

The controversy over Civil Service accountability is symptomatic of an unstable constitution

Andrew Blick relates the recently completed Democratic Audit of the United Kingdom to the issue Civil Service accountability. While there have been substantial changes, the problematic constitutional principle that civil servants are only indirectly accountable to Parliament remains.



The manner in which civil servants are held accountable for their actions is at present a subject of considerable controversy. In the House of Commons, the Public Accounts Committee, the most senior parliamentary committee, has been pressing to hold *individual* officials responsible for their actions as accounting officers, even if they have subsequently moved on from the post.

Opponents of this idea, such as Lord O'Donnell, former Cabinet Secretary and head of the Home Civil Service and the senior public servants' union (the FDA), have raised concerns about issues such as the impact it will have on the individuals concerned and the impartiality of Whitehall. In the House of Lords, the Constitution Committee has been holding a [wide ranging inquiry](#) into the accountability of civil servants, encompassing key tenets of UK democracy such as individual ministerial responsibility and Civil Service impartiality. The viability of these principles is under scrutiny.

That these issues are being given serious and wide consideration underlines one of the key themes identified by the recently completed [Democratic Audit of the United Kingdom](#). The fourth such audit to be conducted since 1996, and the first published wholly online, it answers 75 individual 'search questions' divided into four main blocks covering 'citizenship, law and rights'; 'representative and accountable government'; 'civil society and popular participation'; and 'democracy beyond the state'. Overall the Audit identifies 74 areas of democratic improvement, 92 continuing concerns and 62 new or emerging concerns since the last full Audit was published in 2002.

A recurring observation made during this work was that the constitutional arrangements of the UK suffered increasingly from instability. Reforms, very often well-motivated and desirable, led to the challenging of existing practices, principles and institutions – yet it was not clear what might replace them. Some examples help illustrate this point.

Block 1 of the Audit shows how the UK constitution has shifted increasingly from being 'political' to 'judicial' in nature. That is to say, in a number of areas the courts have entered into the making of decisions that were previously more exclusively reserved to politicians. Under the European Communities Act 1972, acts of Parliament can be disapplied by the courts in so far as they are incompatible with European law. The Human Rights Act 1998 requires the judiciary to uphold individual rights as set out in the European Convention on Human Rights.

A general trend towards increased judicial review of ministerial actions – including using Royal Prerogative powers – exists. The Constitutional Reform Act 2005 in some respects appeared to provide for a potentially more assertive judiciary, providing a statutory underpinning for its independence, the rule of law and creating the UK Supreme Court, separate from the House of Lords. Yet while these developments might be seen as challenging traditional notions of an all-powerful Parliament, it is not clear what kind of arrangements they might lead to in time, and whether a more definite set of restrictions on 'parliamentary sovereignty' will ever come about.

Blocks 1 and 3 discuss the impact of the introduction of devolution to Northern Ireland, Scotland and Wales (and arguably Greater London) in the late 1990s. This change has called into question traditional perceptions of the idea of the UK as a unitary state. Devolution seems unlikely to be undone (aside from

the possibility of some kind of crisis in Northern Ireland); and the movement is towards greater autonomy (and perhaps secession for Scotland). But once more the outcome for the UK as a whole is unclear. How will the lack of devolution in England be handled? Might the UK move more clearly towards a federal system, possibly set out in a written constitution?

To return to the constitutional status of the Civil Service, block 2 of the Audit shows how various changes have impacted upon it over recent decades. Special advisers, temporary civil servants appointed on ministerial patronage and exempted from impartiality requirements, have come to be used increasingly since they were first introduced in the 1960s. From the late 1980s, the 'Next Steps' reforms led to large portions of Civil Service activity being shifted away from the immediate control of ministers into arms-length bodies. Increasingly government activities have been outsourced to the private sector. The Freedom of Information Act 2000 and associated initiatives have brought many more of the specific transactions of government into the public domain. Parliament, in its role as overseer of the executive, has seen its resources to some extent enhanced (though there seem to have been a squeeze recently) and produces a larger volume of work. In 2010 the Constitutional Reform and Governance Act provided for the first time a statutory basis for the Civil Service.

Yet against this background of change the basic constitutional principle that civil servants are largely accountable to Parliament only indirectly through ministers continues to be asserted. Problems can be identified with this idea. Perhaps most seriously, it is unrealistic to hold ministers responsible for all that takes place under their theoretical control. In recent cases, senior civil servants have been put into difficult positions by ministers who have insisted on questionable arrangements involving special advisers or informal outside aides.

But if we are to make a break with the existing constitutional position, with what shall we replace it? If civil servants increasingly become directly accountable to Parliament, the implication is that they are less under the control of ministers. Ministers, rather than rely on career civil servants, might in turn become more disposed towards utilising aides drawn from beyond Whitehall, either as special advisers, or placed in supposedly impartial Whitehall roles, or with no official status at all. In the process government might become less transparent and the existing model of an impartial Civil Service be undermined.

Furthermore, it might be asked; if Parliament is able to call individual civil servants to account for their actions, what will this practice actually amount to? Will parliamentarians be able to do any more than express dissatisfaction at what they regard as unsatisfactory outcomes? Once again a reform agenda which may have some merit will have led into uncertain territory.

The conclusion may be that there are some more underlying democratic arrangements in the UK which require attention. The Audit notes that the UK lacks a consistent constitutional amendment procedure and suffers as a consequence from piecemeal reform and democratic incoherence. Moreover, the research finds that, even since devolution, the UK as a whole remains a massively over-centralised state. In such circumstances, it will be difficult for any accountability mechanism to function effectively.

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