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Civil Servants and Politicians: Problems and Future Prospects

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Introduction: the Dutch Iraq report

At the beginning of 2009, after six years of quarrelling in Dutch politics, an independent committee was established to investigate the decision-making process in the Netherlands concerning the invasion in Iraq in 2003. On 12 January 2010, the Chairman of the Committee, the former President of the Dutch Supreme Court Davids, presented the Committee's report to the then Dutch Christian Democratic prime minister Balkenende (CDA). What happened immediately afterwards was astonishing: the Dutch prime minister gave a press conference the same day during which he rejected almost all the critical conclusions of the Committee. He considered that what his government had decided at the time, which amounted to political support for the invasion, was still right and that the Committee's position merely illustrated that one could take a different view of the matter.

That this was not the most sensible thing to do under these circumstances became immediately clear. The Social Democratic party (PvdA), who had always been against the invasion, demanded a rectification by the government. They were currently coalition partners with the Christian Democratic party (CDA), but were in the opposition when the invasion took place. Their demand almost led to a political crisis. At the end of the day the government came up with a statement, reluctantly supported by the prime minister, that in view of the knowledge they now had available, a more adequate legal mandate of the invasion would have been necessary. A few weeks later, after lengthy internal debates, the government came up with a more elaborate reaction which seemed to support the headlines of the report but in which at the same time many things were brilliantly omitted.¹ However, this

all appeared to have come too late to save the government. Two weeks later the government stepped down because it could not come to an agreement on the eventual renewal of the Dutch military mission to Afghanistan.

As mentioned above, the report of the 'Davids Committee' is very critical of the way the Netherlands decided to support the invasion. What from the perspective of this volume is particularly relevant is that the report gives an interesting view on the way politicians and civil servants dealt with the matter. As the report suggests, there was a fundamental difference of opinion within the Ministry of Foreign Affairs regarding the legitimacy of using force against Iraq. According to the committee, legal arguments were systematically overruled by political considerations. Lawyers of the Legal Division of the ministry were hardly have been involved in the decision-making process. Further, they did not have had direct access to the minister. The legal arguments sustaining the conclusion of the Dutch government at the time – that there was a sound mandate under international law – the committee found to be biased, as if such a mandate, although controversial, could still be construed (Davids Committee 2009, 268–273).

More or less the same happened with the information of the Dutch Intelligence and Security Services. Although these services were more critical about the presence of weapons of mass destruction in Iraq than their colleagues abroad, these signals were, again according to the committee, not reflected by the relevant ministers and departments. On the contrary, ministers and departments extracted those statements from the intelligence service reports that were consistent with the political stance already adopted. Even the competent parliamentary committee, coming together in secret, had not been informed by the government about the more nuanced views of the intelligent services.

However, the critical analysis of the committee was not the final word. After the publication of the report, feelings of dissatisfaction and anger about some of the committee's conclusions leaked out of the Ministry of Foreign Affairs.² Some civil servants, whose conduct has been heavily criticised were very disappointed about the report because, they held, it described the facts incorrectly. The suggestion, for example, that the decision to support the invasion was taken in a meeting which lasted only 45 minutes was in view of some of the civil servants involved absolutely false. A civil servant, who like his colleagues wanted to remain anonymous, concluded: 'If our ministers are not prepared to correct this, let us then have a parliamentary inquiry so that we can defend ourselves'. Jaap de Hoop Scheffer, the Minister of Foreign Affairs at the

time and former secretary general of NATO, did defend the civil service before the final parliamentary debate took place. He argued that the committee was wrong on several points and claimed that his civil servants did no wrong.

The end of the story is that a parliamentary inquiry had not been initiated because the government finally accepted the committee's presentation of the facts. Moreover the government announced some measures to ensure that what occurred in 2002 and 2003, would never happen again. One measure is that a special adviser on international law issues is to get a separate and strong position within the Ministry of Foreign Affairs.³ The government also found it necessary to 're-establish' the rule that different opinions on major political issues within the civil service must have access to the minister. Apparently this was not self-evident at the time.

What the Iraq report has meant for the relationship between civil servants and politicians is not entirely clear. Nevertheless, what the report does illustrate is that this relationship is increasingly a delicate one. Over the years, tensions between civil servants and politicians have grown; this does not apply solely to the Netherlands. In many countries civil servants seem to have come under growing political pressure. The question is: how come? Is this indicative of some trend of politicisation of the civil service and if so, how should this be viewed? Further, if we do conclude that there are serious problems in the relationship between civil servants and politicians, how can they be solved? I will now go into these questions and try to formulate at least a beginning of an answer. My answers will be based both on academic literature and on my personal experiences as a Dutch civil servant over the last almost 20 years. Although it concerns experiences from one specific country my observations are meant to be relevant to the relationship between civil servants and politicians at large.

In this chapter, I will first go into the issue of politicisation as the analytical framework of this volume. After setting the framework I will shortly analyse the growing tensions between civil servants and politicians and its possible causes. This analysis will be followed up by taking stock of possible ways of solving the present problems. In short, my conclusion is that more than changing the constitutional rules and conventions of ministerial responsibility, a clearer identification of the fundamentally different roles of politicians and civil servants can bring us nearer to workable relationships. If civil servants and politicians are strongly aware of their roles in the democratic process, I will finally take the view that politicisation of the civil service, if proportional and

well embedded in the daily business of the civil servant, as such, is not a bad thing.

Politicisation: the broader context

In parliamentary democracies the traditional view is that politics and the civil service should be strongly separated. The roles and responsibilities of politicians and civil servants are in this view fundamentally different. Civil servants are permanent functionaries that have to serve ministers of different political parties and backgrounds. To be successful and trustworthy in their role, civil servants have to be politically neutral. Obviously politicians are not. They have an electoral mandate to try to achieve their political goals. When politicians are in power and become part of the government, civil servants are expected to support them, but this does not mean that are doing the same job. They cooperate with each other from different historical and professional perspectives. Civil servants are supposed to be policy experts who advise politicians on the basis of their expertise and their long-standing experience. Politicians often are (at least initially) amateurs in the policy area they are responsible for but have the political contacts and political skills to effectively achieve things.

Despite the fact that the separation of politics and the civil service still seems to be generally accepted, academic literature draws attention to a general trend toward greater politicisation of the civil service (Bekker 2009). As Peters describes (Chapter 2 in this volume) this tendency has been apparent in any number of industrialised democracies over the past several decades. In an earlier publication he and Pierre (Peters and Pierre 2004) have defined politicisation as:

...the substitution of political criteria for merit-based criteria in the selection, retention, promotion and disciplining of members of the public service

Although many factors contribute to greater politicisation, the driving force behind this trend seems to be the growing political will to reduce the power of the permanent civil service who is considered to be entrenched and unresponsive. Strengthening political control over public policy is to be achieved by selection and by disciplining civil servants on the basis of political criteria. Peters has analysed in more detail which forms of politicisation can be observed in practice. At the same time however, the phenomenon of politicisation should not be

overestimated. With perhaps the exception of relatively few systems (like the United States and Australia), direct politicisation by replacing career officials by political appointees is still extremely rare. In so far as political intervention does take place, it generally concerns only very few functionaries at the top of the departmental hierarchy. Expertise and long-standing experience are, although perhaps less evident than in the past, still indispensable and highly esteemed features of what a normal civil servant is supposed to offer.

To fully understand how the relationship between politics and the civil service has developed over the last decades and which problems have arisen, it is necessary to put the issue in a broader context. Hereafter I will discuss three developments in the public sphere which possibly enhance tensions between politicians and civil servants:

1. The internationalisation of policymaking;
2. The increasing public attention for incidents in the executive sphere, and
3. The blurring of constitutional rules and conventions.

The analysis is not meant to be an exhaustive explanation of what has taken place within the civil service over the last years. Of course these tensions cannot be detached from the issue of politicisation. On the contrary, politicisation plays a role in the broader context of the development of the public sector at large as touched upon below. I will come back to this issue later.

Tensions: possible causes

Internationalisation of policymaking

The first relevant phenomenon is also the most external one. National civil servants are doing their work increasingly in an international arena far from public scrutiny by parliament or the media. Often only a few insiders know what civil servants are discussing in international and European networks not to mention ordinary people. This also results from the fact that supranational organisations are a fundamentally different environment to work in if one compares them with national bureaucracies in the traditional nation state. Decisions are not taken in a top-down fashion under political supervision but through a process of informal consultation and negotiation among politicians, civil servants, the private sector and civil society which often takes place outside the scope of parliamentary control (Vanhoonacker 2009). One could

easily assume that civil servants like this rather unclear situation in which they can often take up a position on their own, and perhaps some of them do. However, many civil servants do not like 'swimming around' without political guidance nor realising that politicians are hardly interested in their work.

An example from my own experience as a civil servant may illustrate this. In 1998 I was representing the Dutch government in the so-called Article 31 Committee: the Committee which assists the European Commission in implementing Directive 95/46/EC on data protection.⁴ In this committee, we were discussing the conditions under which personal data could be transferred to the United States where in many areas no proper data protection legislation was in place. During the debates in the Committee, I was feeling increasingly uncomfortable: how could I reasonably choose a position without knowing how my minister was thinking about this highly sensitive issue?

When I arrived back home from Brussels I went to see my minister and I told him what this data protection debate was all about and I remember well the way he looked at me with glassy eyes, apparently not having the slightest idea what I was talking about and, even worse, not at all interested in what I was saying. After a while he asked me: 'What is Germany's position?' I told him and got the impression that my answer did not at all influence his final conclusion by which he ended our conversation: 'Well, follow Germany'. One of the things I learned from this and other experiences is that national politicians are often not very interested in what civil servants are doing abroad. The main reason for this seems to be that politicians cannot easily score with the public on international policy issues. However, if it goes wrong afterwards civil servants can easily get the blame.

Incidents in the executive sphere

The second reason for growing tensions between civil servants and politicians is the public attention for incidents in the executive sphere. What we have seen over the years is a shift from holding ministers to account for their policy to searching for what went wrong in the farthest corners of the state bureaucracy. In this respect journalists and parliamentarians are often focused on who must get the blame rather than on what lessons can be learned (Verhey 2001). This can easily lead to difficulties in the internal relationships within governmental departments. Ministers and civil servants could be tempted into blaming each other for mistakes that have been made. What makes civil servants even

more nervous is that it can hardly be foreseen in advance which part of the executive bureaucracy will be in the spotlight. This often seems to happen by sheer accident.

A well-known example of the problems that can occur is the political clash in the United Kingdom around the safety in prisons in the nineties of the last century (Tomkins 2008). After a series of spectacular prison escapes Michael Howard, the Home Secretary at the time, started an independent inquiry into prison security. The inquiry's report that followed was highly critical of the Prison Service and of the entire system of prison management. When the report was published, a political storm broke out and the opposition called for Howard's resignation. Yet he refused to resign, instead calling for the resignation of the chief executive of the Prison Service. When the latter for his part refused to step down, Howard carried his decision through and dismissed him.

What was important in this case was the reasoning by which Howard evaded responsibility. He claimed that as a minister he was only responsible for policy matters, not for operational concerns. Because the problems which had been identified in the inquiry's report were caused by operational failures, Howard took the view that the chief executive of the Prison Service was responsible and therefore had to step down. Although Howard got away with it in this individual case, a few years later the House of Commons rejected Howard's distinction between policy and operational matters.⁵ Nevertheless, vast experience in the United Kingdom and elsewhere shows that when political tensions are rising, ministers sometimes publicly criticise their civil servants for executive failures.

As we speak about the growing public attention for incidents in the executive sphere the media plays a crucial role. To survive in politics nowadays a politician has to have a good relationship with the media. Protecting his reputation in public opinion is a top priority of every contemporary politician. This vital aspect of the daily life of a politician can easily cause tensions at ministerial departments. Where politicians feel the pressure of the media and often want straight answers and quick results, civil servants are inclined to exercise due caution on the basis of their expertise and experience.

Blurring of constitutional rules and conventions

Michael Howard's reasoning concerning the scope of ministerial responsibility closely relates to a third development which influences the functioning of the civil service. Constitutional rules and conventions

which affect the relationship between politicians and civil servants have increasingly been called into question. This especially seems to apply to the concept of political accountability. Critics are claiming that the concept is not suitable for holding large executive bureaucracies to account and that it should be replaced or at least be counterbalanced by other accountability mechanisms (Scheltema 2000). This could be achieved by involving other accountability forums like courts, chambers of audits, ombudsmen and civil society panels.

The debate on accountability does not in itself disturb the relationship between civil servants and politicians. The problem is much more that the perceptions of the key players in the political arena about what political accountability actually means or should mean have become blurred. One is not very familiar anymore with the rules of the game, and insofar as one is, one has become more and more divided about how these rules should be interpreted. Civil servants are increasingly confused about to whom they are accountable. Is it the minister, parliament, civil interest groups or society at large?

I can illustrate this again by my experiences when I was a civil servant during a course I took in the Dutch School for Public Administration. During the discussions we had and the role-plays we had to do, there appeared to be a widespread view with my colleagues that a civil servant is primarily a public manager whose task is to facilitate the decision-making process and by wheeling and dealing achieve a result that is supported by the most important interest groups involved. Then a fool suddenly asked: 'What about the minister?'. Most of those present looked at him in annoyance, apparently thinking: 'Probably a lawyer'. It was abundantly clear that the minister was an obstacle in the management game civil servants are playing and that for that reason ministerial responsibility should be reduced or even be abolished. Surprisingly this picture was by no means corrected by the course instructor.

Potentially the confusion about the role of the civil servant is even bigger at the level of the European Union. Within the fragmented and complicated institutional structure of the European Union a clear-cut concept of political accountability does not exist (De Witte 2009; Craig 2010). I could imagine that in the minds of European civil servants questions like 'To whom am I accountable?' and 'What does accountability in the EU context mean precisely?' could easily arise. This is not the place to go into this matter any further but suffice to say these are questions that are far from easy to answer (Bovens et al. 2010). At the very least the questions seem much more difficult in the international context than in most national democratic systems.

Executive accountability: changing the rules?

The relationship between politics and the civil service cannot be dissociated from the rich and in-depth academic debate on executive accountability. Traditionally in parliamentary systems executive power is located in the government who is accountable to parliament. In these systems, ministerial accountability is a vital constitutional principle without which effective parliamentary control of executive power would not be possible. However this picture does not fully correspond with political reality. Nowadays executive power is exercised not only by ministers who form the government, but also by many agencies and networks that function at arm's length of daily politics. As a result, many civil servants do not work at the traditional ministerial departments but at organisations where ministerial accountability does not or does not fully apply ('t Hart and Wille 2002).

In some states, agencies have become increasingly controversial. The most important reason for criticising agencies is their lack of accountability. Ministerial accountability for the actions of independent agencies is limited. Other, more 'horizontal' accountability mechanisms are controversial because they have not proven to be a full-grown alternative. Some people call for a restoration of traditional political accountability. In 2004, for example, a commission in the Netherlands recommended to bring almost all the agencies back to the ministerial departments (Werkgroep Kohnstamm 2004). However this advice was not followed up. On the contrary, the significance of agencies seems to be still growing.

The agencies debate shows that there is no consensus which model of the executive should be preferred. There are arguments for and against shared executive power (Craig 2010). However, experience shows that fragmentation of the executive is a serious concern. There is a considerable risk of getting into an obscure system of committees, agencies and policy networks which are almost inaccessible to the outside world and who are in fact accountable to no one. Here the 'problem of many hands' arises: because many different administrative groups and entities contribute to the decision-making process, it is hard to identify who is, at the end of the day, accountable for the outcome (Bovens 2007). For civil servants this is highly confusing. Because there is no single locus of executive power and because the traditional concept of political accountability has increasingly come under pressure it has become much more difficult for civil servants to meet everyone's expectations.

This is not the place to go much deeper into the pros and cons of different types of executive accountability. It is a complex debate which closely relates to the view one has on the role of politics in society. In any event it is an illusion to think that we could get rid of political accountability. Apart from very exceptional cases, civil services cannot function democratically without politics. There is no real alternative for obtaining democratic legitimacy than by politicians initiating political accountability for what the executive is trying to achieve or has achieved. Other accountability mechanisms can be worthwhile and are even indispensable sometimes, but they cannot substitute political accountability. So perhaps we should resist the first reflex to fundamentally change the constitutional rules. Or, as a prominent Dutch civil servant once said: ‘do not take refuge in constitutional structures’ (Niessen 2001).

Given the probability that political accountability will remain a core constitutional principle in parliamentary systems at least in the foreseeable future, it can be deemed essential to think about solutions within the current constitutional framework. In order to achieve a more effective implementation of political accountability mechanisms one should try to clarify the specific roles of the politician and the civil servant (‘t Hart and Wille 2006). Political scientist ‘t Hart (2000) has argued that in this relationship there are three general principles that should be recognised:

- that civil servants and politicians always treat each other with due respect;
- that they give each other enough room that they can effectively fulfil their responsibilities, and
- that their relationship is based on reciprocity.

In the next two paragraphs it will be explained precisely what this means for the minister and the civil servant respectively.

The minister: ‘role responsibility’

First the minister – what exactly should he do and not do? In 2002 the British constitutional lawyer Diana Woodhouse advocated a different way of implementing ministerial responsibility (Woodhouse 2002). She criticised a construction of ministerial responsibility which focuses on what she called ‘causal’ responsibility, that is, on the direct involvement of ministers in any errors or misjudgements. This is exactly what,

in Woodhouse's view, has resulted in ministers seeking to distance themselves from the cause of any departmental failings by employing constructions like Michael Howard's distinction between policy and operational matters. To avoid the scape-goating seen in Howard's case Woodhouse proposed moving away from direct personal culpability towards what she called 'role responsibility', that is, defining the requirements of the ministerial job.

Indeed the most harmful thing for a minister to do is to seek distance from departmental failures by publicly saying that they are not responsible. What actually happens then is that the minister gives the impression that he openly wants to shift the blame to his civil servants while these are not able to defend themselves. By doing that they are not only presenting themselves as a weak and insecure minister but are also undermining the very essence of the relationship with their civil servants. It seems self-evident that this should be avoided but practice shows it is not.

What should be done instead is defining the role of the minister more precisely. What he should do towards his civil servants are in fact three things:

- giving guidelines;
- explaining;
- supervising and amending if necessary.

The first thing he must do is give guidelines. A minister must make clear what he wants and what he expects from his civil servants to achieve this. When a government first takes office this is often not yet very clear. The most exciting time at the ministry is when the new minister comes in. The civil servant must be keen to find out as soon as possible what the minister wishes to achieve and how. Sometimes nothing happens. What makes a civil servant feel highly uncomfortable is a minister who has no opinions, who does not want to achieve anything or is simply not interested in the policy issues the civil servant has to deal with.

The second thing a minister must do is not only to say what he wants but also explain why. If a minister is only giving orders without giving the reasons the civil servants run the risk of not having understood how they should achieve effective results. Giving reasons also implies that the minister is fully prepared to listen to the arguments given by his civil servants and to explicitly weigh the pros and cons before coming to a decision. A good minister is a minister who initiates discussion and gives room to his civil servants to come up with all the relevant

arguments even when some of the arguments could limit the minister in what he wants to achieve.

From my personal experience this is not at all self-evident. As a civil servant I once sent my minister a memorandum in preparation of a meeting in which I thought I would hear his opinion on the issues involved. Shortly before the meeting I was called by the minister's secretary who read out loud what the minister had wrote down on my memorandum with his feared red pencil. He wrote:

Meeting can be cancelled. The advice of the civil servant is sufficiently well formulated.

I was puzzled by this note, sent the minister an e-mail and asked him:

What do you mean? Do I understand you correctly that you follow our advice and that we can go on with what we had planned to do?

I had got it all wrong because the minister's simple answer was:

No, I do not want to follow your advice although I understand what you are saying.

Well, I answered, of course I am ready to follow any of your instructions but we could help you much better if you would explain to us exactly what you want to do and why. My reaction could not prevent the meeting from being cancelled, and we waited quite some time before we exactly knew where the minister was going policy wise.

The third and last thing a minister should do pertains to what should happen after the policy decisions are made and the implementation has started. In that phase, the minister's task is supervising and correcting where necessary. Of course a minister cannot and should not know everything what civil servants do in order to realise governmental policy. That would not only be unrealistic but also undesirable. But that does not alter the rules of the game. These rules imply that he can and will be held accountable for what his civil servants have done. In this respect the question is: What should be expected from a minister to make his responsibility work effectively? In other words, what precisely is the supervisory and amendatory role he has to fulfil?

Generally speaking a minister should focus on creating and maintaining the conditions under which policy implementation can be successful in the first place. In this respect his responsibility is that

the necessary legislation that legitimises what the government wants to achieve does apply, that sufficient resources are available for effective implementation of policies, that there are capable employees who occupy the key positions in the department and in executive agencies and that there are appropriate mechanisms in place to monitor whether the governmental policies are realised in practice.

Subsequently a minister must take amendatory action if the implementation does not prove to be successful. If necessary, a minister has to set up an inquiry to find out what went wrong, inform parliament and society at large about the results of the inquiry and explain which measures he wants to take to put things right. Which measures are adequate should be determined case by case. However, it is clear that the minister is politically responsible, which means that it cannot be excluded that he himself must face the political consequences. In the last instance this can mean resigning from office.

Of course the minister cannot fulfil the supervisory role I just have tried to identify completely on his own. On the contrary he needs competent staff to support him. However, a minister personally can play an important role. Ministers who have a good sense of what is politically needed and know how to translate this into operational action are often the most successful. And of course a good memory helps. I once worked for a minister who immediately wrote down what he discussed with his civil servants in a booklet so that everyone knew that he could come back to it anytime in the future. I can assure you that it helps.

The civil servant: professionalism, political feeling and loyalty

Although the minister and his civil servants should try to achieve common goals, the civil servant has a role that is fundamentally different from that of the minister. In exercising his role three things are important:

- professionalism,
- sensibility for political issues, and
- loyalty.

Firstly a civil servant must be a highly professional. This simply means that he knows what he is talking about; this sounds self-evident but it is not. One of the biggest failures in present-day thinking about the civil service is the overestimation of managerial capacities and the parallel

underestimation of professional expertise. The consequences of this are disastrous. Many civil servants nowadays do not have enough professional knowledge to achieve the quality that is needed. Undoubtedly this has a negative impact on the public confidence in public authorities.

On the other hand there are fortunately still many good examples of civil servants who put up a good performance. If you look for example at my profession, there are many good and dedicated lawyers in the Dutch civil service who are doing an excellent job. Contrary to what one might think, the quality of the legal debate within the civil service is sometimes even higher than what one can find in academic literature.

The second thing civil servants urgently need is a high sensibility for political issues. A civil servant, even if he is a top-of-the-bill expert, will not be very effective if he cannot cope with the political circumstances in which he has to do his job. A civil servant has to understand that the decision which should be taken from a purely professional point of view is sometimes unfeasible for political reasons. Consequently he may have to come up with alternative options and next best solutions. Moreover, a civil servant must always think about what is the best way to present governmental views and proposals in the political context at present. As practice shows, not all civil servants are equally capable of taking the relevant political aspects into account.

Political advisers and public relations officials are nowadays playing such an important role just because of these political aspects ('t Hart and Wille 2002). In my view that, as such, is not a bad thing. On the contrary, in modern times, with the mass media operating everywhere and with a political arena in which it has become more and more difficult to survive these advisers are indispensable in the departmental decision-making process. The other side of the coin is of course the risk of spin-doctoring – of disguising or straining the truth and thereby overruling the traditional civil service. However, this risk should not be exaggerated. Political advisers and public relations officials, which Peters probably would indicate as 'redundant politicisation' (Peters, Chapter 2 in this volume), in my experience often do an excellent job in close cooperation with departmental experts.

Sensibility for political issues does not mean that civil servants should get involved in party politics. In my view there is a clear distinction between the domain of the politician and that of the civil servant. In the exercise of his duties the civil servant has to distance himself from party politics. In this sense civil servants have to be politically neutral (Overeem 2005). As a civil servant I once crossed the border of what I thought was acceptable. Just a few days before the plenary

debate in parliament of a Bill which intended to change the politically controversial relationship between the minister of Justice and the public prosecution service⁶ my minister at the time asked me to call members of parliament to negotiate the amendments they were planning to submit. I felt highly uncomfortable trying to behave as a politician and remember that some MP's were quite annoyed that a simple civil servant was calling them and not the minister.

The third and last quality civil servants ought to have has to do with loyalty. But what is loyalty? If I put it simply: civil servants are not paid to hamper ministers because they think that what he wants is not right. If they do not want to do things they would not do if they were a minister themselves, they should not have become a civil servant. So the basic attitude is actively supporting the minister in achieving his political goals even if they are not personally liked by the civil servant. A good civil servant even considers supporting a political view he does not share as an attractive and challenging sport.

Loyalty should not by any means be confused with always saying yes to the views or measures the minister wants to take. A good civil servant sometimes strongly advises against ministerial proposals or opinions if he thinks this is necessary. A civil servant must clearly warn if in his view the minister runs a considerable legal, economic, political or other risk in the case he would stick to his original intentions. In this sense the relationship between a minister and a civil servant is not one-sided but what 't Hart has called reciprocal ('t Hart 2000).

In my experience this is not at all an easy thing to do. Some ministers get annoyed, thinking civil servants are only obstructing the wise and noble policies he wants to achieve. For this reason it is highly important that – let me take an arbitrary example – a lawyer does not confine himself to just saying 'no' but also does the utmost to find alternative solutions which are legally acceptable or at least less questionable than the original proposal. It would for example be interesting to have a closer look at the Iraq case and try to determine whether all legal options of supporting the Iraq war were seriously considered.

Politicisation: finding a balance

In the preceding paragraphs I have tried to analyse the normative roles of the minister and the civil servant. These roles are fundamentally different. One might think that this analysis reflects the old tradition of separating politics and the administration, a system in which civil servants are politically neutral. This is only partly true. Civil servants should

indeed be politically neutral in the sense that they should keep distance from party politics. However this is not the whole story. Politicisation is to a certain extent not only desirable but also necessary to give public policy the democratic legitimacy that is needed.

As Peters rightly points out, politicisation is not 'a simple phenomenon but rather a number of different patterns of behaviour to be seen as increasing the influence of political leaders on the bureaucracy and on public policy'. Because it concerns different patterns of behaviour, they also 'may have substantially different effects on governing' (Peters, Chapter 2 in this volume). For this reason one cannot simply conclude that politicisation is good or bad. Its effect depends on many factors like the constitutional context in which politicians and civil servants have to operate, the specific form of politicisation and the proportionality by which it is carried out in practice.

Strong politicisation of the civil service is highly undesirable. Replacement of experts by political appointees on a large scale would be extremely harmful for the quality of any public policy. However, this is not the whole story. One has to place politicisation as a phenomenon in a broader context. In this respect the widely used definition of politicisation as '...the *substitution* of political criteria for merit-based criteria in the selection, retention, promotion and disciplining of members of the public service' (emphasis added) is somewhat misleading because it does not cover the whole variety of patterns which could be indicated as 'politicisation'. The definition particularly reflects what Peters calls 'direct politicisation': appointing political loyalists at positions that might otherwise be career positions. As said before this form of politicisation is, at least in Western parliamentary democracies, still very rare. This could change. It is not at all unthinkable that as a result of a changing political climate more political loyalists will be appointed in the future.

However, in most systems other forms of politicisation are still more relevant. Especially important is what Peters indicates as 'professional politicisation' (Peters, Chapter 2 in this volume). It is a mixed pattern in which the upper echelons of the civil service are filled by political loyalists who at the same time are the product of a career system that is highly professionalised. So the appointed officials at the top of the departmental pyramid are both political and experts in the policy areas. The clearest example would be Germany (see Chapter 9, by Battis in this volume). However this pattern does not seem to cover the whole reality. 'Softer' types of professional politicisation seem to occur more often. Professional politicisation to a certain extent should apply to all civil servants. As I explained in the preceding paragraph, civil servants

cannot do their job successfully without a good sense of the political field in which they have to use their professional expertise. So there almost always has to be a proportional mixture of professionalism and political sensibility. What this mixture should be in any particular case depends on the particular position of the civil servant. Obviously, political sensibility is more important at the top of the departmental pyramid than further below. But even at the lower levels of the civil service a good feeling for the political aspects of public policy is highly relevant nowadays.

Next to 'soft' professional politicisation, other types of politicisation may be useful as well. Peters points out to additional structures within the civil service, which he calls 'redundant politicisation'. The use of ministerial cabinets, with personal appointees of the minister monitoring civil servants, is well known in Western democracies like Belgium and France. However, this type of politicisation has serious drawbacks as it could easily develop as a separate unit within the ministry severely distrusted by the regular civil service. Perhaps easier to build into the civil service are the special advisors which are mentioned by Peters as well. Their task is not – or not primarily – to control departmental officials but to support them by translating policy into politically acceptable 'formats'. In my experience 'redundant politicisation' can be very fruitful if civil servants and political appointees work together on the basis of mutual understanding and with mutual respect for each other's territory.

Summarising, one could conclude that politicisation as such is not incompatible with the traditional idea of the separation of politics and the civil service. On the contrary, as Peters rightly points out, the concept of politicisation helps us to realise that 'while it is important that the civil service be highly competent, it may also be important that those civil servants also be interested in the success of the government'. Therefore it is not enough that civil servants are professional experts; they must also be capable to translate their knowledge into a politically workable outcome. In this specific way all civil servants have to be 'politicised'. But politicisation of the civil service should have its limits. As is often the case, one has to search for and ultimately find the right balance within the civil service between professionalism and political commitment.

Concluding remarks

In this chapter I summarily dealt with the relationship between politicians and civil servants. I started with the Iraq report of the Dutch

Dauids Committee, which amongst many other things can be seen as an illustration that this relationship is increasingly a delicate one. Over the years tensions between civil servants and politicians seem to have been grown, not only in The Netherlands but in many parliamentary democracies (see other chapters in this volume). Changing the constitutional rules and conventions of ministerial responsibility does not seem to be appropriate to solve the problem. What is essentially needed within the framework of ministerial responsibility is clearly identifying the roles of politicians and civil servants. As I have tried to show, their roles are fundamentally different, and it is extremely important that both politicians and civil servants are strongly aware of that. In practice this is not always the case. This does not mean that ‘politicisation’ by definition is a bad thing. On the contrary, politicisation of the civil service, if proportional and well embedded in the daily business of the civil servant, can have a positive effect on the democratic process. On the other hand direct, politicisation in the sense of replacement of experts by political appointees would be extremely harmful for the quality of the public policy and the ‘democratische rechtsstaat’ at large. Hopefully the tendency to greater politicisation as pointed out by Peters (Chapter 2) in this volume does not go in this direction.

When we look at the relationship between politicians and civil servants it is important to note that it cannot be seen in isolation; it must be placed in the broader context of developments in society at large. The key word I finally want to bring in here is ‘trust’. Do citizens still believe in politics? Do citizens still trust the civil servants to whom citizens get in touch when they are getting a new passport or are complaining about their tax assessment? And what about the other way around: does the state still trust its citizens? It seems to me that mutual trust in all kinds of relationships in society, although essential for its proper working, has been substantially reduced. We often do not seem to trust each other anymore.

I think ‘trust’ is also a vital element in the relationship between politicians and civil servants. Without trust this relationship will be highly problematic and full of tension. This element cannot be easily influenced without taking into account the broader picture of society as a whole. This makes the relationship between politicians and civil servants all the more delicate.

Notes

1. Kamerstukken II 2009–2010, 31847, nr. 18.
2. NRC Handelsblad 29 January 2010, p. 2.

3. Kamerstukken II 2009–2010, 31847, nr. 18, p. 4. This measure has finally been carried out through the appointment of Prof. A. Nollkaemper in May 2011.
4. Directive 95/46/EC 23 October 1995.
5. HC Deb., Vol. 292, cols. 1046–1047 (19 March 1997).
6. Law of 19th April 1999, Stb. 1999, 194.

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