

SEPARATION VS. HARMONIZATION: A COMPARATIVE STUDY OF CIVIL SERVICE LEGAL ARRANGEMENTS IN EUROPE¹

*Caspar F. van den Berg, Frits M. van der Meer and Gerrit S.A. Dijkstra*²

1. Introduction

The formal and informal arrangements determining the position of civil servants and their relationship with political principles have come to be described in terms of public sector bargains, or PSBs (Savoie, 2003; Hood and Lodge, 2006). The idea of such bargains encompasses a wide variety of dimensions: conventions about accountability, recruitment, career, political neutrality, duty, and mandates.

A more general tension in contemporary public administration is reflected in the discrepancy between managerial employment arrangements and Weberian civil service values. Governments and governmental organizations are required to satisfy two opposing sets of demands; the first is a managerial set of demands (effectiveness, efficiency, flexibility and managerial discretion) while the second is a set of Weberian demands (integrity, non-discrimination, rule-based conduct, risk-avoidance and frugality).

In this article, we focus on the perspective of employment security and professional and ethical norms relating to political neutrality and integrity: major issues across various European countries over past decades. Moreover, we analyse the centrality of employment security, connecting the idea of bargains to discourse on managerialist Human resources management (HRM) arrangements, and flexibility in the personnel system. In addition, we address the essential question of the degree to which civil servants should enjoy a more protected employment position than employees in the private domain.

The direct motivation for this study is empirical: the resurgence of debate on the legal position of civil servants in the Netherlands

¹ This is an adapted version of an article that previously appeared in the *International Review of Administrative Sciences*, vol. 79 no, 1, March 2013 pp. 91-110. DOI: 10.1177/0020852312467548

² Leiden University Institute of Public Administration

gives rise to questions of a cross-national comparative nature. In the Netherlands, debate is closely connected to the question of the specific character of the public sector and the differences between working for the government and working in the private sector (the distinct nature approach). Some believe that there is (or should be) no fundamental difference between a job performed for the government and a job performed for a private corporation (the harmonization approach, as it has become known in the Dutch context).

A quick scan across a set of European countries suggests that, over the past fifteen years, many countries have arrived at a similar junction regarding the position of civil servants. We hypothesize that, for countries at this crossroads, there have been three broad paths available. The first (a left turn) reinforces the 'distinct character approach' to legal arrangements regarding the civil service. This approach implies that working in the service of the state entails working in a political, democratic and legalistic environment, naturally differing from that of the private sector. The second path maintains the status quo without any real decision or change. The third (a right turn) eliminates special civil service rights and responsibilities.

In this analysis, we have investigated the experiences of nine Western European countries, plus some Central and Eastern European countries, as a more or less homogeneous group of states. After discussing how historical roots and challenges defy such comparison, we present our findings first for the Netherlands, a country which seems to have made a right turn, seeking to alter the special bargain it formerly struck with its employees. We follow with analysis of a cluster of countries which have taken a similar route (Sweden, Denmark, Italy and Switzerland). The second cluster (Germany, Belgium and France) have chosen to maintain the status quo and, finally, we look at those which have taken a left turn, increasingly emphasizing the distinctiveness of public sector work over the past 15 years: Central and Eastern European countries and the UK. To conclude, we analyze and review our findings in terms of changing bargains.

Our study demonstrates that each country's political culture and experience over the past 25 years has influenced its ultimate direction. For this analysis, we use secondary material, mainly single

case studies by country, and some comparative studies, which cover multiple countries.

2. Public Sector Bargains and Challenges of Comparison

It is almost a cliché to state that, notwithstanding a myriad of technologies, public administration is, first and foremost, a matter of human interaction. Nonetheless, it is significant that the quality of public administration depends to a great extent on its administrators: politicians and civil servants. The position of both groups of officials is defined through a multitude of institutional arrangements and, in a formal sense, through legislation. Their positions are the product of an evolutionary process in which formal and informal rights and obligations have been defined through the interaction of a wide variety of participants. Our analytical focus is on the changing (legal) position of public employees: a changing public sector bargain. The bargain essentially focuses on implicit or explicit outcomes, in which politicians gain some degree of loyalty, expertise and competency from civil servants. In return, those civil servants obtain a place in the government structure, responsibility and rewards (Hood 2001; Hood & Lodge 2006).

Hood (2001) distinguishes between two main types of bargain: systemic and pragmatic. The most important difference is that systemic bargains refer to systems where public service is part of a fundamental constitutional settlement; pragmatic bargains refer to systems where public servants' rights and duties are more of a convenient agency arrangement between politicians and bureaucrats. The systemic bargain is divided into two subtypes: consociational; and Hegelian. The pragmatic bargain comprises three types: Schafferian; hybrid; and managerial (Hondegheem and Steen, 2013).

Hood suggests that a shift is occurring, at least for civil service systems of the Westminster type, in terms of pragmatic bargains, particularly as governments move from Schafferian bargains to managerial bargains. The managerial bargain involves:

- a) a 'turkey race' with respect to rewards (based on individual competition);
- b) a delivery attitude with respect to competence (ability to get things done); and
- c) an executive type of loyalty (the civil servant pursues defined goals within set parameters).

Hood's suggestion may seem plausible in the light of the various New Public Management (NPM)-inspired reforms seen across most European countries over the past 25 years. However, it should not automatically be assumed that change occurs in the same direction in each country, let alone in the same way or at the same speed. The first question is whether change processes in countries with a systemic type of bargain are similar to those in countries with pragmatic bargains. If bargains in all countries move towards the managerial type, does this mean that systemic types of bargains (consociational and Hegelian) are slowly disappearing? In this paper, we'll explore the shift in bargain types for a number of European countries where systemic and pragmatic bargains were the previous norm.

Before we begin empirical analysis, it is important to note the debate on the legal definition of the term 'civil servant', which varies widely across countries. The great variety of terms and definitions (given the specific and unique character of the system of public governance in each country) may result in us comparing apples to oranges. The various terms used in defining government personnel, civil servants and civil servant status make it a challenge even to analyze one country. This confusion becomes even greater when we begin cross-national comparison. For instance, the Dutch term *ambtenaar* does not signify the same thing as the French *fonctionnaire*, the British *civil servant* or the German *Beamte*. We are in danger of treating one as the standard against which the others are measured. There is no standard description of a 'real civil servant' so comparing civil service systems remains an unsatisfactory activity, with much potential for confusion (Demmke and Moilanen, 2010).

There is a tendency to reserve the concept of civil servant for those employed within 'classical Weberian career bureaucracy'. However, this approach may be too Franco-German inspired, so we will use the terms civil servant and civil service more generally, referring to public officials and public service regardless of the employment sector, or political-administrative or legal regime (Demmke and Moilanen, 2010).

The legal translation of these bargains will vary by country and by political institutional system. They may be defined in statutory law or in government prerogatives (or both) or may be codified or not.

Legislation may be established in framework or comprehensive law or in constitutional law (with or without qualified change mechanisms). These various forms have considerable potential for change and alteration, delivering additional bargaining instruments and influencing the bargaining game.

3. *The Turn to the Right*

3a. *The Netherlands*

When the modern Dutch constitution was debated (1848), drafted by Johan Rudolf Thorbecke, most legal experts emphasized the importance of a (constitutional) legal anchoring of a professionalized civil service. However, Parliament refused, partly due to fear of rising financial costs (Stekelenburg, 1999). Fifty years later, pressure from public sector labour organizations and constitutional lawyers resulted in a civil service law. The Civil Service Act (*Ambtenarenwet*) was adopted in 1929 and an accompanying by-law (ARAR) for central government was issued in 1931.

These laws regulate and define the constitutional and legal position of civil servants. Under their scope, civil servants enjoy 'public law status'. Since 1931, in cases of labour dispute, civil servants have been able to access administrative legal courts and procedures instead of using administrative appeal procedures (Van I Jsselmuiden, 1988; Stekelenburg, 1999). The bargain that developed in the Netherlands pre-WWII is most similar to the Schafferian public sector bargain. In the post-WWII period, other elements were added. In the 1970s and 1980s, when the civil service gained more representational duties, elements of the consociational bargain were added. Later, in the 1980s and 1990s, reform added some elements of the managerial bargain.

Most material provisions accompanying the CSA 1929 are established in (decentralized) by-laws, reflecting the decentralized nature of the Dutch state. As such, the CSA has the character of a framework law. Each government employer has separate by-laws regulating material provision with regard to rights, duties and rewards, and each government agency determines its own regulations. Since 1993, umbrella organizations for government employers and trade unions have worked together, using a decentralized bargaining sys-

tem (the labour sector model comprises 14 sectors). Employers and trade unions may meet and co-operate (although rarely nowadays) at a council for public personnel issues (ROP) or meet informally at the Center for Public Labour Relations (CAOP) (Dijkstra & Van der Meer, 2011).

Since the late 1950s, the issue of the use, and need for, a separate arrangement for civil servants has featured regularly on the political agenda. Constitutional and administrative lawyers have typically favoured maintaining the status quo, while labour law experts have favoured drastic reform, especially in respect of rewards, employment security and social security. Nevertheless, the system has been maintained - with the single exception of harmonizing the social security system with that of the private sector.

Quite recently, substantive discussions began anew. The 2010 coalition document (in which the coalition parties set the government's policy agenda for its term) included an announcement stating the government's intention to abolish the public law appointment and administrative legal protection. In November 2010, two MPs (Fatma Koser Kaya – Liberal Democrat, and Eddy van Hijum – Christian Democrat) submitted a bill abolishing the public law position of civil servants and harmonizing it with private sector labour law.³ After revision, the scope of the bill was limited to the rules of appointment, termination of employment and administrative legal review. The CSA and other non-substantive provisions would be maintained and elaborated by the Ministry of the Interior. Other public law regulations would remain in force.

Interestingly, recent debate on reviewing the status of public servants has almost exclusively focused on labour law and managerial aspects of public status (Van Peijpe, 2005). In the earlier stages of the debate, in the 1950s and 1960s, constitutional and public administration aspects received the most attention (Van der Meer et al., 2012). Proponents of abolishing the public law status seem to downplay aspects such as public legal codes relating to integrity, anti-corruption and political-administrative interaction and the basic rights of civil servants. However, public administration experts, constitutional lawyers and, notably, the Council of State have stressed the importance of these neglected issues.

³ Elements to be harmonized are arrangements concerning pensions, unemployment benefits and disability benefits.

The Dutch Council of State, the highest body advising Parliament and the Government on the quality and feasibility of proposed legislation, has expressed its formal opinion on the harmonization bill in the most critical terms. The Council argues that the bill neglects the distinct character of employment within a political and governmental context. Furthermore, the Council sees no reason to expect the type of flexibility and cost-reduction predicted by the bill’s authors.

The various parties involved, with different interests and positions, can be listed as follows (Van der Meer, Van den Berg & Dijkstra, 2012):

<i>Group</i>	<i>Assumed interest</i>
Political executive	Ending a perceived civil service ‘overprotection’ to achieve cutbacks;
Parliament (sponsors)	Appearing active and decisive in modernizing and de-privileging the civil service to achieve cutbacks and please the general public.
Top civil servants	Reforming the legal position of the rank and file in order to obtain more flexibility in HRM terms while remaining secure themselves given the existence of the ABD.
Council of State	Providing serious criticism regarding the nature and scope of the proposed legislation
Rank-and-file civil servants	Preserving the protection against political and managerial arbitrariness and material privileges, cf. public service motivation
Civil service trade unions	Protecting specific civil service rights. While some trade union leaders (FNV the social democratic unions) initially favoured a perceived increase in power during the labor negotiations; other unions were very much against.
Academics	Opposing the law (Public Administration scholars), and Supporting the law (generic Labor Law scholars).
Media	Possessing a historical aversion to what may appear as bureaucratic privileges
Broader public	

The above shows that the debate regarding the legal position of civil servants has regained significance in recent years. Although the public law system has been maintained, the major exception has been equality of the social security system with that of the pri-

vate sector. This can be partially explained by increased attention to labour market regulations but an element of revival of Weberian principles of bureaucracy is evident. We conclude that, although no final decision has been taken regarding reform of legal status, the discussion is of significance in itself, independent of final outcome.

3b. Scandinavian Countries: Denmark and Sweden

In Denmark, the majority of governmental personnel work in the service of the state via a collective labour agreement. As in Germany (see 4.4), Denmark has *Beamter*, as well as other staff who work for the state but without *Beamter* status. *Beamter* include senior civil servants, judges, police, prison wardens and defense staff, alongside State Church high officials. While other public sector employees may not be formally appointed as civil servants, the Civil Service Act and the Civil Service Pensions Law apply to them. Other labour arrangements, such as the Holiday Act, the Equal Treatment Act and parental leave, apply equally to both public and private sector employees. This has been in force since January 1, 2001 (Minister of Finance, State Employers Authority, Employment in the Danish State Sector (2005)).

It is important to note here that, although Denmark has partially normalized the legal position of a large part of public sector personnel, an additional, parallel system remains untouched (Niessen, 2010, p.25). It is interesting to see which categories are considered part of the inalienable domain of the state, and which categories fall outside.

In Sweden, civil service status was abolished during the heyday of NPM in the 1990s, with most public employees given equal legal status with private sector employees. Like Denmark, Sweden has crafted exceptions to the judiciary. Moreover, we must consider that egalitarian and co-operative (neo-corporatist) labour relations are typical of the Swedish societal model.

In cases of involuntary termination of employment, the legislator takes a restricted role. The 1970 Termination of Employment Act provides for redress against being fired and for rescinding involuntary termination; in cases of employer non-compliance, this can even result in financial compensation to an employee. Employers

and employees enjoy a substantial degree of discretion in composing their collective labour agreements (Heemskerk, 2009). In the Swedish model, an independent agency manages the negotiation process, and the government is only involved from a distance. It is important to note that this seemingly depoliticized model has its drawbacks, for example, concerning the politicization of the civil service and the preservation of a certain *esprit-de-corps* among civil servants.

Developments in Denmark and Sweden signify a turn to the right. Relatively recent reform in both countries has seen the bargain between politicians and civil servants move towards a managerial bargain, at least in regard to employment relations.

3c. Italy

Italy took a turn to the right 20 years ago; the public law status of labour relations for senior civil servants was eliminated in 1993, as part of reform of a political administrative system deemed defunct. Using NPM solutions, their legal status is now organized under private law. The aim has been to neutralize politics from the civil service and generate more mobility, while clarifying the differing roles of politicians and civil servants and bringing a degree of accountability to individuals (to encourage compliance with norms).

The emphasis in Italy is clearly on professional quality, integrity and political impartiality, as opposed to financial savings or the application of market-mechanisms to HRM within the government (Gualmini, 2012). The bargain was changed in 2002, when it was decided that top civil servants (secretary general level) would again be appointed by decree: a unilateral public decision (Ongaro, 2009). In doing so, the privatization of top civil servant positions was partially reversed. Under the revised policy, their appointment is under public law while their salary is determined on an individual basis by private legal contract, once every three years.

The public service bargain has evolved with greater emphasis on non-material aspects: professionalism, integrity and political neutrality. These, rather than managerialism, have been the driving force for reform of senior civil servants' legal status. We conclude that Italy has taken a turn to the right but has partly reversed this

in regard to top civil servants, rehabilitating the Schafferian bargain for top-managers.

3d. Switzerland

Switzerland is often cited as an example of a normalized system. In 2001, a referendum resulted in a new Federal Personnel Act, which replaced the old Civil Service Statute. The executive relied on anti-bureaucratic sentiments among the general public, upheld by the referendum. The instrument was used to change the Public Sector Bargain (PSB) in legal terms.

The referendum allowed the executive to circumvent the resistance of public sector trade unions. The decision attained additional direct democratic legitimacy and the bargaining position of trade unions was undermined. At Canton-level, the status of *Beamter* was removed in a number of cases, requiring civil servants to be reappointed to their position every four years; this time-consuming and inefficient process has since been eliminated. Moreover, a number of categories of Swiss civil servants have remained under the new regime and under public law.

Article 8 of the *Bundespersonalgesetz* states: 1 *Das Arbeitsverhältnis ist öffentlich-rechtlicher natur* [Labour relations (for Federal Government staff) are subject to public law]. The elimination of *Beamtenstatus* has not resulted in the elimination of their special legal position but is rather a measure promoting the efficiency of HRM policies and civil service professionalism (as opposed to equalizing the legal position of civil servants with private sector employees). Public sector employees continue to enjoy stronger job protection than private sector employees.

In short, reform in Switzerland seems to imply fundamental modernisation along the lines of New Public Management, since the substantive meaning of the term *Beamte* has changed; at the same time, this change has not involved any real movement towards a managerial bargain.

4. Maintaining the Bargain

4a. Germany

We now shift to the cluster of countries continuing on the same path, with the position of their civil service largely unchanged. Germany is considered exemplary in having both *Beamter* (employed by the state and subject to public law) and ordinary public sector personnel (subject to private law - *Angestellten*). Historically, *Beamter* enjoy a special legal position, having a closer relationship with the state than the average citizen and representing the state to the rest of society. *Beamter* owe the state special service and loyalty, being granted certain privileges in return (with the exception of the *politische Beamte*): life-time employment in terms of salary; compensation in case of illness; and retirement pension.

After the Second World War, the Allied Forces abolished the *Beamtentum* in West Germany, holding this institution partly responsible for German aggression: not only failing to uphold the rule of law in times of totalitarianism but supporting totalitarian rule. However, its legal position under public law was reinstated in 1950. In recent decades, the number of *Beamter* within the public service has fallen slightly: primarily as a result of privatization and the fact that no new *Beamter* have been appointed within formerly state-owned enterprises (aviation, post and railways). Individuals working for an organization at the time of privatization have maintained their status of *Beamter*. Other public organizations, such as independent public bodies, have reduced their number of *Beamter*, reflecting their changing position and status.

Most German governmental personnel are not *Beamter*, but *Angestellten* - employed through labour contracts. Reforms affecting both groups have been carried out in recent years, with the aim of creating more transparency and standardization within the HRM system. Within Germany, the principle of separate status for servants of the state remains (albeit for a select group within the larger apparatus). Among the dominant group of academics (constitutional lawyers), formal doctrine remains.

The Constitutional (federalization) Reform of 2006 had consequences for civil service legislation. Although civil service unions resist-

ed, the Federal and Länder governments agreed to replace the old framework with *Beamtenstatusgesetz* for federal level and *Landesbeamtenengesetzes* for Länder level. These instruments decentralized career, pension and remuneration issues to the Länder, with due consequence for position (particularly regarding flexibility within the career system by combining or abolishing the different *Laufbahngruppen* career systems of *beamten* (see Bavaria and Rhineland-Palatinate); there were also salary differences among the Länder (Goetz, 2011).

As in Belgium, why do some functions in organization A receive *Beamte*-status while the same functions in organization B receive *Angestellte*-status - as is the case in various municipal governments? In the municipalities (but not so much the Länder) of the former GDR, there is no historical distinction between *Beamter* and *Angestellten*. The proportion of *Beamter* is believed to be lower than in Western parts of Germany, although, in absolute and relative terms, their number is increasing, even in the East.

In terms of public sector bargains, Germany retains a systemic type of bargain. Some elements of the managerial bargain may still exist, as there has been no system-wide change in terms of job protection, neutrality expectations or salary adjustment. There are insufficient grounds to conclude that Germany's public sector bargain is moving towards pragmatism.

4b. Belgium

The vast majority of government personnel in Belgium have statutory appointment under public law. In addition, there are contract employees, subject to private labour law. While labour conditions in the private and public sectors have become increasingly similar, this may not apply to values such as ethics, impartiality and civil service professionalism. At federal level, 27% of civil servants have a contractual appointment (Hondeghem, 2011). There is less outsourcing for lower-level work compared to other countries but contracts are also used for flexible and technical jobs (Janvier and Peeters, 2005). With local and provincial authorities, more individuals are signing labour contracts.

After an initial, dramatic increase in contract employees, proportions have stabilized since 2005. Often, contracts are used for ob-

ligatory job placements or subsidized jobs (both of which may be permanent in nature) and functions at lower levels. Sometimes, the criteria are less clear. There is ongoing discussion about the rights of contract employees vis-à-vis civil servants, since the former enjoy less protection (De Becker, 2011, offers a political point of view) and have fewer career opportunities (Hondeghem, 2011). For this reason, as well as those relating to NPM and performance management, the issue of a single unitary statute for all public sector personnel has been raised in academic public management and HRM circles. To read more about this, at local and provincial level, see Janvier (2003) and Janvier and Hendericks (2010). This has not yet led to concrete results, although both the Flemish government and the unions are eager to address the most negative aspects of the divide between statutory and contractual public officials. An important consideration in explaining Belgian immobility is the division between blue and white collar labour unions and the stalemate in politics and administration, due to numerous political divisions and neo-corporatist relationships.

Very recently, the Belgian federal government re-fuelled the debate by arguing for a reduction in differences between statutory and contract public sector employees. It argued that this should not lead to an abolition of the public law status of statutory civil servants, which implies a desire to widen (rather than narrow) the group of civil servants subject to public law (*De Standaard*, August 14, 2012).

4c. France

The French Constitution states that Parliament is in charge of the protection of servants in the military and public service. The Constitution, however, is not explicit about whether public service employees should have distinct status under public law. The legal basis for their appointment (which, given its public law nature, is necessarily unilateral) is established in ordinary legislation.

Contractual appointment to the French public service is only possible if (a) there are no civil servants able to fulfil a position, and (b) the position is temporary or included on a list composed by the *Conseil d'Etat* for this specific purpose. All other employees of the French public service are subject to public law. There are three *fonctions*: central level, decentralized level and health care.

A key area of discussion in France is the position of the Corps (Van den Berg, 2011). France has a corporate organization based on a career system, categorized by profession. The advantage of this system is professional expertise and the emphasis on specialists. However, the large degree of fragmentation and corps specialism can be a disadvantage, especially with respect to the power of the *Grands Corps*. On this point, policies are oriented towards minimizing disadvantages by limiting the power of the corps and corps mergers (Bezes and Jeannot, 2011). In conducting reform, the powerful French unions must be taken into account. According to Jeanne Siwek-Pouydessau (2010), civil service unions follow a three-fold strategy of ‘resistance without concession (*Force Ouvriere*) and defense of a civil service that serves citizens (CGT) and focuses on methods deemed inadequate (CFDT union)’.

From a PSB-perspective, there has been a considerable degree of stability in France: the changes that have occurred have been within the boundaries of the existing systemic bargain.

5. *The Turn to the Left*

5a. *Eastern European countries*

In this cluster of countries, the distinct nature of public sector service has been emphasized more in the past 15 years than ever before. The former communist countries of Central and Eastern Europe have adopted a distinct position in this debate. In the Communist era, civil service systems were heavily controlled by the dominant party; there was no separate legal position for the civil service, and employees had little power to counteract the dominating influence of party and political officeholders (Dimitrova, 2002). The system revolved heavily around personal relations (political and party), resulting in nepotism and favouritism.

After the fall of communism, initiatives were begun to promote greater expertise and (political) neutrality. Reform was encouraged by various countries’ accession to the European Union (Verheijen, 1999), which led to new (public law) civil service acts; this was one of the most important results of the Copenhagen (1993) and Madrid (1995) EU summits. Additional criteria state that professional civil services must be depoliticized and merit-based, and should follow

formalized standards of integrity. In this way, EU accession criteria have contributed to Weberian-inspired civil service legislation in these countries (Goetz, 2001). However, it appears that political leaders have tried to circumvent these arrangements and delay their implementation.

In Central and Eastern European countries, most public sector reform has been broadly oriented towards creating modern civil service systems, drawing on the NPM experience of a number of Western (mainly Anglo-Saxon) countries. However, when it comes to efforts to institutionalize specific values of ethics and professionalism, the choices made by governments reveal a clear penchant towards Weberian norms, showing the political and legal context of the public sector (Verheijen and Rabrenovic, 2007). In this sense, Central and Eastern European countries have opted for a systemic rather than pragmatic type of bargain.

5b. The UK

The UK is often hailed as an example of a state without statutory civil service provision; a wide range of public officials exists, governed by various employment schemes and regulations, reflecting level, among other factors. Their position was formalized following the adoption of the Constitutional Reform and Governance Act in 2010. The former arrangement had come under pressure, partly due to New Public Management-style reform. For participants in the bargain (primarily civil servants and ministers), it had become increasingly unclear how their roles and responsibilities should best be fulfilled, so reconsideration of arrangements followed. Interestingly, the Governance Act has brought reform similar to that proposed by Northcote and Trevelyan in 1854, as part of their *Report on the Organisation of the Permanent Civil Service* (and never put into practice).

The present Governance Act provides the British civil service with a legal basis, by formally establishing its core values: impartiality, integrity, honesty and neutrality, as well as merit-based appointment. The Act also establishes rules concerning 'special advisers' and the Civil Service Commission: the institution responsible for policies concerning government personnel and recruitment procedures.

The Constitutional Reform and Governance Act can be seen as a step towards the Weberian model of civil service legislation – even though, until recently, British attitudes appeared to be fervently opposed to such codification. The absence of such legislation has traditionally been seen as one of the defining features of the British civil service: thought to be much less legalistic than various Continental-European administrative traditions.

This is interesting for two very different reasons. First, developments in Britain may serve as an indicator for cross-national convergence in the legal position of the civil service across various EU member states: Britain's move towards a Weberian conception of the civil service reduces fundamental differences across the countries of Europe. Models that were once starkly different now seem to be converging: continental systems are adopting elements of Anglo-Saxon systems (less protection in material terms and more similarities with the labour conditions of the private sector) while Britain is adopting elements of the Continental tradition (codification of core values and constitutional obligations). On the other hand, the introduction of this act in Britain can be seen as a modern response to important questions concerning the expanding number of special advisors, who are not bound to political neutrality, and who have become increasingly influential over recent years - usually at the expense of the position of impartial career civil servants (Peters and Pierre, 2004 and Van den Berg, 2011).

Secondly, various aspects of developments in Britain seem contrary to the privatizing reforms that have taken place in countries such as Italy, Sweden and Denmark. In Britain, the public, legal nature of the civil service is more emphasized.

6. Trends in Rethinking the Bargain

This tour of a number of European countries demonstrates that debate about civil servants' legal position in a changing societal and governmental context is on Europe's agenda. It also shows that discussion is not limited to labour law, but includes the legal position of public sector employees as part of a broader debate about the role and position of the civil service.

Discussions in various countries revolve around professionalism, interactions with and relations to politics and society, and the degree of independence within a bureaucratic organization. The transformation from the distinct nature of public sector bureaucracy and deployment towards equality with the private sector looks like a shift from Schafferian bargains towards more managerial oriented bargains. Nevertheless, movement in various countries (mentioned above) seems to contradict this trend.

Generally, it seems that decision makers have moved towards equalizing labour conditions and social security issues in the public and private sectors. In contrast, the issue of 'normalization' of civil service rewards is explicitly avoided in most cases, given the political and societal sensitivity of public sector rewards (Peters and Brans, 2011). Ample attention has been given to public law arrangements relating to integrity, moral competency, political neutrality and the protection of civil service professionalism; these are closely related to the other issues mentioned but are more like hybrid bargains than managerial.

This implies that the two main aspects of public service bargains examined are independent of each other: the legal arrangement surrounding employment, and the ethical and professional norms regarding civil service integrity and political neutrality. While we see movement towards the managerial bargain on the substantive side, on the ethical side, we have witnessed a move in the opposite direction. For instance, in the Netherlands, employment arrangements are undergoing reform (following the harmonization model) yet ethical and professional norms are still very much stressed. We might argue that discussion concerning abolition of special civil service status has led to opponents reformulating their view on the importance of such status. In the UK, where ethical norms are increasingly made explicit and codified in rules, employment arrangements are not following the same path away from the traditional British model.

We suggested earlier that, despite some discrepancies in context and time of origin, all European countries have developed extensive legal and more or less formalized frameworks for their public service over the past 150 years. This development can be seen as part of

a bureaucratic revolution strongly associated with the development of the rule of law (Van der Meer, 2009).

Analyzing the relationship between politicians and civil servants in PSB terms (Hood and Lodge, 2006), civil service legal frameworks formalize public sector labour relationships (and ensuing bargains) into law. By this legal entrenchment, these relationships are made more durable, limiting room for interpretation and providing bargaining power for future encounters. All depends on the nature of the translation of formal and informal elements of public sector bargains into law.

According to the PSB concept, these bargains are the implicit or explicit outcomes of politicians gaining some degree of loyalty, expertise and competency from civil servants, and of civil servants securing their position in the government structure, with responsibility and rewards. Formalized bargain outcomes are made explicit in law, with changes to legal frameworks reflecting changing bargains. The (legal) translation of bargains varies, based on differences in the political institutional systems of a country.

The term bargain suggests (two) directly involved (contractual) parties: politicians and civil servants. What has become clear in this study is that many others are directly or indirectly involved. It is a misconception that both groups are unitary players, since both comprise a variety of actors with their own interests, rationales and bargaining positions, forming temporal associations and fluid coalitions. Within the group of politicians, ministers should be distinguished from members of parliament and party officials. The same applies to other levels of state and, in some cases, to various sectors. Among civil servants, there are a multitude of lines of separation; these include government level and functional sector but also hierarchical levels, involving top and senior civil servants and the 'rest', and functionally politicized and functionally bureaucratized senior civil servants (Van den Berg, 2011).

Civil service unions play a role, depending on their (formal) inclusion in government-labour relation mechanisms, the rate of membership mobilization and the degree of 'radicalism'. Besides the 'usual suspects' (executive officeholders and civil servants), other influential actors should not be disregarded: international organiza-

tions and institutions (EU and OECD primarily in European cases) and ILO and Human Rights institutions and courts at various levels. In addition, in some countries, professional associations and academics also play a role (labour and constitutional law, and political and public administration experts).

A PSB perspective in this case seems particularly appropriate in examining the definition and the redefinition of the (legal) position of public employees within the wider political administrative system of a particular country. In the past, reasons for formalized construction under public law have been argued in terms of a fairly simple bargain. A structured rewards system, an ordered system of tenure and promotion as well as protection from nepotism and political interference were offered by the political system, with rewards and a place within the administrative system offered in exchange for loyal support.

From discussions in political, professional and academic quarters, the suggestion might arise of movement towards the normalization or harmonization of the (legal) position of public employees copying private sector standards. Some fundamental assumptions regarding the nature of government in society and the nature of public employment underlie the primarily legal debate. The movement towards normalization is inspired by the idea of public and private employment being generic. Private employment schemes could be used to make public employment more flexible and more adaptable to political needs, given the diminished level of protection, increasing professional autonomy, and the use of private sector incentives.

We have found recent movement towards equalizing civil service personnel policies and practices with those in the private sector, as well as the normalization of civil service laws and regulations in countries like Sweden, Denmark and Italy. The last two elements have been seen to a lesser extent in the Netherlands and Switzerland. Given this evidence, it is often argued that there is a trend towards managerial bargains. Nevertheless, analysis shows that this movement is somewhat fragmented and, even, incomplete in these countries. Other countries have maintained the status quo (Germany, Belgium and France) while a third set have followed a path of Weberian principles being introduced or reinforced (Central and Eastern European countries and the UK).

For two reasons, the British case is of particular interest. Firstly, it has had a longstanding attachment to an alternative type of bargain, differing from Weberian-inspired bargains across Europe. Recent developments in the UK may spell the end in this regard (displaying some Weberian components). At any rate, fundamental rethinking of the bargain has been taking place in the UK. Secondly, the form of these arrangements is moving away from informality, with legal text being adopted and enacted, to define the position of the civil service and its basic principles. Besides substantive rethinking, the long-cherished flexibility of an uncodified bargain has been limited.

We have pointed to the introduction of (public law) arrangements for handling issues relating to integrity, moral competency, political neutrality and the protection of civil service professionalism, given governments' budgetary problems, which limit civil service pay. Often, aspirations to create managerial flexibility and a modern, outward-looking public service are unsupported or, even, in conflict with the available facts, complicating managerial bargaining.

References

- Becker, A.H.L. de (2011), The Legal Status of Public Servants or Public Employees: comparing regulatory frameworks in the UK, Belgium, France and the Netherlands. *Comparative Labour Law & Policy Journal*, 32(4), pp.949-990.
- Berg, C.F. van den, (2011), *Transforming for Europe: the reshaping of national bureaucracies in a system of Multi-level governance*. Leiden: LUP.
- Bezes, Ph. and G. Jeannot, The Development and Current Features of the French Civil Service System, F.M. van der Meer (ed.) (2011), *Civil Service Systems in Western Europe*, Cheltenham/Aldershot, Edward Elgar, pp.185-217.
- Demmke, C, (2004), *European Civil Services Between Tradition and Reform*, Maastricht: EIPA
- Demmke C. & T. Moilanen (2010), *Civil Services in the EU of 27*, Frankfurt am Main, Peter Lang.
- De Standaard* (2012), Fons Leroy, *Eenheidsstatuut Nodig in Overheidsjobs*, d.d. August 14, 2012
- Dijkstra, G.S.A. and F.M van der Meer, The Civil Service System of the Netherlands, Frits M. van der Meer (ed.) (2011), *Civil Service Systems in Western Europe*, Cheltenham/Aldershot, Edward Elgar.
- Dimitrova, A. (2002), Enlargement, Institution-Building and the EU's Administrative Capacity Requirement, *West European Politics*. Vol. 25, no 4, pp. 171-190.
- Goetz, K.H. (2001), Making Sense of Post-Communist Central Administration: Modernization, Europeanization or Latinization?, *Journal of European Public Policy*, vol. 5, pp.1032-51.
- Goetz, Klaus, (2011), The Development and Current Features of the German Civil Service System, F.M. van der Meer (Ed.) (2010), *Civil Service Systems in Western Europe*, Cheltenham/Aldershot, Edward Elgar pp. 37-67.

- Gualmini, E. (2012), Rewards for High Public Office: The Case of Italy, M. Brans and B.G. Peters, *Rewards for High Public Office in Europe and North America*, Oxon: Routledge, pp 96-111.
- Hondeghem, A. (2011), The National Civil Service in Belgium, F.M. van der Meer (Ed.), *Civil Service Systems in Western Europe*, Cheltenham/Aldershot: Edward Elgar, pp.115-149.
- Hondeghem, A. and T. Steen (2013), Evolving Public Service Bargains for Top Officials: Some International Comparisons, *International Review of Administrative Sciences*, vol. 79 no. 1, March 2013, pp. 3-8.
- Hood, C. (2001), Public Service Bargains and Public Service Reform, B.G. Peters and J. Pierre (eds.) *Politicians, Bureaucrats and Administrative Reform*, Routledge, London, pp.13-23.
- Hood, C. and M. Lodge (2006), *The Politics of Public Service Bargains: reward, competency, loyalty – and blame*, Oxford University Press.
- Janvier, R. and K. Janssens (2003), *De Mythe van Het Statuut Voorbij?* Brugge: Die Keure.
- Janvier, R. and E. Henderickx (2010), *Diversity or Discrimination*, EGPA paper, Toulouse, 2010.
- Meer, F.M. van der and L.J. Roborgh (1993), *Ambtenaren in Nederland: Omvang, Bureaucratisering en Representativiteit van Het Ambtelijk Apparaat*, Alphen a/d Rijn: H.D. Tjeenk Willink.
- Meer van der, F. M. (2009), Public Sector Reform in Western Europe and the Rise of the Enabling State, R Mathur (ed.) *Glimpses of Civil Service Reform*, pp. 171-195, Hyderabad, Icfai Press.
- Meer, F.M. van der, C.F. van en Berg and G.S.A. Dijkstra (2012), *Het Eigene van de Overheid en Haar Personeel in een Systeem van Multi-level Governance: naar een nieuwe ambtelijke status*, LUP Academic Series, Leiden University Press: Leiden.

- Minister of Finance (2005), *State Employers Authority, Employment in the Danish State Sector*, Copenhagen.
- Ongaro, E. (2009), *Public Management Reform and Modernization, Trajectories of Administrative Change in Italy, France, Greece, Portugal and Spain*, Cheltenham: Edward Elgar.
- Peters, B.G. and J. Pierre (eds.) (2004), *The Politicisation of the Civil Service in Comparative Perspective*, London: Routledge.
- Savoie, D. J. (2003), *Breaking the Bargain: Public Servants, Ministers and Parliament*, Toronto: University of Toronto Press.
- Stekelenburg, M (1999), *200 Jaar Werken Bij de Overheid, I, 1813-1940, II, 1940-1998*, Den Haag: Sdu Uitgevers.
- Verheijen, T.J.G. (ed.) (1999), *Civil Service Systems in Central and Eastern Europe*, Cheltenham: Edward Elgar.
- Verheijen, T.J.G. and A. Rabrenovic (2007), *Civil Service Development in Central and Eastern Europe and the CIS: Swimming with the Tide*, J.C.N. Raadschelders, F.M. van der Meer and T.A.J. Toonen, *The Civil Service in the 21st Century: Comparative Perspectives*, Houndmills: Palgrave, pp. 17-33.
- Wunder, B. (ed.) (1995), *The Napoleonic Model of Government*, Brussels: IIAS.
- Ijsselmuiden, P.G. van (1988), *Binnenlandse Zaken Een Het Ontstaan Van de Moderne Bureaucratie in Nederland, 1813-1940*, Kampen: Kok.

**KNOWLEDGE
MANAGEMENT
IN CIVIL SERVICE**

**УПРАВЛЕНИЕ ЗНАНИЯМИ
НА ГОСУДАРСТВЕННОЙ
СЛУЖБЕ**



