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5 Codifying ethics

New Labour and the government of civil servants

Edward Barratt

Introduction

In the early months of his Prime Ministership in 2007, Gordon Brown spoke of a new era of government, of restoring trust in government that would lead to democratic renewal, the nurturing of citizenship and effective government (Brown, 2010). Against a background of declining levels of political participation and the need to respond to an array of challenges now confronting the nation, from the threat of terrorism to the global economy, the rights and responsibilities of British citizens were now in need of redefinition. Amongst the issues at stake for Brown were the powers of an overpowerful executive, including those executive powers that compromised the independence, neutrality and impartiality of the Civil Service. Brown spoke of reviving the aims of the Civil Service reformers of the mid-nineteenth century, seemingly intimating new priorities beyond the dominant themes of the Blair era: “business like,” “joined up,” “decentralised,” “consumer responsive” and “network and partnership” based administration. There was a need for an Act of Parliament, Brown argued, that would formalize the legal status of the Civil Service and the Civil Service Commission and promote the proper conduct of government and the good conscience of public officials. A particular way of governing civil servants was to serve wider governmental objectives, helping to renew politics and society. Subsequently, in 2008, a draft Constitutional Renewal Act was presented to Parliament (House of Commons, 2008), including proposals to formalize the political neutrality of the Civil Service, defining the role of special advisers and requiring the publication of a code setting out the core values of the Civil Service: integrity, honesty, objectivity and impartiality. The Civil Service Commission too, with its responsibility to uphold the principle of open and fair competition in the appointments process and to hear appeals from civil servants in relation to the infringement of the Civil Service code, was to become a body established in law.

This chapter addresses the historical conditions of possibility of Brown’s scheme for the government of civil servants. We highlight the role of an array of collective and individual political actors and disparate governing authorities, beyond the formal political domain, in the emergence of a particular scheme of rule. We consider the ideas and practices at stake and the role of an alliance of



forces in the emergence of the scheme for codifying bureaucratic ethics. We reveal the contribution of **Civil Servants** seeking to uphold customary ways during Margaret Thatcher’s Prime Ministership, Liberals, Social Democrats, think tanks and pressure groups advancing critiques of the vagaries of the British Constitution and Civil Service organization **in the Thatcher years**, alongside sympathetic elements in the Labour Party. Though Tony Blair’s priorities lay elsewhere, a discourse on the identity of the British, developed by Brown in the years after 1997, encouraged a revival of interest in constitutional change and Civil Service reform. A naturalising discourse on the history of the British and the values of the nation, we argue, was not simply a tactic for political advancement in a newly devolved Britain. There were other productive consequences in respect of the reinforcement and reformulation of political priorities, as Brown looked forward to the era after Blair. But we will comment on the slow and faltering progress of Brown’s programme during the final years of New Labour. Problematic political and economic conditions and circumstances, together with Brown’s prevarication, meant that the Constitutional Reform and Governance Act (House of Commons, 2010) became law only in the final months of his Prime Ministership. Critics (Hood, 1991; Pollitt, 1993; du Gay, 2000; Bevir, 2005) of recent Civil Service reform have raised an array of **criticism** of the perverse effects and dangers of the pursuit of responsive government and the “lionisation” (Fournier and Grey, 2000) of practices borrowed from the domain of the business enterprise. In turn we raise the question of the costs and contradictions of a programme of rule that appeared – initially at least – to indicate new priorities for Labour.

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Civil Service ethics in question

It is to controversies in the middle years of Margaret Thatcher’s Prime Ministership that we should look for a revival of interest in the ethics of the Civil Service that led ultimately to calls for regulation in later years. Clive Ponting, a senior official at the Ministry of Defence, supplied documents to the Labour MP Tam Dalyell disclosing that, contrary to information provided to Parliament by the government, the sinking of the General Belgrano during the Falklands War had breached the rules of engagement. Charged under the Official Secrets Act of 1911, Ponting (1985) claimed that he had been acting in the public interest, with a higher loyalty in mind than that of his minister and the government of the day. The Judge Sir Anthony McCowan, in directing the jury, argued instead that the public interest was as the government of the day determined it to be. The jury, after brief deliberation, acquitted Ponting, accepting his argument that he had indeed been acting with the public interest in mind.

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At stake in Ponting’s defence was the ideal of the civil servant as an impartial and independent adviser to government, not only a loyal servant of the government of the day but a truth teller endowed with a deep sense of the public interest, core principles associated with the Civil Service reformers of the 1850s: Gladstone, Trevelyan and Northcote. To the principles of the division of labour,

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1 which owed much to Trevelyan's experience of the Indian Civil Service
2 (Chapman and Greenaway, 1980; Osborne, 1994; Barratt, 2009), the reformers
3 of the 1850s added the ideal of an administrative class recruited on merit, pos-
4 sessed with a deep sense of the interests of the public domain and an independ-
5 ence of mind. Contesting a regime founded on patronage and all that undermined
6 public servants' good character, the reformers imagined a new moralised and
7 thinking class of officials, the embodiment of Coleridge's Christian Platonist
8 notion of a secular clerisy (Colmer, 1959; Osborne, 1994). Public servants would
9 help to confront a number of characteristically classical liberal problems of gov-
10 ernment: securing efficiency and economy in government, promoting a moral
11 tone and the public interest, encouraging social harmony and the integration of
12 the lower and middle orders. The key technology enabling these objectives was
13 the entry exam, enabling a proper measure of selectivity in entrants and viewed
14 as a test of independence and perseverance in its own right (Parliamentary
15 Papers (PP) 1854, p. 24).

16 To imagine that the Northcote Trevelyan report formed the foundations of the
17 Civil Service for the next 100 years, as the critics of the 1960s argued (Fulton
18 Committee, 1968), would be misleading. Such an analysis understates the resist-
19 ance that the initiative of 1853 confronted and the slow and haphazard nature of
20 change (Chapman and Greenaway, 1980; Barratt, 2009). Similarly, the authors
21 of the Fulton Report underestimated the way in which the ideals and aims of the
22 reformers of the 1850s would subsequently inspire the administrative imagina-
23 tion and encourage an array of developments that would in key respects extend
24 and modify the original goals. Foremost among the "interpreters" of Northcote
25 Trevelyan was perhaps Warren Fisher, the first Head of the Home Civil Service,
26 in the years between the two world wars. For Fisher, the absence of a formal
27 legal definition of the responsibilities and duties of the civil servant was a dis-
28 tinctive virtue. The Civil Service should be an organization fully conscious of
29 itself, endowed with a cooperative sense and an esprit de corps, nurtured by rec-
30 reational activities and most especially sports, through competition with the
31 armed forces. What distinguished the character of the civil servant, Fisher told
32 the Royal Commission (Tomlin, 1931), was an integrity, fearlessness and inde-
33 pendence of thought. Fisher understood the civil servant as guided by principles
34 and precepts that could not be elaborated into any "detailed code" and for which
35 the most effective sanction was the public opinion of the Civil Service itself.
36 Later Edward Bridges (1950), the so-called arch exponent of generalist adminis-
37 tration (Chapman, 1988, p. 314) and Head of the Civil Service for 10 years after
38 1945, argued in a similar way. Bridges believed that a deep unselfishness marked
39 out the disposition of the civil servant, a capacity to put the inherited wisdom of
40 a department and a deep knowledge of the constitution to work. Whilst there was
41 always a place for specialists in the work of government, the practice of the
42 administrator was of a different order: the capacity to see the essential points in
43 a situation, to understand preconditions and implications and to anticipate future
44 circumstances (Bridges, 1950). And as was fitting for a country without a formal
45 constitution, the administration of government was something that could be



learnt only in practice, acquired through informal means and by a practice of self cultivation.

For the neo-Fabian reformers of the 1960s (Fulton Committee, 1968) such customary ideals and values were simply misaligned with the requirements of the modern state and the management techniques and specialist knowledge required for effective government. During Margaret Thatcher’s Prime Ministership the same ideals were understood to occlude the real economic ambitions of bureaucrats to expand their responsibilities for personal gain (Niskanen, 1973). But in the middle years of the 1980s, with Ponting these same ideals provided a language for contesting changes to the management of the Civil Service. In the aftermath of Ponting and following the Westland helicopters controversy, in which a civil servant had been found to have leaked a letter to the press in support of her minister, the First Division Association (FDA) of senior civil servants sought clarification of the duties and responsibilities of public officials. After Ponting’s acquittal, the Head of the Home Civil Service (Armstrong, 1985), argued that the duty of civil servants was first and foremost to the Minister of the Crown in charge of a department and that strict confidence was essential to the efficient conduct of government. For the FDA (1986), siding with Ponting, Armstrong had taken too limited a view of the duties of a civil servant. Whilst civil servants should indeed pursue the implementation of government policies assiduously, they should also provide honest and impartial advice, whether or not this was consistent with the view of a minister. For the FDA, civil servants had rightly been the custodians of their own largely unwritten professional values. Yet an effective response to what the FDA judged to be a fundamental change now required a new code of conduct to clarify and reinforce the duties of civil servants as subjects of integrity and bearers of the public good. The code would also afford a right of appeal to an independent body that civil servants could activate, specifically in circumstances where conscience prevented them from serving government or where the implementation of policy would entail an infraction of the law.

Though a right of appeal to the head of the Home Civil Service where conscience was at stake was introduced in 1987 and incorporated into a new version of Armstrong’s memorandum and amendments made to the ministerial guidance document, Questions of Procedure for Ministers (Baker, 2000), no further concessions were made at this time. But with the quickening pace of reform from the late 1980s, an array of actors both within the formal political process and beyond were calling into question how far the organization of the offices of government had departed from customary practices in terms that assumed a need for a new codification of norms and values. There were different versions of this argument. In some instances, it was primarily a matter of defending customary practice against practices, techniques and forms of expertise associated with the domain of the business enterprise. Thus, with the growing number of agencies, the increasing number of external appointments and the emergence of market testing, the implications of change the Treasury and Civil Service Committee (TCSC) (1992–1993) argued, had yet to be adequately considered. As if to

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1 deflect criticism, the government subsequently (Cabinet Office, 1994) affirmed a
2 “wholehearted commitment” to the principles on which the Civil Service had
3 been based: integrity, objectivity, political impartiality, recruitment and advance-
4 ment on merit and accountability through ministers to Parliament. There was no
5 conflict between customary ideals and the current direction of change, and gov-
6 ernment would proceed with an array of further refinements to enhance effi-
7 ciency and quality of service: new freedoms for the managers of the agencies
8 and a new senior civil service, more open to external recruitment and the use of
9 personal contracts. Yet for the TCSC, the government response suggested complac-
10 ency (Treasury and Civil Service Committee 1993–1994). Whilst there was
11 no inherent contradiction between their schemes and the customary traditions of
12 the Civil Service, government had shown indifference both to the effects of con-
13 tracting on staff morale and the imposition of targets on the agencies. Most of
14 all, complacency was implied by the assumption that core principles and values
15 would be maintained in a restructured Civil Service.

16 The analysis of the Treasury and Civil Service Committee shared much in
17 common with that of the Public Accounts Committee reporting in the same year
18 (Public Accounts Committee, 1993–1994) but the TCSC would reach the more
19 radical conclusion. The preservation of principles and values should not be for
20 civil servants and ministers to determine. The case for a new code – to provide a
21 benchmark for right conduct, to protect civil servants from being forced to act in
22 ways that violated standards and a right of appeal where matters of conscience
23 were at stake to a newly constituted Civil Service Commission, henceforward to
24 be established in law – appeared irrefutable. Claiming the risk of politicising the
25 Civil Service, Conservatives questioned the principle of introducing the law to
26 the offices of government. But the proposed code was ultimately accepted by an
27 increasingly defensive government and with additional duties for civil servants:
28 that they report cases of criminal or unlawful activity to the commissioners.
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30 **Arguments for political renewal and reform**

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32 By the later 1980s arguments for the reform of the government of civil servants
33 were being subsumed in broader programmes of rule. For some upholding the
34 good conscience and political neutrality of civil servants was considered a way
35 of advancing wider political and social change. Social Democrats (SDP) were
36 prominent, with Anthony Lester (1987) challenging attacks from both the polit-
37 ical right and left (e.g. Sedgemoor, 1980) on the British Constitution. In the
38 name of democracy, the centralised character of State power was in urgent need
39 of reform. An enforceable Bill of Rights, to include the rights and duties of civil
40 servants defined by Parliament rather than by the executive, was an essential
41 requirement to protect the integrity of civil servants against political
42 interference.

43 Rustin (2009) characterises the participatory democratic ambitions of the
44 intellectual leaders of Charter 88 as an attempt to reformulate a left of centre
45 politics in democratic republican terms. In the intellectual circles around the new



pressure group a distinctive analysis and critique of the state of the British constitution was being developed (Barnett, 1988). Borrowing from Anderson (1964) and Nairn's (1964) analysis of the pre-democratic inheritance of the nation, Margaret Thatcher's authoritarian politics had been enabled by a system that relied ultimately on the legacy of monarchical power (Barnett, 1988). But Charter 88 was intended from the outset to be a cross-party movement. Elements of the SDP and Liberal parties were prominent in the pressure group during these years. Charter 88's demand for political, civil and human rights, including the return of the extensive powers and prerogatives of the executive to Parliament to enrich and enliven democracy and enable liberty, quickly touched the politics of the centre left more widely. Responding to the Charter and seeking new political directions in the year after their initial formation, the Liberal Democrats advocated a bill of rights as a means to a new pluralist liberal democracy (Ashdown, 1989).

Enjoying particular influence in Labour circles, and most especially among members of the Labour Coordinating Committee (Evans, 1995), the Institute for Public Policy Research (IPPR) gave particular attention to the prerogative powers of government in fashioning a new written constitution (IPPR, 1990, 1991). Formed in 1988 by representatives of business, academics and trade unionists as an alternative to the think tanks of the new right and allying closely with the Charter 88 movement after 1991, the IPPR argued that changes to the organization of central and local government had been initiated with scant regard for the constitutional implications (IPPR, 1991, p. 7). Political resistance was an insufficient response, but enshrining a framework of rules in law and fashioning a set of positive rights, which government could not easily meddle with, would limit the dangers of the unfettered exercise of executive power. The management of the Civil Service was among the powers and privileges exercised by convention now requiring legal definition. For the IPPR it would be through the norms and standards of a professional code as defined and overseen by a newly constituted Public Services Commission, enjoying powers to investigate breaches and infringements as well as the complaints of civil servants, that a constitutional weakness would be remedied.

Of all those who would later enjoy influence in New Labour circles, it was perhaps Robin Cook who was most sympathetic to the proposed reforms. Cook, an early signatory of Charter 88 in 1988, at a time when the Labour leadership was largely hostile to the movement, believed a key insight revealed by the Thatcher years was the lack of formal checks and balances in the British constitution. After a decade in power, the absence of constitutional limitation, Cook argued, had allowed Conservatives to surround themselves with officials "incapable of distinguishing between their loyalty to the political ambitions of their Minister and the duty to the nation to provide a Civil Service above party politics" (Tribune 21 January 1994, cited in Theakston, 1998, p. 16). By 1994 the case for wide-ranging political reform was gathering momentum as the Co-ordinator of Charter 88 gave evidence to the recently formed Nolan Committee (Committee on Standards in Public Life, 1995) on the need for a Civil Service

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1 Act. The act they proposed would clarify the responsibilities and accountability
2 of civil servants and protect whistle blowers with an enforceable code of conduct
3 to uphold the values of impartiality, probity and integrity.

4 The Nolan Committee, set up by the Conservatives in 1994 in the immediate
5 aftermath of the scandal over MP's receiving remuneration for Parliamentary
6 questions but charged with a broader responsibility to investigate standards in
7 public life, shared the assessment that customary neutrality and impartiality was
8 at risk in the Civil Service. Reward and advancement appeared increasingly to
9 depend on commitment to a favoured ideology. With greater delegation and
10 more movement in and out of the Civil Service, greater vigilance over standards
11 of conduct was required. Greater attention appeared to have been given to effi-
12 ciency and effectiveness than the maintenance of these standards. Yet for Nolan
13 a code of conduct, though essential, needed to be of a type that would fit with
14 convention to be effective. The use of statutory force for the committee's pro-
15 posed code to be underpinned by seven principles of public life – selflessness,
16 integrity, objectivity, openness, honesty, leadership and conferring new powers
17 of appeal to an independent Civil Service Commission – was inadmissible on
18 these grounds.

19 The government accepted Nolan's recommendations in January 1996 and a
20 new code took immediate effect. Yet, after the publication of the Scott report in
21 the same month, the case for a code of conduct with statutory backing was made
22 with increasing urgency by an alliance of forces. Robin Cook (House of
23 Commons, 1996a) highlighted not only Scott's intimation of the deception
24 of Parliament by ministers over the sale of arms to Iraq but also the complicity
25 of civil servants in the deception (House of Commons, 1996a) and the inadequa-
26 cies of the advice they had supplied. The chair of the Public Service Committee,
27 Giles Radice, spoke of the Civil Service as a "national asset" at risk (House of
28 Commons 1996b). In common with others (Mandelson and Liddle, 1996),
29 Radice saw the problem of politicisation as lying not in the overt use of political
30 appointees as in civil servants having become overly familiar with the govern-
31 ment and the type of advice they wanted to hear. If, as Conservatives now pro-
32 posed, the Civil Service Recruitment and Assessment Services was to be
33 privatized, the ethos of the organization would be in further jeopardy. Now the
34 implications of such apparent abuses for the future direction of Labour pro-
35 grammes for the government of civil servants seemed to become clearer. It was
36 a matter of satisfaction, Radice argued, that his party believed not only that the
37 Civil Service should have its own code of conduct but that the code would be
38 placed on a statutory basis. Such a code would "define civil servants" and their
39 values and give a right of redress against abuses by ministers. By late 1996, with
40 the ratification of the Cook – McLennan agreement over a shared Labour and
41 Liberal Democrat agenda for constitutional reform, it appeared that the inde-
42 pendent status of the Civil Service and its customary values and norms would
43 shortly be defined in law.



The Blair years – reform arrested

It appeared in the early months of New Labour in office that constitutional renewal would be a priority. In the interests of “reviving” politics, addressing the political cynicism which had flourished under their opponents and improving the efficiency of government, the manifesto had promised an array of constitutional changes and a new decentralised and open style of governing (Labour Party, 1997). On 17 June 1997, in a speech to 600 civil servants representing all departments and agencies, the Chancellor of the Duchy of Lancaster reaffirmed New Labour’s commitment to restoring faith in the public service ethos (Clark, cited in *Local Government Chronicle* 19 June 1997). To that end, customary norms and values – integrity and incorruptibility, selection and promotion on merit and accountability through ministers to a democratically elected Parliament – would soon be fortified by a new legal status for the Civil Service code. Clark affirmed that the new government would “listen to and involve” citizens.

Yet there were expressions of concern at the lack of progress on Civil Service reform as early as 1998 (House of Lords Select Committee, 1998). In practice, New Labour’s priorities for the Civil Service were following a different course. The “Modernizing Government” (Cabinet Office, 1999) white paper, the first major statement of policy on the Civil Service, evokes a familiar sociological inflection in the discourse of New Labour (Finlayson, 2003). In a style familiar to Blair from the debates in *Marxism Today* in the 1980s, sociological argument was deployed in making available the facts of a situation in a way that brooked no argument (Finlayson, 2003). The established machinery of government was simply unsuited to the conditions of the time: social change and advances in new technology had encouraged new, more sophisticated and demanding consumers, to which governments were compelled to respond. The white paper praised the Conservative leaderships of Thatcher and Major for innovations in the deployment of management techniques and simulated market processes that had improved efficiency in the Civil Service. The offices of government should become more “strategic” and joined up to address the most complex social problems and to respond to a tendency toward fragmentation in provision and service delivery that had developed under the Conservatives. Government should acknowledge the central role of local partnerships in the enhancement of service delivery. The key challenge now was that of improving the implementation of policy, the responsiveness of the commonly recalcitrant civil servant to political goals, particularly in respect of the promotion of quality and choice in the delivery of public services. Performance management and other managerial innovations – the acquisition of external expertise, the improved use of technology, action on poor performers and enhanced performance pay – would be essential to a newly modernised Civil Service.

But with the rapid expansion of the use of outside expertise during New Labour’s first year in office, in the form of special advisers, and with new executive powers conferred on three of them, the House of Lords Select Committee (1998) warned that both the “collective memory” and the morale of the Civil

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1 Service were at risk. The case for the codification of the values and norms of
2 civil servants appeared more compelling than ever. The Wicks Committee not
3 long after (Committee on Standards in Public Life, 2000) raised similar con-
4 cerns, signalling its impatience with the government's lack of progress by
5 requesting a timetable for the introduction of legislation, to include target dates
6 for the consultation process. By 2002, with more than 80 special advisers now
7 working for the government and considerable adverse publicity on the effects of
8 their influence on the political process (Winstone, 2003), the Public Administra-
9 tion Select Committee (2002) argued that the protection of the public service
10 ethos should be at the centre of the government's reform programme. With addi-
11 tional threats to the public ethos presented by the role of private and third sector
12 interests in the provision of public services, the committee now announced it
13 would be drafting its own Civil Service Act. Given the government's seemingly
14 dilatory progress it would be for the committee to shape the debate over how
15 norms and standards might be best codified and scrutinised.

16 A distinctive feature of the debates of this era was the growing willingness of
17 new political actors – former leading public officials – to enter the argument,
18 speaking candidly on the current condition of the Civil Service. Sir Robin
19 Mountfield (2002) returned to the problems associated with special advisers,
20 arguing that the effects of these changes had not been to politicise the advice of
21 senior officials but to encourage their marginalisation in policy-making pro-
22 cesses. As his own experience as permanent secretary at the Cabinet Office had
23 made all too apparent, advisers were now commonly placed in the position of
24 conveying guidance to civil servants on behalf of ministers. Legislation was cer-
25 tainly required to entrench norms of neutrality and impartiality. But for Mount-
26 field, there were risks attached to the creation of a new legal concept of “civil
27 servant”: that officials might come to view their obligations as always above and
28 beyond those of the government of the day. More needed to be done not only to
29 clarify the obligations of politicians in respect of civil servants but also the
30 authority of special advisers and the appointment practices and roles of the
31 expanding numbers of seconded staff.

32 Shortly after retiring as head of the Civil Service, Sir Richard Wilson (2002)
33 sought to update Edward Bridges' characterisation of the civil servant for a new
34 era. Evoking the discourse of New Labour, Wilson wrote of modernisation as
35 the overriding priority of the Civil Service. Britain was in the midst of an
36 epochal shift, occasioned by the forces of globalization and changes in attitudes
37 and technology to which the central bureaucracy was compelled to respond.
38 Though there was much still to be done to enhance the quality of management
39 required to meet the demands of the new era, it was a matter of pride that so
40 much had been achieved: opening the Civil Service up to new talent from the
41 outside, improving the quality of leadership and the management and incentivi-
42 zation of performance. For Wilson, there was no fundamental tension between
43 such modernising measures and customary values. It was a matter of common
44 knowledge that the best way to protect those values was to show that civil ser-
45 vants could move with the times and adapt. Yet Wilson could nonetheless see a



place for measures that would define the activities of civil servants and relationships between officials and others now playing an increasingly important part in advising and assisting government and, in so doing, ensure that nothing of value had been lost in the course of modernisation.

Until 2002, notwithstanding the critiques of New Labour’s inaction and the manner in which current priorities exacerbated the problems of the Civil Service, the assumption had been that reforms would in due course be forthcoming. Now the Committee on Standards in Public Life, concerned at the lack of progress, invited staff from Blair’s office to discuss the position only for their invitation to be declined (Winstone, 2003). Leading officials were arguing that the real problems of government lay not in rules and the mechanisms of their enforcement but in “culture” and the changing of attitudes (Riddell and Sherman, 2002). Above all, the new head of the Civil Service, Andrew Turnbull, argued the enhancement of “delivery” and finding ways to match the rising expectations of consumers and social change was the central concern. And the pace of reform, he insisted, must increase. To that end, the Civil Service was now in the midst of a profound transformation with a new Delivery Reform Team in the Cabinet Office, comprising both officials and special advisers, under Turnbull’s own direction. Yet more had to be done to improve the responsiveness of private and voluntary sector providers in meeting the need for public services that afforded consumer choice and the required national standards of quality and flexible delivery.

By 2002 then, government had communicated explicitly that its priorities lay elsewhere. The agitation of the Liberal Democrat Lord Lester (House of Lords, 2003) and the publication of the Hutton (2004) and, especially, Butler (2004) reports and the further amplification of the critique of government’s indifference to the advice of officials prompted the publication of a draft Civil Service bill in 2004 (House of Commons, 2004). But the act itself would never materialise during the Blair years. Constitutional renewal – devolution, the Human Rights and Freedom of Information Acts – proceeded without the measures to reform the Civil Service approved under the Cook–McLennan agreement. Increasingly it appeared to critics that, for New Labour, the proposal of such a measure had only ever been a matter of expediency, designed to secure an alliance with the Liberal Democrats for electoral advantage, which ceased subsequently to be of great importance (Cook, 2004). As key members of the original alliance found themselves marginalised by a style of political discourse that admitted no opposition (Cook, 2003), the prospects for measures that would codify the activities of the Civil Service appeared unpromising.

Brown, “Britishness” and constitutional reform

Gamble and Wright (2009) interpret the discourse on “Britishness,” which Gordon Brown began to formulate after 1997, as a tactic for personal political gain, an astute response to evidence of the declining salience of British identity in the context of a newly devolved Britain by an ambitious Scottish politician,

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1 anticipating the era after Blair. Yet after 1997 the discourse on Britishness
2 should be seen in part for the way in which, in tandem with the Third Way
3 (Blair, 1998), it provided a way of affirming and naturalising New Labour's pro-
4 grammatic aims and priorities. Further, after the middle years of the 2000s,
5 reflecting on Britishness enabled Brown to begin to reformulate political prior-
6 ities and, it seemed, to fashion the outline of a future programme of government
7 for the era after Blair. In particular, the concern with British identity would give
8 a new emphasis to constitutional renewal and the problem of the powers and
9 influence of the executive.

10 Of the many references to historical sources scattered across Brown's various
11 speeches and articles on Britishness (Brown, 1997, 1999, 2004, 2005, 2006), at
12 first sight it is the trace of Burke that is the most striking. Britishness embodies
13 customary values, reflecting the collective experience of a people rather than a
14 "mystery of the blood" (Brown, 1997). Reminiscent of Burke, "modernisation"
15 and renewal are licensed to allow for the accommodation of inherited forms of
16 life to the exigencies of new times. Brown speaks of the recovery of authentic
17 British values and of establishing new institutional forms to reflect those values.
18 There are moments when Brown's history appears to be an explicitly partisan
19 and perspectival endeavour, laying claim to no absolute truth. Acknowledging
20 Britain's imperial past, Brown's history represents the nation "at its best." Fol-
21 lowing no predetermined path, the course of events is an effect of political
22 struggle and the exercise of the will. Yet Britishness can be read back from the
23 present through a golden thread, linking together the scattered historical
24 moments that engendered the values of a nation. At the heart of the national
25 character is the "commitment to liberty." Yet the liberty favoured by the British
26 has not been of a selfish type; Brown shares Himmelfarb's (2008) critique of
27 Tocqueville's American exceptionalism: civic association and civic virtue were
28 equally characteristic of the British. Values of personal liberty and moral and
29 social obligation infused the thought of Smith, Hume and other contributors to
30 the "British enlightenment."

31 Promoting efficient and customer sensitive public services, furthering "com-
32 munity," "partnership," "creative enterprise," "equality of opportunity" and
33 "outgoing internationalism," Brown commonly constructs a version of British
34 history such that New Labour policies, adapted to the "modern era," go with the
35 grain of a national inheritance. After 2005, however, the reflections on British
36 identity increasingly follow another course, suggesting a reformulation of polit-
37 ical priorities and the attempt to fashion the outline of a future programme of
38 government. There is no radical break with Blair's formulations in the Third
39 Way (Blair, 1998) but seemingly a new emphasis on political and social renewal
40 and certain constitutional ingredients, as means for the advancement of change.

41 Brown's interest in constitutional matters had a longer history. He was one of
42 the members of the Parliamentary Labour Party seemingly touched in the early
43 1990s by the broad movement around Charter 88 (Brown, 1992). At this time, he
44 set his argument for constitutional change in the context of wider debates across
45 Europe, in Germany and the former Soviet bloc countries, whilst acknowledging



the particular needs of Britain for fundamental change. A “modern view of socialism” (Brown, 1992, p. 395) evoked a number of “modernising” themes that had already emerged during the years of Neil Kinnock’s leadership (Keegan, 2004): state and business partnerships or the community as a resource for achieving the aims of social justice under an “enabling” or “empowering” state (Brown, 1992, p. 395). But releasing the capabilities and potential of all required an attention to the conditions of their liberty. A “modern view of socialism” (Brown, 1992, p. 395) in this sense suggested a variant of republican argument, highlighting the vested interests of political authorities and the risks of the abuse of political powers. Brown thus proposed an array of constitutional measures including freedom of information, reform of the House of Lords, devolution and a Bill of Rights. And a new and radical settlement between “individual, community and government” also required an effort “to reinvigorate the ideal of public service” all too often disparaged and undermined by the Conservatives (Brown, 1992, p. 402).

When Brown (2005, 2006) returned to these themes in the final years of Blair’s Prime Ministership, he can be seen as fashioning a position with a particular constituency in mind: the liberal intelligentsia, which he believed had been neglected in the earlier years of New Labour. The case for constitutional renewal was made in terms of the need to renew the British “passion for liberty” under new circumstances and conditions. Against a background of the continuing decline of levels of political participation and the need to respond to an array of challenges now confronting the nation, Brown (2005) argued for new ways of engaging people in the political process and fostering a revitalised sense of national purpose. In the years after 1945, faced with relative national economic decline and the end of Empire, Britain, Brown contended, had lost confidence and had failed to face up to a number of fundamental constitutional questions. Curtailing the powers of the executive in favour of the legislature, as well as enhancing citizen participation and local democracy and instilling a new sense of community in tandem with a “national conversation” over a new statement of citizen rights and responsibilities, now appeared to be central priorities.

“Renewal” after 2007

Seldon and Lodge (2010) present Brown as a leader without a programme. Between 2004 and 2007, an obsession with the pursuit of personal political ambition interfered with the development of a coherent programme, such that “an agenda for change” (Seldon and Lodge, 2010, p. xxi) became clear only in the final months of his Prime Ministership. The plan to formalise the legal status of the Civil Service Commission and Civil Service, and to put the Civil Service code on a statutory basis, became law only in the final weeks of Brown’s Prime Ministership, as part of the amended Constitutional Reform and Governance Act (2010), and even this depended heavily on cross-party support. Yet in the light of our reflections on the theme of British identity, the criticism appears excessive. In July 2007, when Brown spoke of rebuilding trust in democracy by measures to invest “more power in the British people” (Brown, 2010, p. 159), of

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1 curtail the powers of the executive in 12 key areas and of beginning a public
2 debate on these questions, his scheme should be viewed in the light of the
3 various reflections on the identity of the British in earlier years. Thus it appeared
4 that Civil Service neutrality, new limits on the powers of special advisers and a
5 code of ethics with legal backing, a device not only for maintaining the good
6 conscience of public officials but for renewing politics and society at large,
7 would soon be established as part of a wide-ranging new programme of constitu-
8 tional renewal.

9 The repeal of the Order in Council licensing special advisers to instruct civil
10 servants and the appointment of civil servants to key positions in the Prime Min-
11 ister's office appeared to signal a new direction. A new style of government was
12 announced at this time (Brown, 2010, pp. 151–182), with consultation papers on
13 constitutional reform published and citizens juries on child care, crime, com-
14 munities, health and education policy (Maer, 2007). Yet the commitment to
15 change would not endure. The perception that Brown misled the public over the
16 decision not to hold an election in the autumn of 2007, and the scandals over
17 party funding shortly after, undermined the claim to be advancing a “new pol-
18 itics” or style of administration (Seldon and Lodge, 2010). There was a long
19 delay over the publication of a white paper, and when it appeared (House of
20 Commons, 2008), though the proposal for Civil Service reform remained, the
21 proposed measures on constitutional reform failed to reflect the broad ambitions
22 of earlier statements. Lacking in clear direction and fearing the political con-
23 sequences of association with “old Labour,” Brown increasingly returned to
24 ideas associated with the Blair era (Seldon and Lodge, 2010), advocating new
25 schemes of modernisation, with an emphasis on consumer choice and personal-
26 ised forms of service provision (Needham, 2011). Introducing what would
27 become a familiar periodization of reform, Brown (2008) spoke of a new third
28 stage of modernization fashioned as a response to changing social expectations.
29 If the first stage had involved the use of targets, league tables and inspection
30 regimes to raise standards after years of decline, and the second action on spe-
31 cific underperforming service providing institutions, the third stage of public
32 service reform would see a greater diversity of providers and choice, more per-
33 sonal to the needs of individuals.

34 Lord Lester (2009), appointed as a special adviser in 2007, confirms the lack
35 of progress on constitutional reform at this time. With the global financial crisis,
36 Labour did not revisit the question of Civil Service reform again until the forma-
37 tion of the National Democratic Reform Council – effectively a subcommittee of
38 the Cabinet – and the publication of *Building Britain's Future* in June 2009
39 (Brown, 2009) in the final year of his Prime Ministership. Now, in the aftermath
40 of the scandal over MP's misuse of their allowance and expenses entitlements,
41 Brown tried to frame the problem in broader terms, returning to the theme of the
42 decline of trust in the political process. The long-term problem of “alienation in
43 political and civic participation,” it was claimed, had been brought into relief by
44 the scandal. The “first and most urgent priority” was to “fight for the interests of
45 the British people and clean up politics” (Brown, 2009, p. 1). *Building Britain's*



Future reaffirmed a new era of public service modernization, adding a new emphasis on legally enforceable entitlements for the consumers of public services. Civil Service reform was, however, conceived once again as part of an ambitious programme of constitutional renewal designed to rebuild trust in the political process and strengthen society.

Yet, Labour, in effect, ran out of time in the 2009/10 parliamentary session. The majority of the limited proposals announced in the first reading of the Constitutional Act, including measures for the reform of the House of Lords, protests near Parliament and judicial appointments, were ultimately excluded at the final stages. The Constitutional Reform and Governance Act became law on 8 April 2010, less than a month before the election. What saved the measures for the Civil Service was the support of the Conservatives, and a cross-party consensus on the need to formalise the legal status of the Civil Service that had emerged by this time. The Conservatives had developed a critique of Labour’s use of management consultants and the “alien” and “stifling” performance management regime of their opponents. It appeared that they too had come to a sympathetic appraisal of the customary ways of the Civil Service (Barratt, 2015).

Discussion: on the codification of Civil Service ethics

How then should we judge the provisions for the Civil Service and Civil Service Commission that emerged in the compendium act in the final years of New Labour? How should we appraise the value assigned to ethical codification in diverse schemes for the government of civil servants? We have highlighted the hybrid character of New Labour’s schemes during its final years. The ideal of safeguarding the core values of an independent Civil Service, relying on the precepts of a code with legal backing and contributing to a wider process of democratic and social renewal, coexisted and ultimately stood in a secondary and subordinate relation to priorities of a different kind. In uncertain economic and political circumstances Brown revisited, drew inspiration from and extended the application of notions of consumer choice and the personalised delivery of services popularised during the Blair era, prevaricating over constitutional questions. Labour, in Brown’s era, appeared to be caught between contradictory positions. Measures designed to renew citizenship co-existed with, and were trumped ultimately by, an emphasis on meeting the requirements of private individuals and “citizen consumers.” There was no fundamental break with the aims of the Blair era, with the pursuit of “business like,” “joined up,” “decentralised,” “partnership based” and, most especially, “consumer responsive” administration. Brown was therefore no less vulnerable to familiar criticisms of Civil Service modernisation, dating back to the arguments of the FDA and Treasury and Civil Service Committee in the 1980s and early 1990s. The problem of how political accountability and core principles and values were to be maintained in a more politically partial, incentivised, restructured and fragmented Civil Service remained unresolved. The question of how public trust in the process of government was to be maintained under such conditions equally went unresolved

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1 (Crouch, 2004). When the work of government is conceived in large part as an
2 expert, technical and managerial activity, the space for the practice of citizenship
3 and political engagement must surely contract (Brown, 2015).

4 In the years since the passage of the law, government policy has continued to
5 exhibit a contradictory logic. The law nominally protects the values of an inde-
6 pendent and neutral bureaucracy, whilst government, praising the characteristic
7 “flexibility” of the Civil Service (Cameron, 2012), pursues measures which
8 appear to undermine those same values. By 2010 the Conservatives had already
9 arrived at a position in which support for the scheme to formalise the roles of the
10 Civil Service and Civil Service Commission combined with an array of planned
11 measures designed to encourage more business-like and politically responsive
12 administration. (Maude, 2009a). A “cultural shift” (Maude, 2009a, 2009b), it
13 was claimed, was required in the light of national economic crisis and the need
14 to secure “more output from diminishing resources.” Government should be
15 more “strategic” in its approach, with government departments preparing busi-
16 ness plans and under the control of newly constituted departmental boards,
17 chaired by relevant ministers and including nonexecutives drawn from the busi-
18 ness interest (Barratt, 2015). With greater empowerment individual civil servants
19 would be able to display enterprise and inventiveness. All civil servants would
20 enjoy the right to request a new mutual or cooperative status (Conservative
21 Party, 2009c, p. 7), spinning off from the state and enjoying many of the benefits
22 of business ownership.

23 In government the Alliance built on these plans, pursuing the advice of an
24 array of governmental forces – think tanks and policy discussion groups – pur-
25 porting truths about the next phase of modernization. Today the extent of con-
26 sensus in political discourse is evident. For the Opposition, Michael Dugher’s
27 (2014) speech at the Institute for Government endorses recent reforms: the
28 enhanced role of the Prime Minister in the shortlisting of permanent secretary
29 appointments, new powers for ministers to appoint their own advisory teams on
30 temporary Civil Service contracts and the creation of a chief executive to oversee
31 a range of key strategic projects. Yet the government is criticised by Labour for
32 weakening the management of the Civil Service, and the favoured system of
33 business planning amounts to an abandonment of management control. A minor
34 shift in management practice is proposed, a preference for yet more business-
35 like practices in the light of the perceived failure of currently favoured practices
36 and an appraisal of the conditions and circumstances of the moment. Compre-
37 hensive performance management is the favoured remedy to meet the demands
38 of increasingly sophisticated consumers of public services and to ensure control
39 over more devolved mechanisms of service delivery (Labour Party, 2015). If
40 these objectives are to be met, Labour argue, the auditing and enhancement of
41 capabilities in the Civil Service should be a priority. Government must become
42 more integrated and strategic, transcending “silo management,” if critical issues
43 like health and climate change are to be addressed effectively. Dugher’s speech
44 reveals that the habit of endorsing the “core values” of the Civil Service, as
45 embodied in the Civil Service code, whilst proposing schemes that undermine



those same values appears to have become commonplace in British political discourse.

Without genuine and consistent political support, the law today seems a dead letter. And the weakness of the law has encouraged certain expert voices (Harris, 2013) to look to foreign example and the possibility of new forms of codification, to strengthen the powers of Parliament and limit the “flexibility” now desired by politicians (Cameron, 2012). Yet the value of truth assigned to codification in contemporary political discourse seems to be in need of fundamental reappraisal. Such an aspiration appears guided by a desire to standardize, at odds with the work of context sensitive reflection and judgment that an ethically guided administrative practice must surely require, whether it be the frank speaking criticism of a proposed policy by a mandarin or the application and interpretation of the law by a junior official. Ethically informed practice in this sense, or ethical agency as a mode of bureaucratic self rule, would appear unsusceptible to imposition by command (O’Toole, 2006).

Perhaps, eschewing the will to codify, we might benefit from considering the multiple practices and devices of power by which officials might be disposed to act in ethical ways. For Bridges, as we have seen, a proper comprehension of the arts of administration could be acquired only in practice, through informal means and by a practice of self-cultivation. Mechanisms of socialisation, the example of other officials and their practice were a surer guide to the acquisition of values and standards of conduct than the abstraction of a formal code. Equally, the “tradition” which Bridges sought to characterise in the 1950s depended heavily not only on devices of practical training and socialisation but also common employment standards: fair or model employer standards as they became known in the early twentieth century (Gladden, 1967) to nurture and maintain the active cooperation and loyalty of bureaucrats. Codes of conduct, as John Uhr (2005) argues, cannot motivate the bureaucrat. Indeed the very attempt to codify implies an attitude of distrust. Reformers have been concerned, as we have seen, to grant rights of appeal and mechanisms of redress against infringements of the code. Yet the functioning of these rules, if they are to be more than nominal, must surely depend on the existence of an employment relationship in which civil servants experience sufficient trust and confidence to appeal against infractions and exercise their rights.

The public denigration of civil servants, employment insecurity, the erosion of common and fair employer standards and work intensification has done much to undermine relations between civil servants and government in the era of austerity, with substantial levels of turnover, particularly at the higher levels of government (Public Administration Select Committee, 2013). In the post-Fulton era (Fulton Committee, 1968), the problematic condition of Civil Service morale has often been a subject of investigation, analysis and debate. As Keith Ewing (2007) shows “public employment values” have been subject to erosion over time; the effect is that the Civil Service no longer leads the market in the treatment of the employee but is led by it. And in the era of austerity, this tendency has intensified as civil servants become not only responsible, empowered subjects – who must take

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1 responsibility for finding solutions to the central problems of government in crisis
2 conditions – but also “punishable” subjects, who must lose “lavish” benefits and
3 conditions for the sake of the national good (Brown, 2015). Beyond the will to
4 codify bureaucracy in yet more ways, perhaps then it is to revision of the mundane
5 practices of public service personnel management that we should look for ways of
6 nurturing the ethics of officialdom, adapting the thought and practice of Fisher and
7 Bridges and the doctrine of the “model employer” for a different era.

8 John Uhr (2005) argues that today we require not only mechanisms of power
9 for nurturing good conduct among officials, but also additional instruments for
10 guarding against misconduct and impropriety, raising the question of how mech-
11 anisms of accountability might be enhanced. Perhaps here the history we have
12 been recounting serves as a useful reminder of varied currents within British
13 socialism. By 1992, Gordon Brown, once an advocate of the participatory poli-
14 tics of the urban new left (Brown, 1975) was, as we have seen, dabbling with a
15 variant of democratic republicanism that flowed through the Charter 88 move-
16 ment (Barnett, 1988). Brown, at this time, in conjunction with his “modernising”
17 tendencies, seemingly imagined a vigilant citizenry calling public authorities to
18 account and challenging abuses of office. The argument differs markedly from
19 New Labour’s primary interest in enhancing “participation” for the sake of
20 enhancing the legitimacy of parliamentary democracy and the strengthening of
21 society and social capital (Bevir, 2005). The scope and practices of participation
22 in New Labour’s favoured style seemed to be determined in advance, notwith-
23 standing the talk of a “public dialogue” during the years we have been consider-
24 ing. Brown, in his earlier democratic republican guise, shares more in common
25 with those today who imply the need not only for a range of familiar external
26 checks to discourage malpractice in government and administration – mech-
27 anisms of audit, Parliamentary scrutiny and a responsible press (Doig, 1997) – but
28 an educated, “distrustful” citizenry willing and able to speak frankly to govern-
29 ment (Bevir, 2005). Though these are not arguments we can develop fully here,
30 at issue here is the very concept of “accountability” and the need for the widest
31 possible public debate over the very terms of the association between citizens
32 and the local and central State (Wainwright, 2003; Marquand, 2004; Bevir,
33 2005; Newman, 2014). “Representation,” Wainwright for example suggests,
34 could be resignified to refer to practices which would seek to make citizens
35 present in the administrative processes of the State, a field of political practice
36 from which they are customarily absent. Bureaucratic knowledge could be aug-
37 mented by the customarily disqualified knowledge of the citizen and politicians
38 made more accountable by experimentation along these lines. Representation, in
39 this sense, could displace forms of influence commonly brought to bear on gov-
40 ernments and senior officials of the State, the clandestine work of think tanks or
41 the organised interests of business and the professions. Perhaps it is in such
42 debates that Labour, desperately in need of political reinvention, might find some
43 resources for a new style of politics today.



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