which is consistently below the potential of the individual or the full needs of the business, but falls short of being a disciplinary matter. It has always been easier to pass the problem on, rather than to address it directly.51

But it is not only the emergence of business principles which now compete with or complement public service values. Also relevant is the emergence of private sector concerns. These include the greater use of outsourcing of ‘large scale process functions’,52 for which the Fair Wages Resolution has been conveniently rescinded. They also include the better management of staff. Thus, there is a need for greater operational flexibility of staff to improve the performance of the business in which the government is engaged:

  One implication of this is that while the Civil Service will remain a distinct entity within the public sector, we should expect much more movement between civil servants and their public sector colleagues responsible for delivery. Experiencing and understanding the pressures on each side of the policy/delivery equation is critical to an effective linkage between
the department as service leader, and the operational *businesses* that deliver the outcomes.\textsuperscript{53}

There is also a need for greater business efficiency, both in terms of the overall numbers of staff and their location:

This drive for efficiency is not a one-off event. We need a continuous process of self-generating improvement, with departments keeping up an internal process of reviewing their efficiency against the scope for improvements in the way they do their *business*.\textsuperscript{54}

By 2007–08, some 84,000 posts will be lost. Yet this hunt for efficiency is not just about losing posts. It might also include new ‘[r]eward structures and performance review systems’,\textsuperscript{55} as well as — as we have seen — ‘addressing performance which is consistently below the potential of the individual or the full needs of the business, but falls short of being a disciplinary matter’.\textsuperscript{56} So far as the latter is concerned, there are some for whom the following passage may have made particularly chilling reading:

5.23 Although managing weaker performance is something that we want to improve across the Civil Service, we are leading from the top with a new approach starting this April for Senior Civil Servants. We will pay particular attention to the performance and development issues raised for those individuals who, relative to their peers, fall into the lowest 20 per cent of performance effectiveness in their current responsibilities. But the objective is support for improvement, not blame for the past.

5.24 The first task will be for managers and staff concerned to identify the causes of the performance weakness, and then to work out the best means of addressing them. This may be about the skills or training necessary for a particular post. It may be about an individual’s range of experience and how it could be broadened: a highly competent policy maker may be unable to adapt successfully to commanding a large operational activity, or vice versa. The answer might lie in training, in opportunities elsewhere in the Civil Service, or perhaps in secondment to another organisation that helps deliver the department’s objectives.

5.25 And there will always be cases where, whatever the abilities people may have been recruited with, either they or the organisation have moved on in ways which mean there is no longer a role they can fulfil effectively. For these people it is unhelpful and unfair to pretend otherwise: the individual should be supported to find work elsewhere. But the values and capabilities of civil servants are highly regarded in other sectors, and we should expect to see people moving more freely in and out of the Civil Service as a normal working pattern.
5.26 Identification as being in the lowest 20 per cent means that there is an issue to be addressed in comparison with the performance of peers. It is a relative judgement, not an absolute measure. That is why the new policy properly applies to everyone in the Senior Civil Service, from the most newly promoted Deputy Director to Permanent Secretaries.

**Changing Civil Service Employment Practices**

Changing public employment values has coincided with changing public employment practices. The legal authority for determining pay and conditions is found in the Civil Service Order in Council of 1995, a prerogative instrument. This provides that:

The Minister may from time to time make regulations and give instructions... providing for the number and grading of posts in the Service, the classification of all persons employed therein, their remuneration, expenses, allowances, holidays, hours of work, part-time and other working arrangements, retirement and redundancy, the reinstatement and re-employment of persons in the Service, the re-deployment of staff within the Service and the conditions of service of all persons employed in the Service.

It was the predecessor to this measure which formed the basis of the instruction to the trade unions in the famous GCHQ case, itself a symptom of the changing attitude of government in terms of its role as an employer. The then Minister for the Civil Service gave instructions that staff employed at GCHQ would no longer be permitted to join or remain in membership of a trade union. It was not until 1997 that trade union rights at GCHQ were partially restored. A legal challenge at the time was rejected by the House of Lords on the ground that the decision had been taken in the interests of national security, and an application to the European Commission of Human Rights was rejected. However, this high profile event should not obscure the fact that since 1925 a national pay bargaining system has been in operation for civil servants, based on the recommendations of the Whitley Committee in 1917.

Until the 1990s the system of collective bargaining was based on national agreements setting terms and conditions which would apply across the sector to workers in the same grade, regardless of the department in which they were employed. Indeed this was consistent with the longstanding principle of a unified civil service. (This is not to say that there were not concerns about civil service management style in this earlier era. Apart from the GCHQ case already referred to, *Cresswell v Inland Revenue Commissioners* was another case to reach the High Court around the same time. In this case the court held that the Inland Revenue was entitled to push forward with the introduction of new technology without the consent of the staff unions. In its view, employees were under a
duty to adapt to new methods of working, provided that the new method did not involve ‘esoteric’ skills.) These collective bargaining arrangements were changed in 1992 by legislation that provided for the delegation of pay determination to the departments and agencies themselves. This was done by the Civil Service Management Act 1992 which gave little clue as to its purpose by enacting that ‘[a] Minister of the Crown in whom a function to which this section applies is vested may, to such extent and subject to such conditions as he thinks fit, delegate the function to any other servant of the Crown’.61 The 1992 Act was the harbinger not only of departmental pay determination, but also the break-up of the national bargaining arrangements. Mimicking the decentralisation of collective bargaining in the private sector from sector to enterprise, there has been a decentralisation of collective bargaining in the civil service, with bargaining now taking place in a large number of individual bargaining units.

The process began in 1996 when the then government withdrew from the national bargaining arrangements then in force. It has been explained that ‘[r]esponsibility for pay bargaining was delegated to individual government departments, agencies and related bodies: there are now over 170 pay systems, meaning 170 different pay scales, minimums, maximums and vastly differing terms and conditions’.62 But it has also been explained that this is not a real delegation, as ‘the negotiated departmental pay structures were tightly constrained by the un-negotiated decisions made at the centre’.63 The point is made clearly by the Civil Service Management Code which states that departments and agencies ‘have authority to determine the terms and conditions relating to the remuneration of their own staff outside the Senior Civil Service’.64 But, as the Code also makes clear, this is a rather meaningless facility given that

[d]epartments and agencies must develop arrangements for the remuneration of their staff which are appropriate to their business needs, are consistent with the Government’s policies on the Civil Service and public sector pay, and observe public spending controls.65

There are also concerns about the pointless inefficiency of these ‘devolved’ arrangements:

While centralised pay negotiations used to be carried out by some 40 people in the Treasury, the Civil Service College has now trained over 2,000 civil servants.

Bargaining units vary in size from the Department of Work and Pensions with 115,000 staff, to the Queen Elizabeth II Conference Centre which is required to develop its own fully-fledged pay system and to conduct pay negotiations for just 50 staff.
Clearly, we have lost the economies of scale and of administrative time which were available when there were national negotiations on the core aspects of pay and conditions of service. Yet, since 1996, the Treasury has not carried out any cost/benefit analyses of delegation. This is remarkable given the considerable costs of:

- setting up new pay units in delegated areas,
- extra staff directly employed,
- staff time in delegated negotiations,
- administrating the process of pay delegation and of pay remits,
- the use of consultants in establishing new pay systems, pay and grading reviews,
- job evaluation.66

The decentralisation of pay bargaining also has huge implications for industrial action by civil servants, which is subject to the same rules as apply to workers in other employment. The industrial action immunities apply only if the action in question is preceded by a ballot. But the balloting legislation is predicated on the basis of enterprise bargaining and enterprise disputes. This causes difficulties for national action, such as that which may be organised by the civil service unions protesting against job cuts. At a conference in November 2004, the General Secretary of the largest civil service union, the Public and Commercial Services Union (PCS), explained that ‘we had to hold 160 separate ballots across the civil service and we still had to defend a legal action by the Learning and Skills Council’.67 Industrial action is becoming an increasing feature of civil service employment. Indeed on 5 February 2005 the radical daily newspaper the Morning Star screamed from its front page headline: ‘Biggest strike for decades’. Although carried not quite so provocatively or so prominently, the story was not neglected by other newspapers. Even The Times picked it up (albeit on page 24) with a scarcely more reassuring headline: ‘Million-strong strike gets closer’. These headlines told us about a proposed public sector strike, to be led by 330,000 civil servants but to include local government workers and firefighters, all to be co-ordinated to take place on the same day, 23 March, just weeks before an anticipated general election.

At the heart of this particular dispute was a decision by the government to raise the retirement age of civil servants and to replace their final salary pension scheme with one based on average earnings. But the dispute itself was simply a symptom of a deeper problem in the civil service, following as it did industrial action by civil servants in 2004 about government proposals to relocate jobs from London to the provinces. Civil service employment is changing, and far from being a model employer, the government is now condemned by civil service unions. The condemnation is not only for its unilateral management style, but also for the fact that the civil service is now an area of low pay and gender pay
discrimination. It is this question of pay which highlights that the public employment changes affect outcomes as well as procedures and institutional arrangements for pay determination. According to the PCS: ‘[l]ow pay in the civil service is a serious problem which is getting worse’. It is claimed that:

There is a 27 per cent gap between the median salaries of male and female full-time workers in the civil service. Men earn an average of £20,380 per annum; women earn an average of only £14,810 per annum. Women are approximately twice as likely as men to be low earners — i.e. full-time staff on a salary below £15,000 per annum.

Much of this pay gap arises from the fact that, while more than 50 per cent of civil servants are women, the majority work in the lower grades. Whilst there are 2,610 men in the Senior Civil Service, there are only 780 women; in Grades 6 & 7 there are 14,750 men and 5,290 women. Of the 1,000 staff earning above £70,000 per annum, only 170 are women. However, even within the same grade women earn only an average of 95 per cent of men’s wages."

These are problems which in the view of the unions can only be resolved by a return to some kind of national pay bargaining, establishing a National Pay Framework. So far as the gender pay gap is concerned, the union claims that ‘the current system of delegated pay, grading and conditions of employment is part of the problem’."

**Changing Civil Service Employment Law**

The final step in the emergence of private sector values is the privatisation of civil service employment law. As we have seen in the era before modern employment law, civil servants were treated differently from other employees mainly because of the source of the authority by which they were employed. Civil servants had no contracts, they could not sue to recover unpaid wages, and they could be dismissed at pleasure. Indeed the impact of Crown employment went beyond its impact on the staff themselves, as revealed in *Mulvenna v Mulvenna* where it was held that a wife could not attach (or in Scotland arrest) the wages of her husband to deal with defaulting aliment payments. These common law disabilities were ameliorated by the collective bargaining which took place within the civil service and gradually by the extension of employment legislation to Crown servants. Although the first wave of such enactments (dealing with minimum notice periods before dismissal and redundancy payments) had no application to civil servants, the practice since 1971 has been to extend the burgeoning body of legislation to Crown employment, though there are exceptions.

The position of civil servants was potentially transformed, however, by the developments in judicial review and by the ruling by the House of Lords in 1984
that the exercise of prerogative power was no longer beyond the jurisdiction of the English courts, provided that the prerogative power in question was justiciable (as the employment power would almost certainly be). In *Council of Civil Service Unions v Minister for the Civil Service* the decision to ban trade unions from Government Communications Headquarters failed not because it had been taken under prerogative power but because it had been taken in the interests of national security. The holding in that case that prerogative decisions could be reviewed opened up the possibility that civil servants might be able to seek judicial review to challenge decisions taken against them by their employer, whether it be discipline, dismissal or any other matter relating to their employment. It is true that at the same time as the Lords were ruling on the reviewability of the prerogative, the Court of Appeal was ruling in another employment case (this time involving a nurse employed by the National Health Service) that judicial review was not an appropriate forum for dealing with employment matters (even against public authorities). But civil servants were different: unlike their colleagues in the National Health Service they were employed under prerogative.

The reluctance of the courts to entertain employment disputes in judicial review proceedings was nevertheless soon to affect civil servants. Here the courts were helped by the Cabinet Office which from 1985 began to assert the opposite from what they had asserted in the past, namely that civil servants were employed under contracts of employment after all. Faced with this argument in 1988, the Divisional Court accepted that there was ‘nothing unconstitutional about civil servants being employed by the Crown pursuant to contracts of service’. Indeed, such a position would be ‘wholly consistent with a modern and realistic view of the position of civil servants vis-a-vis the Crown’. That being the case, the relationship between the civil servant and the Crown suddenly metamorphosed into an relationship in private rather than public law. So in *R v Lord Chancellor’s Department; Ex parte Nangle*, it was held that the civil servant could not under judicial review proceedings challenge a decision to discipline him for sexual harassment: ‘if the applicant can establish breach of contract by failure to comply with the express or implied provisions of the disciplinary code which has resulted in loss, he can sue for damages for breach of contract’. But even if judicial review was applicable, the court went on to say that it was not prepared to entertain an action for what was wholly domestic and informal and not appropriate for judicial review.

So here we have the privatisation of public sector employment law: civil servants are now employed under contract, a journey that it now recognised at various points in the *Civil Service Management Code*. This now claims that ‘[b]ecause of the constitutional position of the Crown and the prerogative power to dismiss at will, civil servants cannot demand a period of notice as of right’. In other
words, although the courts now recognise the existence of a contract, the Crown continues to claim a power to dismiss without notice. To the extent that there is a prerogative power in relation to the employment of staff this would be it: the power to dismiss at pleasure. It is not clear whether the courts would accept this power claimed by the Crown, and it is noted that the Supreme Court of Canada has rejected similar (though not identical) extravagant claims by the Crown. Here it was held that ‘[e]mployment in the civil service is not feudal servitude’, that senior civil servants are engaged under a contract, and that the Crown was bound to pay substantial damages for the premature termination of a contract. It is to be pointed out, however, that although the Crown in the United Kingdom claims a legal right to terminate an employment contract at pleasure, the Civil Service Management Code provides minimum notice periods which ‘in practice’ departments and agencies ‘will normally apply’. These generally track the minimum periods in legislation from which the civil service is excluded.

The effect of privatisation is to remove unequivocally any protection they might have under judicial review, which is likely to be much greater than that provided by contract, both in terms of the grounds for review and the remedies where a complaint is successful. We thus have not just the privatisation of civil service values and the privatisation of civil service employment practices, but also the privatisation of civil service employment law. By extending the law of contract and enhancing the status of civil servants, we are paradoxically weakening their legal protection by denying access to administrative law. But it should be noted that the extension of contract is purely formal: although civil servants now have contracts, the term of the contract is that they are employed at the pleasure of the Crown. This means that they have no common law remedy in private law for wrongful dismissal, though they may have a statutory remedy for unfair dismissal. The existence of the latter has provided another opportunity for the courts to refuse judicial review in dismissal cases brought by civil servants. Dismissed civil servants can appeal to a body called the Civil Service Appeal Board, a body set up under prerogative power. Although the courts have accepted that the decisions of the Board are subject to judicial review (and have compelled it to give reasons for its decisions), they have shown little desire to scrutinise its decisions in judicial review proceedings. The last judicial review case was in 1991.

**Changing Civil Service Regulation — A Civil Service Act?**

In these different ways the civil service is in a process of change. Also part of this process are proposals for the introduction of a Civil Service Act or a Public Service Act. The idea here is that the position of the civil service should be placed on a firm statutory basis, a proposal first made in the seminal Northcote-Trevelyan Report in 1854. This is a proposal which has been made
in more recent years from a number of sources: the Public Service Committee of
the House of Lords, the Public Administration Committee of the House of
Commons, and the Committee on Standards in Public Life. It also has academic
support and indeed the idea was first seriously articulated in academic quarters.
But how — if at all — does this proposal support the thesis of this paper? The
answer is that it does so, but only as a general indicator of the trends identified:
it will move the base of regulation away from a peculiarly public law source (the
royal prerogative) to one which is a mixed public and private law source of
regulation. As Professor Hennessy told the House of Lords Public Service
Committee: changes to Orders in Council were easily made and seldom noticed,
but ‘if it is in the form of primary legislation and you do want to make a change
you have to be honest about it because only primary legislation can override
primary legislation’. It is true that the government appears only to be a late
(and if the lack of progress is any guide, reluctant) convert to the idea of a Civil
Service Act. But that alone is not enough to diminish the contribution of the
proposal to the process of privatisation that is underway, even if on this occasion
it is not an unwelcome contribution.

The main concern of the reformers is with what we have referred to as protecting
public service values rather than public service employment practices. But it is
not clear that there is any great desire to change those values beyond what is
already set out in the Civil Service Code which is seen to be a good statement of
principle. This applies particularly to the following provision:

The constitutional and practical role of the Civil Service is, with integrity,
honesty, impartiality and objectivity, to assist the duly constituted
Government, of whatever political complexion, in formulating policies
of the Government, carrying out decisions of the Government and in
administering public services for which the Government is responsible.

Attention has also been drawn to the Ministerial Code which also contains a good
section on the civil service and its relationship with ministers:

Ministers have a duty to give fair consideration and due weight to
informed and impartial advice from civil servants, as well as to other
considerations and advice, in reaching policy decisions; a duty to uphold
the political impartiality of the Civil Service, and not to ask civil servants
to act in any way which would conflict with the Civil Service Code; a
duty to ensure that influence over appointments is not abused for partisan
purposes; and a duty to observe the obligations of a good employer with
regard to terms and conditions of those who serve them. Civil servants
should not be asked to engage in activities likely to call in question their
political impartiality, or to give rise to the criticism that people paid from
public funds are being used for Party political purposes.
As the House of Lords Public Service Committee made clear, the main concern is to acknowledge the constitutional autonomy of the civil service and to protect it from politicisation. Thus:

within that constitutional framework the position of Ministers, Parliament and the courts is acknowledged, assured and understood; but the same cannot be said of the Civil Service. If Ministers were to decide that Civil Servants had no role in identifying and explaining the public interest, that would be that. The Civil Service would, in effect, become a private service for Ministers and neither the Civil Service, Parliament nor the courts would be in any position to do anything about it.91

The purpose then seems to be to draw a line in the sand and to protect the values already established from further erosion. This becomes clearer on examination of the specific proposals for what a Civil Service Act would contain. The most fully developed proposals are those of the House of Lords Public Service Committee, which recommended that there should be legislation despite concerns from some high profile witnesses about the impact of legislation restricting the flexibility of the civil service. These witnesses included Lord Nolan (the first Chairman of the Committee on Standards in Public Life) who argued that good standards come from within and not from primary legislation, of which there was already enough. Nevertheless, the Committee envisaged legislation that would do the following:

• specify which public bodies come within its ambit; it would define the civil service and give statutory force to a Civil Service Code of the kind which was promulgated in 1996;
• clarify whether civil servants have any duties over and above their duties to Ministers and whether they owe independent duties as an organ of the constitution; it would set out the duties of Ministers in relation to civil servants;
• give uniform and clear guidelines on the recruitment and management of civil servants as servants of the Crown; it would define what changes to the ambit of the civil service could be effected only by primary legislation;
• specify a mechanism by which civil servants could in the public interest report breaches of the provisions of the Act, which they might otherwise be prevented from doing by their obligations of obedience and confidentiality;
• indicate the grounds upon which application may be made by those seeking judicial review of the action of civil servants or Ministers.92

There have in fact been several Civil Service Bills produced and introduced into Parliament, while the government dragged its feet. The fullest of these was the Bill introduced into the House of Lords in 2004, given a second reading but lost before the end of the parliamentary session.
The government has, however, now proposed action with the publication of its Draft Civil Service Bill in November 2004. The accompanying consultation document invited comments by 28 February 2005, and it was clear that even if the comments were all favourable, further progress would be interrupted by a general election later in the year. Nevertheless the Draft Bill contains a number of important proposals to put much of the civil service on a statutory footing. The Civil Service Commission would become a statutory corporation (clause 1), empowered to produce a recruitment code to ensure open competition for appointment to much of the civil service (clause 10). Separate provision is made in the Draft Bill for open competition (clause 8), for some time a fundamental principle of recruitment to the civil service, and essential to avoid the abuse of patronage. Commissioners would be appointed by the Prime Minister, who must consult the Scottish First Minister and the First Secretary of the Welsh Assembly, as well as the leaders of the main political parties. The management of the civil service is also to be placed on a statutory footing, with clause 4 proposing to vest ‘management powers’ in the Minister for the Civil Service. These are powers of a wide and varied kind, from the number of civil servants, to their grading and classification, to their remuneration and working conditions. There is no sense, however, that civil servants will enjoy any special treatment, with the accompanying consultation paper making clear that any Civil Service Act should ‘leave civil servants subject to general employment practices’, albeit with ‘very similar statutory employment rights to other employees’. 93

The other main provisions of the Draft Bill deal with ethical issues. The Minister for the Civil Service is to use his or her statutory management powers to publish a Civil Service Code, which must be laid before each House of Parliament (clause 5). The Code would require civil servants to carry out their duties for the assistance of the duly constituted government whatever its political complexion (clause 5(7)), and require civil servants to carry out their duties efficiently, with integrity and honesty, with objectivity and impartiality, reasonably, without maladministration, and according to law (clause 5(8)). It is specifically proposed that ministers must not impede civil servants in their compliance with the Code (clause 5(10)). The provisions of the Code — which do not apply to special advisers — are to form part of the terms and conditions of service of civil servants (clause 7). A separate code is to be published for special advisers (clause 6), for whom special provision is made in the Draft Bill. The government’s intention is that the Draft Bill should make clear what special advisers can do (advise and assist ministers) and what they cannot do (exercise executive power). The Prime Minister may, however, designate two special advisers to authorise the expenditure of public funds, exercise statutory power, and exercise management functions over the civil service (clause 16). This power of appointed officials is justified as being ‘designed to give the Head of Government a small degree of freedom in how he or she chooses to organise the centre of government’. 94 But
it is likely to be highly controversial, as is the refusal of the government to put a statutory cap on the number of special advisers who may be appointed.\textsuperscript{95}

**Conclusion**

We began this discussion with an account of an argument presented in 1953 in which an attempt was made to draw similarities between the state and the corporation. We conclude with the thought that this argument may be more relevant and sustainable 50 years after it was first presented. This is so, not because the state has adopted the corporate form, but because corporate values have penetrated the public sphere. This is seen in what has been referred to as the privatisation of the process of government, not in the sense of government being sold or outsourced to the private sector, but in the sense of government embracing private sector similes, private sector values and private sector methods. We also see the adoption of private sector legal forms which remove some of the unfavourable legal treatment to which civil servants are exposed by virtue of their employment under the royal prerogative. Paradoxically, however, the extension of the contractual model to civil servants actually involves a dilution of rights, as it has the effect of ensuring that judicial review is not available to civil servants alleging an abuse of power by their employers. Having suffered years of legal disadvantage, it appears to have been thought to be a step too far to endow them with legal advantage. Any move in the direction of statutory regulation of the civil service is likely to ensure that any such privilege is avoided. This could be achieved by the simple expedient of providing that employment under the new arrangements is under contract and not otherwise. As we have seen, the government has already signalled that a move in this direction will confirm rather than reverse the trend of assimilating the position of civil servants with that of other workers, which in many cases is one of considerable insecurity and uncertainty.

The prospect of a Civil Service Act is perhaps another example of the privatisation of government and the civil service. Although — as suggested — it is not a compelling indicator of a move in the direction of privatisation, it does nevertheless indicate a move away from regulation by means of the royal prerogative, a peculiarly public law source of authority. Although a Civil Service Act may provide the basis of a greater degree of parliamentary scrutiny of government conduct towards the civil service than the regulation by the royal prerogative, it is unlikely to make much practical difference or to reverse the trend of recent developments. It is not to be overlooked that civil servants performed best when operating under public service employment values underpinned by public service legal rules which gave maximum power to the state as employer. The halycon days (if they ever existed) for the civil servant were ones in which there was little law and few enforceable rights — days in which the Crown claimed ‘the right to change its officers’ conditions of service
at any time'.

In the days when the prerogative was at its purest (in terms of hiring and firing), collective bargaining was at its most effective. With governments having so enthusiastically embraced private sector methods and values, there are many obstacles to encounter before returning to such an era. But it is a nice lesson about the difference between public and private sector values and practices, and about how formal legal protection is more necessary where the latter rather than the former prevail. The current unrest in the civil service is also an indication that in a modern private sector regime such protection is never likely to be an effective brake on the abuse of power by the state as an employer.
The Privatisation of the Civil Service

ENDNOTES

1 (1953) 65 Juridical Review 255.
2 Ibid 255.
3 Ibid 258.
5 This was the era of large-scale nationalisation, on the form of which, see Lord Herbert Morrison, Government and Parliament: A Survey from the Inside (3rd ed, 1964) ch 12.
6 Walker, above n 1, 259.
8 For a general account of public sector employment, see Sandra Fredman and Gillian Morris, The State as Employer (1989).
11 The impact of the Official Secrets Act 1989 (UK) was revealed in R v Shayler [2003] 1 AC 247 in which it was held that the Act’s restrictions on the disclosure of official information did not breach the Human Rights Act 1998 (UK).
13 Civil Service Management Code (UK) section 4.4.
14 See Bob Hepple and Paul O’Higgins, Public Employee Trade Unionism in the United Kingdom (1971).
16 The Freedom of Information Act 2000 (UK) (which came into force in 2005) will also contribute to the growing transparency about the identity of civil servants and the advice they give, though at least one department is refusing to identify civil servants by name: David Leigh, ‘MoD says staff names are secret’, The Guardian (UK), 19 February 2005.
19 Some of these developments are traced in highly readable terms in Peter Hennessy, The Prime Minister (2001) ch 18.
20 HC 423–i (2003–4), above n 17, Q63.
21 Ibid.
22 See Bradley and Ewing, above n 7, 356.
24 This is a matter of considerable concern: see Public Administration Select Committee, Fourth Report. Special Advisers: Boon or Bane?, House of Commons Paper No 293, Session 2000-01 (2001).
25 HC 423–i (2003–04), above n 17, Q64 (Kelvin Hopkins MP).
26 Johnson, above n 23.
28 Bogdanor, above n 12, 262.
30 Ibid.
31 Ibid.
32 The Rt Hon Jack Straw MP, then Home Secretary, quoted by Hennessy, above n 19, 523.
33 Bogdanor, above n 12, 260.
34 Bradley and Ewing, ibid n 7, 273.
Carltona, Ltd v Commissioner of Works [1943] 2 All ER 560, 563.

See Bradley and Ewing, above n 7, 275–6.


R v Secretary of State for the Home Department; Ex parte Oladehinde [1991] 1 AC 254, 302 (Lord Griffiths).

See Fredman and Morris, above n 8, 1.

The leading account is Brian Bercusson, Fair Wages Resolutions (1978). The 1946 Resolution was revoked in the 1980s.

Cabinet Office, Civil Service Reform — Delivery and Values (2004) [4.2].

Ibid.

Civil Service Code (1996) [2].


David Shayler (above n 11), a former MI5 agent, was convicted of breaching the Act by making disclosures to a national newspaper, including allegations of incompetence. There is also the case of Kathryn Gun, who was arrested and charged with leaking information about clandestine US surveillance of UN Security Council members before the UN votes on the invasion of Iraq, though the case against her was eventually dropped.

Civil Service Reform, above n 42, [3.2] (emphasis added).

Ibid [5.3] (emphasis added).

Ibid [5.21]–[5.22] (emphasis added).

Ibid [7.3] (emphasis added).


Ibid [7.3] (emphasis added).

Ibid [5.19].

Ibid [5.22].

Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374.


See Fredman and Morris, above n 8, ch 5.


The purpose of this provision is explained at United Kingdom, Parliamentary Debates, House of Commons, 5 November 1992, col 451.


Ibid.

Civil Service Management Code section 7.1.

Ibid section 7.1.2.


Morning Star (UK), 15 November 2004.


Ibid.

[1926] SC 842.


76 [1992] 1 All ER 897.
77 Ibid 905 (Stuart-Smith LJ).
78 Civil Service Management Code section 11.1.1.
79 Wells v Newfoundland [1999] 3 SCR 199. See also the discussion of the Australian position in this volume, Ch 2, Weeks, in section 'Dismissal at Pleasure'.
80 Ibid [29] (Major J).
81 Civil Service Management Code section 11.1.
82 Ibid section 12.1.
83 R v Civil Service Appeal Board; Ex parte Cunningham [1992] ICR 816.
84 See especially R v Civil Service Appeal Board; Ex parte Bruce [1988] ICR 649.
87 HL 55 (1997–98), above n 85, [411].
89 Civil Service Code (1996) [1].
90 Ministerial Code (2005) section 3.1. The same provision was made in the 1997 and 2001 versions of the Code.
91 HL 55 (1997–98), above n 85, [407].
92 Ibid [415]–[418].
93 A Draft Civil Service Bill, above n 88, [20].
94 Ibid [39].
95 Ibid [41].
96 Cresswell v Inland Revenue Commissioners [1984] ICR 508, 521.