

*“What can we do about the Civil Service?”*

## WHAT CAN WE DO ABOUT THE CIVIL SERVICE?

William Kingston

An aspect of recent revelations from Tribunals and other enquiries is how badly the Civil Service has come out of them. The Department of Agriculture has been shown up by evidence at the Beef Tribunal, Health by Lindsay and the Pensioners' Homes case, Finance by the Dáil Committee on Public Accounts, the Revenue Commissioners by the same Committee and the McCracken, Moriarty and Flood tribunals, Public Enterprise by the revived Tuskar Rock air crash enquiry, Education by the Cromien Report and the Synnott case, Justice by the Special Criminal Court affair, and so on. It is perfectly obvious from the enquiry reports that there were many civil servants who knew that what was going on was wrong, but who could not speak out about it because the penalty for doing so in terms of their jobs is simply too great. In terms of what might be done to remedy this sad state of affairs, this article focuses on only one issue, which is that of job independence.

Although the Irish Civil Service derives from the British one, it has never possessed a characteristic which the British Civil Service shared with all the other European public bureaucracies up to the first World War. This characteristic was that public servants had a degree of independence of their jobs either through having private means or the possibility of alternative careers. It was this that produced Corps which could be authoritatively described as “supremely efficient, quite above temptation, entirely independent of politics” (Schumpeter 1939 p. 346). Even in the United States, where a permanent Civil Service developed late, von Mises noted the same characteristic:

*there was no numerous class of men who considered work in public offices their exclusive calling...Many remained in public bureaux for life. But they retained their personal independence, because they could always return to private jobs (1945: 68).*

Unfortunately, however, the “social stratum of adequate quality and corresponding prestige...not too rich, not too poor, not too exclusive, not too accessible” (Schumpeter 1943 p. 294) on which European Civil Services depended for their personnel, was destroyed by World War I. In Germany, Austria and France, war casualties were compounded by post-war hyperinflation, which of course completely undermined its economic basis. In Britain, where the chances of surviving the war as an officer were six times worse than as a private soldier, the cohort which would have staffed the higher, policy-making posts in the Civil Service of the inter-war years was

virtually wiped out on the Western Front (cf. Kingston 1983). Those lost had to be replaced by people who were totally dependent on their jobs.

There has never been a better encapsulation of what these demographic changes meant than the comments by Nevil Norway (better known as Nevil Shute, the novelist) on the loss of the British airship R101. Its construction was a Government prestige project, and had been given a strict deadline by the Secretary of State for Air, who committed himself to fly to India in it. Throughout, it was beset with technical problems and it never completed its flight trials. Nevertheless, the day before it was due to depart, civil servants were prevailed upon to give it a certificate of airworthiness. This also turned out

*Unfortunately, the  
"social stratum of  
adequate quality... and  
corresponding  
prestige..." on which  
European Civil Services  
depended for personnel,  
was destroyed by World  
War I.*

to be the death warrant of the Secretary of State and his entire entourage, as the airship had only got as far as Beauvais before it crashed in flames.

Norway, incidentally the son of the civil servant who was in charge of the Dublin GPO in 1916, was a remarkable engineer who had first-hand knowledge of the story, and wrote about it:

*[T]he high executive civil servants at the top...appreciated that quite abnormal and unjustifiable risks were being taken with R101...they failed to speak up against Lord Thompson because they were afraid... If just one of them had stood up at the conference table when the issue of the certificate of airworthiness was under discussion and said - 'this thing is wrong and I'll be no party to it. I'm sorry, gentlemen, but if you do this, I'm resigning' - if that had been said then or on any one of a dozen previous opportunities, the disaster would have almost certainly been averted. It was not said, because the men in question put their jobs before their duty.*

*Perhaps it is easy for an engineer to write like this, because he can get another job without much difficulty in some other branch of engineering; perhaps it is even easier for an author. This should not blind us to the facts, however, that in this case a number of high civil servants shirked their duty to preserve their jobs. It may be that under modern conditions of life in England it is unfair to expect a man who has spent his life in government service and is unfitted for any other occupation to place his duty to the State before his job. But if that be so, it should be clearly recognised that in certain circumstances these high civil servants will not do their duty, though all the honours in the book be showered on them by the Crown... I think this is an aspect of inherited incomes which deserves greater attention than it has had up till now. If the effect of excessive taxation and death duties in a country is to make all high officials dependent on their pay and*

“What can we do about the Civil Service?”

*pensions, then the standard of administration will decline and that country will get into greater difficulties than ever. Conversely, in a wealthy country with relatively low taxation and much inherited income a proportion of the high officials will be independent of their job and the standard of administration will*

*This lack of civil servants' independent financial means inevitably results in a situation where the task of a Department can never be other than secondary to the career security of the individuals employed in it.*

*probably be high (Shute 1954 pp. 138, 151-2).*

What Norway described as “modern conditions of life in England” have in fact *always* been the conditions of Irish civil servants, and it is consequently unrealistic as well as unfair to expect them to act as though they had a degree of independence of their employment which they do not have. But this lack of independence in turn inevitably means that the *task* of a

Department can never be other than secondary to the career security of the individuals employed in it.

Individual civil servants may of course be morally equal or even superior to other citizens. However, the reward/punishment system under which they work need have little relationship to whatever the output of their Department is supposed to be. Above all, it is not symmetrical: rewards for success by no means balance penalties for failure:

*Whereas failure for yesterday's entrepreneur simply meant the loss of money (someone else's) failure for the modern bureaucrat means the loss of part of his identity. A report of his failure goes on his file - his paper identity, a paper alter ego that follows him inescapably through life -and alters his identity unfavourably. Innovation is more risky for the bureaucrat than for the entrepreneur. Loss of identity is far more serious than loss of money, even one's own (Thompson 1969 p.5).*

Consequently, searching for “cover” against being blamed in the event of failure becomes a rule of life for a civil servant every bit as much as the search for profit is the rule for individuals who personally invest in their own risky projects. The result is that

*Inevitably, therefore, bureaucrats become dependent on the organisation for status and function - in the extreme case, for everything that is worthwhile. If they do not become alienated, they become organisation men, loyal to the organisation that supports them, thereby strengthening the system of organisational authority. Deprived of intrinsic rewards related to work or the rewards of the growing esteem of their professional peers, they become largely dependent upon the extrinsic rewards distributed by the hierarchy of*

*authority, thereby greatly reinforcing that institution. Their dependence upon organisational programs and procedures for whatever function they acquire induces a conservative attitude with regard to these programs and procedures. They may even hypostatise them into "natural laws", losing sight of their purely instrumental significance (Thompson 1969 p.21).*

When the only serious reward lies in promotion to a higher level within the hierarchy, opportunities for this become all-important, but since promotions are decided primarily by absence of failure, it is those who are best at arranging for their "cover" who move up through the hierarchy at the expense of those who take the actual task of the Department more seriously:

*Any form of organisation, including bureaus, will differentially reward those whose capabilities and attitudes best serve the organisation, and people will sort themselves out among forms of organisation depending upon their perceived reward. Bureaus reward a different type of personal behaviour from other forms, and, as a group, bureaucrats will be individuals who are most adept at this type of behaviour (Niskanen 1973 p.12).*

Obviously, outsiders have no right to blame a civil servant for behaving in this way - it is the only rational way to act, given the prevailing reward/punishment structure.

Unfortunately, as time passes, selection for promotion of the most career-focussed individuals tightens a bureaucratic organisation's hierarchical structure, and renders it progressively more self-regarding and less capable of delivering any outputs expected of it. From first-hand experience in Eastern Europe, Matejko has written a powerful description of this process:

*Functioning of the hierarchy and its survival becomes the primary goal and the original goals become only a window-dressing arrangement. There are several internal and external factors which contribute to such developments. One of them is the organisational hierarchy in itself which is so important in the daily existence of the people working for a given complex organisation that it soon occupies most of their attention.*

*In order to preserve its internal balance, the hierarchical organisation depends on the loyalty of its functionaries; and the fact that such complex organisation is oriented towards longitudinal survival as a social institution has importance here. The "loyalists" win in the long run against the task-oriented innovators because the stability of the hierarchical organisation depends on them. Risky endeavours become gradually eliminated; everything within the organisation becomes standardised in order to limit the uncertainty. However, this progressing standardisation leads at the same time to*

*"What can we do about the Civil Service?"*

*the dominance of mediocrity. The cause of innovators and organisational nonconformists becomes hopelessly subordinated to the cause of mediocrities who provide the bulwark of the status quo. In the long run, the outcome is easy to predict: complex organisations run by mediocrities become mediocre in themselves; there is a growing cleavage between them and the changing environment (1986 p.256).*

*The civil servants' only serious reward lies in promotion; and promotions are decided primarily by absence of failure. So searching for "cover" (against blame) becomes a way of life.*

The crucial point in Matejko's observation is that those who are focussed on their career path simply have to win in the long run against those who are more concerned with the task of their Department. This on its own is enough to condemn all "public/private" economic

arrangements. The evidence is clear that the motivation of those whose job it is to protect the public interest is no match for that of single-minded entrepreneurs from the private sector in any such relationship.

Such structural weakness is of course further reinforced to the extent that a public bureaucracy's task is what its political masters want it to be. Even an honest Minister will see this primarily in electoral terms, which can be how it contributes to his party's image, but even more, how it will affect financial contributions to its funds or how he can reward supporters with sinecures in semi-state bodies. A corrupt one will of course distort its task fundamentally in his own interest. Since job security and career progression within the civil service are everything to people whose skills have little value outside it, any Ministers whose reputation even hints that their power will be used against the career of anyone who stands up to them, will in fact meet no resistance at all, because the cost to individuals is too great.

It is true that the Head of a Department has countervailing power, explicitly granted by legislation. Unfortunately, however, since by definition those who do reach the top have been the most successful in the game of "cover", they are likely to have been correspondingly less concerned with their Department's task. The result is that by the time they achieve this power they have long since lost any desire to use it to confront a Minister. Similarly, at the Assistant Secretary level and even to some extent at that of Principal Officer, career-minded civil servants will have become particularly sensitive to the wishes, implicit as well as explicit, of their political masters, because of their influence on access to the final rungs of the ladder. Some tribunal evidence from senior civil servants convincingly showed that they had lost (or perhaps never even had?) any vision at all of their Department's objective task.

### What can be done about it?

Since the problem is that the cost to individual civil servants of doing their duty to their Department's task is so unacceptably high, the solution can only be some way of providing them with a degree of independence of their jobs. It is not to be expected that all civil servants will want this. Most are likely to prefer the line of least resistance, especially since this will do least damage to their promotion prospects. But the minority (probably the *very small* minority) who would act in the public interest if they could, are the necessary leaven in the entire system and the ones who must be supported. The most promising candidate for such support is practical endorsement of whistleblowing, the activity of bringing failure and wrongdoing to public notice.

*The minority who would act in the public interest if they could, are the ones who must be supported; and the most practical measure of support would be: endorsement of whistleblowing.*

The need to protect individuals who do this has been obvious in the private sector for many years. Regrettably, the preponderance of the evidence about whistleblowers is that the organizations they challenge succeed in wrecking, not just their careers, but their lives, as has been illustrated in well-documented cases, such as those related to Hoffmann-LaRoche, Baring's Bank, British Biotech, and the U.S. Tobacco firms. The whistleblower who does not suffer grievously for his or her actions is indeed a rare being.

One of the best known contemporary whistleblowers, Paul van Buitenen, is doubly interesting, both in being from the public sector, and in having caused the resignation of the entire Jacques Santer European Commission. The importance of "cover" to civil servants and the persisting damage to their careers of any errors on their records, means that a significant proportion of the energy in any bureaucracy is devoted to pretending that errors have not happened. This explains the intensity of the venom with which a bureaucracy turns on an individual who threatens to destroy this pretence. Apart from threats to van Buitenen that he would surely lose his job, and his actual suspension from it, his telephone was tapped and his computer access restricted, and before he presented the incriminating files to the Court of Auditors in Luxembourg, he had to go into hiding for fear that he might be robbed of them. Fear of the consequences is therefore a most powerful deterrent to whistleblowing, and indeed van Buitenen is on record that if he had known what it would cost him and his family, he would never have begun his campaign.

The book van Buitenen wrote whilst under suspension from his job in the Commission does not just recount what happened, but also contains some valuable reflections on how a modern bureaucracy can be made more like one of the "old" European ones:

*"What can we do about the Civil Service?"*

*Whistleblowing is not a crime. It ought to be thought of as an important part of a modern and open administrative culture. Open and transparent organisations have nothing to fear from a whistleblower. Whistleblowing is not a "necessary evil." It is a guarantee against the persistence of structurally endemic fraud and irregularities. It is an illusion to think that stricter regulations and a perfect audit policy can wipe out all major irregularities. In my own practice as assistant auditor in the Commission, but also before I worked in Brussels, I have observed on many occasions that major breakthroughs in ongoing investigations could only be achieved with the assistance of responsible whistleblowing .*

*The independent experts confirmed that the events leading up to the resignation of the former Commission demonstrated the value of officials whose conscience persuades them of the need to expose wrongdoings encountered in the course of their everyday duties. They also showed up how the reaction of superiors failed to live up to their legitimate expectations. Instead of offering ethical guidance, the hierarchy put additional pressure upon me (van Buitenen, 2000, p.249).*

The results of legislation to deal with these problems have not so far been very encouraging (see Feldman 1999). In the U.S., the Civil Service Reform Act of 1978 was a failure, and was replaced by the 1989 Whistleblower Protection Act which was little better. The U.K. passed a Public Interest Disclosure Act in 1998 and in Ireland the similar Rabbitte Bill is only crawling towards becoming law, even though it has all-party support in the Dáil.

The first case brought under the British legislation has recently been won, and the damages awarded were nearly £300,000. Whether this is adequate payment for losing a job will depend upon the whistleblower's future employment prospects, but if these have been damaged, such a sum would be poor compensation. Certainly, it would not be of much help to an Irish civil servant.

Every public bureaucracy extracts an undertaking from its members that they will keep all its affairs in strict secrecy. This adds a further strong element of deterrence to whistleblowing, since the more conscientious a civil servant is, the more reluctant he or she will be to break an undertaking which had been entered into freely. Van Buitenen's actions were sustained by his religious faith, and one of the most touching aspects of his account is how much anguish he suffered from this particular element of what he believed he had to do.

Yet, it is through this very secrecy undertaking that a practical way of providing some independence of their jobs to civil servants can be envisaged. An external, Ombudsman-type body could be given power to release any civil

servant from this obligation, upon showing of good cause. This might not go as far as permitting *public* disclosure in the first instance, but might only allow information to be passed to some appropriate individual or body outside the bureaucracy. In van Buitenen's case, for example, his evidence that he could get no action from his own Directorate-General on the information he had collected, might have resulted in his being given explicit permission to disclose it to the Court of Auditors of the EU.

The very existence of such an external, independent body would instantly change the balance of power within a bureaucracy as between the whistleblower and his superiors who wish to cover up whatever he has discovered. At present, any such superior has enormous power of intimidation. But if a superior is deprived of this power, he has little choice except to act on an internal complaint, since otherwise he himself may be blamed both for causing an external supervisory body, or at the limit, even the public, to learn about the wrongdoing or failure to perform to an acceptable standard.

It has to be accepted as likely that a civil servant who is known even to have asked for release from his obligation to secrecy, even if he never has to use any freedom he may be granted, will be marked out as a troublemaker and that his career will suffer accordingly. It is certainly unrealistic to think that one who actually takes the step of bringing failures in his Department to public notice will ever have the career progress he might have expected if he had kept quiet about them. Even van Buitenen, who "won" his battle with the European Commission (at least to the extent that the Santer Commission lost) has completely failed to get back into any aspect of the audit function for which he is trained and in which he is so obviously effective. He has also had to agree not to accept invitations to speak. All this is in spite of the extent to which his "rehabilitation" is being watched carefully by a wide public, and of the decoration bestowed on him by the Queen of the Netherlands.

A possibility well worth exploring as a means of dealing with this, is extension of a provision which already exists in Germany. In the two highest ranks of the Civil Service there, an official can be transferred by his Minister without any reason being given, but if the change is not acceptable, the official can retire on full pay (Plowden 1994 p. 95). Why should a similar provision not apply to *all* ranks if subsequent discrimination against an official because of whistleblowing through loyalty to his Department's task could be shown?

If this was considered too vulnerable to fraudulent claims for "exit", it should still be possible to rely on the pensionable nature of civil service jobs. The external, Ombudsman-type body which had earlier given the whistleblower release from his undertaking of secrecy could also be given the power to award him an option to retire on pension, if his career has suffered as a result of using this freedom. Such a body should also be able to apply some factor to increase his pension at the date of retirement, to take account



*"What can we do about the Civil Service?"*

of the fact that pensions are usually calculated as a proportion of final salary, and the whistleblower is virtually sure to have forfeited a career path that would lead to a high one.

Giving the external body this additional power would undermine the position of those who wish to cover up wrongdoing still further. They would then run the risk, not just of being blamed because their inaction resulted in the wrongdoing being revealed to an external supervisory body or even to the public, but also for the extra pension costs (and adverse publicity) which will have to be borne. If the external body could give some sort of undertaking on the pension issue on the basis of evidence presented to it in confidence by the

*The obligation of professional secrecy might stand in the way of whistleblowing. But an external Ombudsman-type body could be given power to release any civil servant from this obligation, upon showing a good cause.*

whistleblower before he makes use of his release from his obligation of secrecy, it would be all the more effective in preventing covering-up and inaction within bureaucracies, before problems reach the stage where public revelation is the only way of dealing with them. If proper action had been taken about van Buitenen's discoveries when it should have been, M. Santer would still be President of the European Commission, even if without Mme. Cresson as a fellow-Commissioner.

There is another way in which such an external body with the power suggested could be beneficial to public bureaucracies. Van Buitenen places his faith in "transparency" as a cure for bureaucratic corruption, and some countries are attempting to improve their Civil Services through this means. However, not everything can be opened to public gaze, and transparency has its own disadvantage. There is growing evidence that in countries where Freedom of Information Acts have been introduced, civil servants are recording less of what they do. In Ireland, for example, top Civil Servants are known to have destroyed their diaries, lest an enquiry under the Freedom of Information Act might reveal their involvement in decisions. This is to be expected, in light of the bureaucratic practice, referred to earlier, of searching for "cover" against attribution of blame. But bureaucratic organisation is only able to operate to the extent that it has more or less complete information, an important aspect of which is that it is codified, indexed and accessible. This reflects the record-keeping activity (the sanctity of "the file") which has always been the hallmark of civil service life. To the extent, therefore, that records are being replaced by informal communication - or worse, by informal decision-making - bureaucracies are moving still further away from the standards of the "old" bureaucracies that were so effective.

The external body proposed above would preserve whatever secrets need to be kept in the public interest in all but the rarest cases. As well as this, its

existence should bring about a great improvement in the morale of civil servants. At the present time, it must be extremely frustrating for the best of them to be aware of incompetence and even wrongdoing and to feel helpless to do anything about it, because the personal cost of taking action is so terribly high. This point is illustrated by the following comment by a former Taoiseach:

*And let no one say that we did not know at that time that tax avoidance and evasion existed on a massive and crippling scale. In addition to the phenomenon of massive understatement of income by tens of thousands of taxpayers, hundreds of thousands of people, many of them very well-off, were abusing the provision for tax exemption on small savings by spreading their money over multiple accounts. It was because of this massive diversion of resources away from the Exchequer that as Taoiseach, on the suggestion of my economic adviser, I initiated the DIRT tax in 1986.*

*The enforcement of this tax would, I believed, flush out those who by their selfish lawlessness were effectively helping to bleed to death the State - and through the State our whole society. Unhappily, my DIRT initiative was shamefully sabotaged by some still unidentified person in the Revenue Commissioners who arrogated to himself the right to instruct his subordinates not to enforce the law. We are, apparently, now expected to believe that no one in the Revenue Commissioners knew then or since who gave this obviously illegal instruction - one that was, however, obeyed to the letter by its officials for a decade thereafter (Fitzgerald 2001).*

By providing civil servants with a degree of independence of their jobs, albeit only in serious situations like this one, the proposed arrangements seem to hold out considerable promise of ability to change the operating standards of the civil service for the better. In the case cited by Dr. Fitzgerald, for example, could we not expect that they would have emboldened someone in the Revenue Commissioners to shout stop? Even more important, might not the fear that this could happen have prevented evasion of the law in the first place?

**William Kingston lectures in the School of Business, Trinity College Dublin.**

#### **References**

- van Buitenen, Paul, *Blowing the Whistle*, London: Politicos, 2000.  
Feldman, Estelle, "Whistleblower protection: comparative legal developments", *Irish Law Times* 17, 264-72, 1999.  
Fitzgerald, Garret, *Irish Times*, April 14, 2001.  
Kingston, William, "Ideas, Civil Servants and Keynes," *Economic Affairs*, February, 1983.

*"What can we do about the Civil Service?"*

Matejko, Alexander J., *The Self-Defeating Organization*. New York, Praeger Publishers, 1986.

von Mises, Ludwig, *Bureaucracy*. London, William Hodge, 1945.

Niskanen, William A., *Bureaucracy: Servant or Master?* London, Institute of Economic Affairs, 1973.

Plowden, William, *Ministers and Mandarins*, London: Institute for Public Policy Research, 1994.

Schumpeter, Joseph A., *Business Cycles*, 1939.

Schumpeter, Joseph A., *Capitalism, Socialism and Democracy*, New York: Harper and Row, [1942] 1958.

Thompson, Victor A., *Bureaucracy and Innovation*, Alabama: University of Alabama Press.