Introduction

The configuration of the administrative state has been radically transformed in recent decades. In turn, these changes have had profound implications for the established mechanisms of constitutional accountability. This essay will not only consider the characteristics of the contemporary administrative state by mapping its form but it will also explain how an orthodox model of centralised bureaucracy has evolved into a contracting state where the organisation and role of government has been modified both in terms of how policy is implemented and how accountability is achieved in constitutional terms. It will be argued in this article that the initial reforms have triggered a dynamic process of constant institutional change which have both made the task of government more complex and have impacted on the concept of accountable government by refashioning the channels of accountability. It will be apparent that multi-layered governance with the intersection of public and private has replaced the previous monolithic administrative state. [1]

Of course, accountability might be viewed from a top down perspective by noting the increased importance of supra-national intervention through EU law and the human rights jurisprudence from the ECHR. Professors Harlow and Rawlings point out that: 'European regulatory harmonisation is facilitated through a bewildering array of formal and 'horizontal' networks of national bodies … With the increased exercise of regulatory authority by international or trans-national institutions across many fields, national authorities must also master the art of standard-setting on the global stage, not least with a view to enabling national regulatory policies and practices'.[2] Coterminous with this upward accountability to constitutionally superior state institutions there has been an equally important trend to downward accountability in the UK due to the introduction in 1999 of a new level of devolved government in Scotland, Wales and Northern Ireland.[3] This development has undoubtedly added an additional level of complexity to governance in the parts of the UK falling under the executives based in Edinburgh, Cardiff and Belfast.[4] Finally, viewed from the bottom up there have been initiatives such as Citizens Charter to establish enhanced accountability to the citizen as consumer.[5] These initial observations confirm that contemporary government is in fact accountable to a plethora of different forums at one and the same time.[6] The levels of government and governance are interwoven and overlapping demonstrating the increasing complexity of the administrative state.[7] For example, the provisions of European directives not only become part of domestic law but they are enforced by domestic regulatory authorities. In recent years, the efficacy of accountability mechanisms for the European level of governance have been called into question and there has been a perceived failure to bring European Union budgets under control.[8] Further, concern has been expressed over the degree of control by national parliaments in the light of the Protocol on Subsidiarity requiring all legislative proposals to be circulated to national Parliaments at the same time as EU institutions.[9]

Returning to the central underlying concern of the present study Carol Harlow reminds us that: 'The

public wants to know how it is governed; it wants in particular to know how public money is spent and to receive assurances that it has been well spent'.[10] While a comprehensive answer to this question would require investigation of the adequacy of the European institutional framework and the system of devolved government this essay will concentrate on the administrative state, in particular the relationship between the executive branch and Parliament in an era which has witnessed an unrelenting trend towards governance. The discussion commences in Part I by outlining the post-war constitutional model based on the convention of individual ministerial responsibility. The analysis that follows demonstrates how this traditional constitutional mechanism of accountability was impacted by initiatives designed firstly to reshape the form of the executive into agencies, secondly, to transform the internal management of the civil service and thirdly to allow the contracting out of services previously provided directly be government. By way of contrast the second part of the essay concentrates on discussing the transformation of the regulatory function of government against a background of privatisation and statutory regulation of pivotal industries previously in the hands of government. The accountability theme is illustrated throughout with reference to an emerging inter-action between Parliament, the executive and regulators discernible from the reports of departmental select committees and the Public Accounts Committee and the response by government to these reports. It will be argued that the accountability element is reflected by registering that the transformation of governance has occurred in repeated waves, partly in response to criticisms made by Parliament.

Part I: The trend towards governance

The Traditional UK Model of Accountable Government

From a constitutional standpoint the importance of establishing political and legal accountability should not be underestimated. In the UK the question is rarely a matter of strict law but it is explained under the constitutional convention of individual ministerial responsibility. It is a requirement that all ministers are members of the House of Commons or the House of Lords and they must be seen as being answerable before Parliament for their departments, both before the whole House, and before its committees.[11] Quite apart from their role in regard to the introduction of legislation concerning their policy domain, ministers of all ranks are interrogated by MPs at Question Time and ministers are required to appear before the parliamentary select committees shadowing their department and they may be summoned before the Public Accounts Committee which is part of the audit of government spending.[12] It is Parliament which provides the funding from the taxpayer to underwrite the operation of government and the flip side of this coin is the need to establish accountability as an integral part of the democratic process. Although the Secretary of State (as the Cabinet rank minister) is answerable to Parliament for policy matters in the sense the she or he takes the credit for successes and the blame for failures, there has never been a general expectation that ministers should routinely resign from their position for departmental oversights and blunders.[13] Nevertheless, some ministers have tendered their resignation

as they regarded an error under their watch as a stain on their personal honour.[14]

The influential constitutionalist Sir Ivor Jennings writing at the end of 1950s identified a post-war consensus over the role of government when he described the administrative machine as exercising three sorts of function: 'the policy functions and general external functions of the old "executive"; the regulatory functions of the Board of Trade, the Home Office, and the Ministry of Transport; and the public services provided by a collection of Ministries now too numerous to mention specifically, and the subordinate authorities connected to them.'[15] Having explained that the law and practice of the civil service existed outside the jurisdiction of the courts, Jennings was able to state that the system as a whole rarely led to serious political difficulties because of the overriding, accountability-driven constitutional convention of ministerial responsibility, which regulated the whole service. The point was that 'Each minister is responsible to Parliament for the conduct of his department. The act of every civil servant is by convention regarded as the act of his minister.'[16] The minister appears in Parliament as the political head of the department but in practice policy has also been formulated with the support and then implemented by a professional civil service capable of serving whatever complexion of government holds power.

Following the reforms introduced in the mid-nineteenth century ministers have been served by a professional civil service recruited on an objective basis through competitive examinations and led at the top by an elite Mandarin class of Oxford and Cambridge educated officials with a reputation for political neutrality.[17] The middle ranks of the service were essentially trained for a professional managerial role and below that in each department a much larger body of clerical functionaries performed the more routine task of policy implementation. In other words, the service displayed an affinity with the much favoured 'Weberian model' of centralised hierarchical administration that is based on having a bureaucracy comprised of trained professionals who operate according to prescribed and objective rules. It developed as a system designed to ensure that those at the base of a pyramidal structure of administration carry out the commands of those at the summit. The Weberian system is characterised by equitable application of rules to achieve consistent and uniform decision making. The objective is to implement policy often by putting into effect detailed legislative provisions and this establishes a system which limits the arbitrary exercise of power by officials.[18] Nevertheless, in the UK the legal framework of legislation frequently confers delegated powers which will inevitably leave scope for the exercise of discretion by officials,[19] with the traditional model regarding ministers and civil servants as partners.[20]

The Conservative government (1979-1997) tended to be increasingly critical of the upper echelons of the civil service whom they viewed as one of the causes of, rather than the solution to, the core of governance problem.[21] This malaise was identified as weak, ineffective, government marked by a tendency to pursue consensual policies and, in part, this was because permanent officials were too

closely linked to particular established interests.[22] Since the 1980's there have been innovations to help overcome resistance to change by senior officials. In particular, there has been an increase in the appointment of political advisers by the Prime Minister and other ministers. These appointees of ministers exercise a growing influence on policy making and also can be involved lower down the administrative hierarchy to monitor progress with policy initiatives.[23] As we shall see in the next section the delivery of accountability has been transformed in response to changes in the shape and functions of the state.

Next Steps and New Public Management

The size, configuration, management and culture of the central administration has been transformed in recent years.[24] The ideological shift towards economic liberalism from the election of a Conservative government in May 1979 resulted in: 'The market creed [being] extended deep into public administrations as the collectivist welfare state was remodelled as a market in democratic goods and the notion of choice became a fetish.'[25] At the heart of the civil service the 'Next Steps' initiative which was inspired by an ideological commitment to introduce the disciplines of the free market to the process of government. In fact, the ultimate goal of some advocates of the 'free market' was to move towards the privatisation of much of the civil service.[26] At the same time, this development has been recognised as part of a trend towards 'debureaucratization'. The bureaucratic approach of the traditional civil service was regarded by some critics as not simply outmoded, but as inhibiting the development of an emerging enterprise culture at many different levels.[27] Since the late 1980's the most significant development in the area of central government reform has been both a substantial reduction in the size of the civil service and the transformation of a large proportion of what remained into Next Steps Agencies.[28] This heralded the introduction of market mimicking as a prevalent theme in publicly-funded enterprises throughout Europe, including Italy.[29]

Margaret Thatcher's Conservative government inherited a central government bureaucracy of nearly 750,000 civil servants.[30] This drastic re-organisation resulted in the disappearance of a relatively uniform and monolithic structure and its replacement by a loose federation of many smaller agencies and other units.[31] The agencies were formed by defining the task to be performed in a framework document, ranging from the Passport Agency issuing passports within the Home Office to the management of waterways under the Environment Agency, as part of the Department of Environment, Food and Rural Affairs. Once established for budgetary purposes each Agency is regarded as a distinct organisation under its own Chief Executive with performance targets set out for each financial year. The initiative has relieved departmental overload by handing over this responsibility for budget and staffing to the agencies.[32] Government departments and the agencies within them continued to be run by civil servants who, on the whole, remained under similar conditions of employment but as part of New Public Management (NPM) benchmarking and other performance related criteria were incorporated as part of

the system of public sector pay. Staff are now bound to follow the Civil Service Management Code.[33] Nevertheless, the reorganisation left scope for internal restructuring. Another aspect of this reform was that it provided the opportunity to recruit highly-paid former private sector managers as agency chiefs.[34] The bare statistics demonstrate the impact of these reforms. By the millennium there were only 466,00 civil servants remaining, assigned to 138 Next Steps Agencies making up approximately 80% of the service.[35]

The consequences have been dramatic in relation not only to the structure, but also to the functioning of government, with important implications for the concept of accountability under the doctrine of individual ministerial responsibility. The principle concern has been that this caused a gradual dilution in the expectation that ministers remain responsible for the conduct of their departments and the policy areas covered by their departments. A famous example arose in 1995 when following an escape of high security IRA prisoners from the Isle of White and the publication of a generally critical report on the matter the Home Secretary dismissed the Chief Executive of the Prison Service Agency for what he regarded as an operational matter. He did this rather than accepting responsibility as the Cabinet minister in overall charge of the department and its agencies. [36] In calling government to account this case set the alarm bells ringing as it appeared as if the revised structure had led to a 'spurious' distinction both between policy on the one hand and operations on the other. Also, it leads to an equally spurious distinction between accountability and responsibility. Indeed, the effect of such distinctions was to define away ministerial responsibility to almost nothing. It was highly significant that under the Labour government elected in 1997 the new Home Secretary reasserted responsibility which went beyond a duty to account generally for the department but also included a supervisory responsibility for all aspects of its routine functioning.[37]

Despite this recognition of ministerial responsibility the overall effect has been that there is now an institutional differentiation within government caused by the fact that many governmental tasks are undertaken by agencies within departments and unelected bodies (quangos) operating at a considerable distance from the main institutions of democratic legitimation. The critical issue is not simply that of distance but that their work cannot be explained by any principal-agency distinction. What has been termed as a 'new ephorate' of up to 650 bodies has emerged which carry out executive functions.[38] Furthermore, as a result of the NPM changes to the internal organisation of the service, the language of accountability has been transformed. For example, there has been constant reference to so-called performance 'outputs' expressed in terms of various forms of 'target setting' and 'benchmarking'.[39] The most recent published plans for the civil service emphasise corporate-style leadership on a model of reduced size and shared services. In comparison to the 1997-2010 New Labour model, the revised approach grants an increasingly important role to (fiscal) accounting officers in signing off implementation plans for major projects, with former accounting officers being required to give evidence

to select committees.[40] Nevertheless in response to the question posed by the current Civil Service Plan: 'What would good look like'?[41] it can be observed without hesitation that the mantra of successive governments has been directed at finding novel ways of measuring success in terms of criteria related to 'economy, efficiency, effectiveness'.[42]

Contracting Out

In part at least, the slimming down of the civil service was facilitated by another important trend, namely, the contracting out of many services previously offered in house by government departments. Following the introduction in 1991 of the White Paper Competing for Quality a process of market testing was introduced across central government which required government departments and Next Steps agencies to ascertain whether their activities could be carried out at less economic cost by external organisations.[43] If the result of the testing indicated that the private or independent sector could perform the task more economically the next stage was for the government body to define in contractual terms the exact nature of the task to be performed, as the private law contract was turned into the means for ensuring the delivery of the goods or services in question.[44] Local government was required to follow a similar procedure termed 'compulsory competitive tendering' (CCT) in respect to many core services such as refuse collection and street cleaning.[45] In consequence, contemporary government at both central and local level often relies on many large scale business providers and other independent organisations. The negotiation of contracts between government bodies and the private sector are potentially an excluded category under the Freedom of Information Act 2000 which makes it very difficult to establish by reviewing the contractual terms openly whether in fact value for money has been achieved.[46] In respect to the economic viability of contracting out arguments of 'commerical confidentiality' have sometimes been deployed to prevent ministers from giving full answers over the terms negotiated to departmental select committees and the Public Accounts Committee. One recent example concerned the failure of the contract reached between government and a multi-national company called G4S to provide sufficient security staff for the Olympics games. Although the Chief Executive of the company was subjected to public humiliation before the Home Affairs Committee for neglecting to recruit sufficient staff in time for the London Olympics in 2012 the contract to provide security with the company remained in place. [47] The government was in a position to seek compensation under the contract but was faced with having to draft in the military and volunteers to bridge the gap. Such high profile cases before select committees demonstrate the greater visibility of parliamentary oversight in calling the executive to account, albeit while demonstrating limits to the effectiveness of such oversight beyond attracting adverse comment in the broadcasting and print media.

Deep NPM, the NHS and the evolution of the contracting state?

The seeds of the New Public Management (NPM) were sown in the late 1980s but it has since become a

permanent feature of the governance landscape, with the ethos and vocabulary of resulting structural and managerial changes being adopted by all major political parties.[48] Formal contracts have been increasingly used to obtain private provision of public services. The result is that market-based solutions supposedly designed to provide accountability across the civil service have been in force for more than two decades. At the same time successive governments have been responsible for constant revisions of NPM approaches in many key areas of policy including health, education and local government. While these initiatives have been largely driven by value for money criteria the style of delivery has been constantly changing. For example, although in the National Health Service (NHS) treatment for patients remains free at the point of delivery under NPM services have been provided as part of an internal market. Primary Care Trusts (PCTs) were able to commission any service from designated providers including NHS hospitals, private sector hospitals and so on. This right to commission services was provided they met a threshold of excellence. The Health and Social Care Act 2012 once again turns to market inspired initiatives to improves services which are underpinned by statute.[49] The major change under this legislation is that family doctors (GPs), now termed Clinical Commissioning Groups (CCGs), are given responsibility for commissioning the majority of health services they consider appropriate to meet local needs. In assessing local needs and developing such plans the CCGs are required, together with the new local authority Health and Wellbeing Boards, and NHS England, to provide statutory guidance on the commissioning process. The Act also establishes Strategic Clinical Networks hosted by NHS England.[50] It has been claimed that decision-making will shift from bureaucrats to clinicians (doctors and senior nurses) but one problem is that the medical profession have not been equipped to perform the task of bidding for services and assessing whether they provide real value for money.

A particularly controversial feature of the new system is that instead of relying mainly on NHS providers, as was previously the case, it allows health and care services to be purchased much more widely from private providers. The process introduced under current legislation has been criticised for opening up potential conflicts of interest. It has been argued that the risk of such conflicts arising has become higher since there are a number of firms which perform both commissioning support and care services.[51] Another equally alarming feature is the enormous number of diverse players with a role in running and regulating the system. This list includes the Care Quality Commission which regulates service providers, the National Institute for Health and excellence formed as an independent body responsible for providing national guidance on quality standards and for the promotion of patient care, Monitor regulates providers with a view to promoting competition, Healthwatch is formed as a new independent consumer champion representing the views of the public. In addition, the professions are separately regulated by professional bodies such as the British Medical Association and the Royal College of Nursing. The upshot is that the Health Service is intended to operate as an internal market subject to these various forms of overlapping regulation. In terms of individual legal redress, should a citizen wish obtain a remedy against the service private law matters of medical negligence falls under the jurisdiction of the civil courts. The decision-

making process of health service bodies as a question of public law falls under the remit of judicial review[52] while issues of bureaucratic maladministration will be taken up by the Parliamentary and Health Service Ombudsman[53] or by MPs who are able to table parliamentary questions concerning the NHS. Finally, viewed from the standpoint of political accountability Parliament retains a crucial role as the Secretary of State determines the overall budget and sets the strategic direction for the NHS as a whole. She or he does this through the mandate for NHS England and the NHS outcomes framework. The Chief Executive of NHS England is both accountable to the Department of Health and to Parliament.

Notwithstanding the overwhelming shift since the 1980's toward a preference for private sector policy delivery the prospect of reverting 'back to government' has arisen in respect to care homes for the elderly and, as we shall see later, in relation to the railways, banking and financial services. Private sector delivery through contracting has not, in itself, provided a solution to the organisation and delivery of public services.[54] In a technical sense legislative approaches have been able to refine the issue of whether the tendering process is competitive and whether the contract is able to not only define the nature of the service but also the question of oversight to see that the obligations are adequately performed. In the present economic climate a more worrying development concerns the implications of company insolvency on private sector providers. This danger has been exposed by the demise of Southern Cross Healthcare. A company that over several years had been able to take over many smaller care providers without retaining the ownership of the homes. It went from having a high stock market valuation of £1.1 billion to the verge of bankruptcy because it had over several years distributed the profits from the disposal of its property assets to directors and shareholders. The insolvency was caused by the imposition of rent increases outside the control of the company or of the public authorities which used its services. The city bond companies owning the freehold of the homes sought to dictate these rent levels and the incapacity to meet increases in rents bankrupted the care provider. This outcome was inevitable unless the hike in rents were reviewed by the freeholders or ultimately passed on to public authorities responsible for meeting the costs of 31,000 elderly patients.[55] The Southern Cross affair has drawn attention to a massive lacuna in regulatory oversight. The consequences of this failure were potentially catastrophic for the vulnerable residents who still depended on the care arrangements guaranteed under contracts which could no longer be enforced. In effect, the government stepped into the breach indirectly to alleviate the problem. Four Seasons Healthcare part owned by the state controlled Royal Bank of Scotland took over more than 100 homes belonging to Southern Cross while other homes were returned to the landlords until a buyer was found. This experience suggests that private law contracts alone are not able to ultimately provide a coherent framework for the protection of individual rights to public services in the domain of health and social care.[56]

Part II: The State as Regulator

From Nationalisation to Privatisation

The privatisation of state owned industries from the 1980s and 1990s is a further important development which has modified the profile of government and has resulted in a blurring of boundaries between public and private law and, in turn, this change has called into question the existing channels of accountability. Before proceeding to consider the salient features of privatisation it is important to grasp the main characteristics of public ownership. During the first half the twentieth century, particularly under the post-war Labour government between 1945 and 1951, a string of strategically important and often monopolistic industries, including the public utilities, were nationalised. These industries were placed under public ownership by statute under a legal framework that allowed the industry to function, in theory at least, at arm's length from government control, while enjoying state-regulated funding or subsidy. Each year the broad financial parameters were set out by the Secretary of State for the government, while the chairman and the board of the industry were responsible for the day to day management of the organisation.[57] Viewed in terms of the exercise of control the Secretary of State[58] was responsible for appointing the Chair and Board which then had the task of running the industry. In addition the Secretary of State was directly answerable to Parliament for its overall performance. Questions could be directed in Parliament to the Secretary of State and she or he could be called before Departmental Select Committees of the House of Commons and/or the Public Accounts Committee.[59]

The privatisation policy under the Conservatives (1979-1997) was an ideologically motivated reversal of this earlier approach.[60] A prime objective of the government was to achieve more efficient performance from these industries by introducing them to competitive market pressures.[61] For some industries (such as telecom and air transport) a rationale based on the desire to inject competition and choice was supported by the economic characteristics of the enterprise concerned. However, many aspects of privatisation have, from the outset, been a source of political and economic controversy. For example, certain of the public utilities and rail retain monopolistic characteristics and they continue to dominate particular markets. There is only a single set of telephone cables, gas pipes, power generators or railway lines. Promoting competition in such circumstances was bound to be problematic and not self-evidently in the public interest. Advocates of the privatisation initiative argued that freeing up markets would deliver long-term benefits of efficiency, economy and consumer choice; but privatisation has given rise to a raft of fresh problems. The introduction of full market pricing for the installation of power supplies, water and sewerage services and telephones was one possible outcome of privatisation. It will be obvious therefore that in the absence of regulation privatisation would have adversely affected vulnerable groups in society.

Privatisation was introduced by offering shares on the stock exchange to the general public and financial institutions at favourable prices to ensure an instant premium as the share price rose well above the flotation price.[62] Ownership moved from the state to private shareholders. In the short term at least, these sales apart from being the first step in the quest to establish in Prime Minister Thatcher's vision of

a ‘share-owning democracy’ also constituted a substantial extra source of additional public revenue. In light of the public interest dimension associated with nearly all privatisations it was recognised that ministers on behalf of the government of the day needed to continue to play an active role but this was achieved indirectly through the agency of a framework of statutory regulation.

Utility Regulation

The approach to regulation adopted from the mid 1980s to safeguard the quality of delivery of the newly privatised industries and protect the interests of consumers was to establish statutory regulators.[63] Given that the list of privatised industries included the public utilities of gas, electricity and water with the expectation of a universal service, the formulation of a system of regulation is far from straightforward. In the cases of utility and telecom privatisation the office of the regulator was not only responsible for overseeing the process of transition from the public sector to the private sector but also for performing a range regulatory functions.[64]

According to some influential advocates of privatisation canvassing views in advance of the sell offs an approach to regulation needed to be adopted which favoured the emergence of competition. Indeed, regulation was regarded merely as a holding operation until competition, with its supposed benefits, could be more generally achieved. [65] In the meantime the core objective of regulation was to control the level of profit and ensure that the pricing of goods and services took account of the wider public interests. It was unclear how sufficient competition could be injected into inherently monopolistic industries. Despite working within the parameters of the relevant Act regulators were required using subjective powers to make very difficult and, at times, controversial judgments relating to pricing. The initial enabling legislation attempted, with only limited success, to insulate the regulatory authority from accusations of ‘regulatory capture’. It only became clear post-privatisation that it was essential to prevent the regulators from becoming too closely linked to the industry by minimising the discretionary element in the hands of the regulators.[66] This could be achieved by reference to detailed formulas for pricing fixing. As a result of the inadequacy of the guidelines pricing levels in the energy and water sector had become the subject of heated political debate.[67] Further, there were claims by parliamentary select committees that regulators were frequently provided with incomplete or inaccurate access to certain types of information e.g. Railtrack and Network Rail concerning the state of repair of the track and signals or British Gas concerning the details of its internal financial affairs. This dearth of accurate data has been a recurring matter of concern as such information will always be essential to perform the regulatory task effectively.[68] The tendency for senior executives of the newly privatised companies to increase their own salaries in line with those of other private sector corporations and to pay themselves substantial financial packages on their retirement without any intervention by the statutory regulator has also been the cause of great controversy, particularly against a background of indifferent levels of performance by the industry concerned.[69]

Returning to the legal position in relation to Parliament and the operation of the industry, the Secretary of State was no longer in a position to set the financial parameters directly but she or he retained a significant role following privatisation with responsibility for appointing the regulator and for determining the degree of competition by issuing licences establishing the authority under which the privatised company operated. However, each statute was drafted in a distinct manner and the various privatisations were not co-ordinated. In consequence, a serious drawback that emerged from each utility (e.g., gas and electricity) having its own individual regulator was that it provided little scope to intervene strategically across a sector to promote policies that were in the public interest. In order to overcome this problem a second wave of regulation in the form of the Utilities Act 2000 combined the Office of Gas Supply (Ofgas), formed under the Gas Act 1986, and the Office of Electricity Regulation (Offer) formed under the Electricity Act 1989, into a single regulator for gas and electricity (Ofgem). The Utilities Act 2000 not only creates a single regulatory authority based on a commission rather than an individual regulator for each industry, but also, in setting out to promote effective competition, the system is geared to reflect increasing convergence between the two sectors. This trend was already evident from the interpenetration of utility companies with interests in gas, electricity and water in various combinations. Furthermore, there was nothing in the legislation to prevent energy and water companies from takeovers and a number of companies have ended up in foreign hands.[70] However, Ofgem no longer has a purely economic agenda as the Utilities Act differs from previous legislation by placing much greater emphasis on protecting the interests of consumers and particularly disadvantaged groups.[71] In taking up the question of fuel prices charged to customers the parliamentary Departmental Select Committee for Energy and Climate Change summoned to give direct oral evidence the Secretary of State for Energy and Climate Change, Interim Chief Executive, Markets, Ofgem, as well as the Managing Director, Energy British Gas, Chief Executive Officer, Retail and Generation, Scottish Power and Managing Director, Ovo Energy.[72] Having done so it completed a report critical over the lack of transparency over the profits obtained by energy companies from consumers and it made clear that:

‘We are disappointed at the regulator’s slow progress on requiring energy companies to improve their transparency and communication with their customers. We hope that Ofgem will use its existing powers to ensure that its Retail Market Review (RMR) reforms are implemented. If the requirements are not in place by August 2013 as promised, we recommend that the government stand ready to use any statutory powers to compel greater transparency from energy companies …’[73]

As part of the inter-action between Parliament, the executive and office of regulation the detailed official response by the government and by the regulator to the analysis and criticisms made by the parliameentary select committee are now routinely published.[74]

The registration and licensing systems which have been established as part of the regulatory regime are costly to administer and they tend to interfere with the process of competition. Nevertheless, the

liberalisation of the British gas and electricity supply markets has been a step towards allowing greater competition in some areas. For example, consumers are increasingly able to choose between energy suppliers, with the emergence of multi-utilities (gas and electricity companies) offering to provide both gas and electricity but there is limited evidence to support the contention that competition between the companies acting as suppliers contributes much to the reduction in energy prices paid by the ordinary consumer.

In response to the manifest failure of the original regulatory framework post privatisation the water industry[75] has also been subject to a revised regime of regulation based upon the formation of a regulatory commission.[76] In common with gas and electricity with the formation of Ofgem, the scheme of water regulation was modified to allow the Secretary of State to make regulations, to issue detailed guidance to the regulator[77] and to make regulations in regard to performance standards and charging schemes with view to protecting the interests of consumers. The Water Services Regulation Authority (Ofwat) and Director General of Water Services were given powers to approve charging Schemes. The revised system of regulation addresses some of the problems to do with reaching an accommodation between the conflicting considerations and the revisions mark a major shift in emphasis from the previous Water Act of 1991. For example, the 2003 Act introduces a primary duty to protect the interest of consumers.[78] The way in which Parliament is now able to probe into the economic and political management of the water industry can also be illustrated by looking at investigations by the relevant departmental select committee. To see the revised scheme in practice, we turn to the investigation of water pricing. The committee called before it as witnesses the Ofwat Chief Executive and Director of Regulatory finance, Strategy and Regulation Director of Thames Water. However, the Minister for the Natural and Marine Environment was summoned rather than the Secretary of State and also reflecting the re-configuration of government discussed earlier the head of water at the environment agency. Ofwat has been required to deliver affordable, sustainable water management having regard to affordability.[79] The committee recommended a review of the current regulatory approach to incentivise both competitive and non-competitive parts of the industry. Both needed to operate in tandem encouraging customers to be more water efficient.[80]

Rail Privatisation and Regulation

The privatisation of British Rail was not only controversial but also extremely complex. Following privatisation the performance of the railways dropped spectacularly. As a result the performance of the rail regulators was crucial. Furthermore, the capacity for ministerial and regulatory intervention was severely restricted under the original legislation but the industry continued to receive a massive public subsidy even though it had been privatised.

On this occasion privatisation was achieved by first forming a company called Railtrack in 1994 to take

on responsibility from British Rail for the rail infrastructure. The flotation of Railtrack on the stock exchange in 1996 allowed ownership of the track and stations to be in the hands of private shareholders.[81] Railtrack was placed under a statutory duty to maintain the infrastructure and it received revenue from the train operating companies (TOCs) responsible for running the trains.[82] The most controversial feature was that the network of routes was divided (mainly geographically) into 25 segments, bringing to an end the vertical integration of the industry. Private companies bid for franchises to run trains as TOCs.[83] However, the government offered subsidies on uneconomic routes to encourage interest from private companies.

Separate regimes of statutory regulation were established to oversee the general operation of the railway infrastructure designated as the Office of Rail Regulation (ORR), while the Office of Passenger Train Franchising (OPRAF) was there to preside over the bidding process for franchised routes and the performance of the TOCs. Coordinating service delivery in a fragmented rail network which was only bound together by complex contractual relationships proved problematic from the outset. The Strategic Rail Authority (SRA) was established in 2001 in place of OPRAF with a more strategic remit to address regulatory failings. There continued to be widespread dissatisfaction with the general reliability of the railways post privatisation. The deterioration in performance culminated in an number of serious accidents linked to under investment in the infrastructure by Railtrack.[84] The programme of extensive repairs needed to restore safety prompted the financial collapse of Railtrack in October 2001. This event brought matters to a head as the government was obliged to step in. Network Rail was formed as not-for-profit company and direct replacement for Railtrack. It was granted responsibility for running the rail infrastructure.

In 2004 prompted by these regulatory failings the government announced its intention to abolish the SRA and take on a direct role in the strategic direction of the industry, including franchising, while also revising the remit of the ORR to take account of these changes. The initial effect of privatisation had distanced both regulators from the ambit of ministerial responsibility as they were given the status of ‘non ministerial government departments’. The effect of this change was that the rules under which they operated were not subject to parliamentary approval and there was no form of direct democratic accountability as ministerial responsibility only applied in respect of the statutory regulator and did not apply to the privatised industries themselves. As well as taking over direct responsibility for franchising the Secretary of State for Transport and Dft retained power to appoint the remaining rail regulator and to determine the extent of competition by being able to at least partly determine the licences which are essential to permit each company to do business.

Under the revised structure the Department for Transport (Dft) was also given responsibility for capacity levels, safety and operational performance (e.g. specifying operating conditions in contracts negotiated with the train operating companies) but Dft also sets the funding parameters for the industry based on

the assessment of the state of the infrastructure supplied by the ORR. This last change addressed a central criticism identified by the Transport Select Committee concerning the enormous discretion previously given to the rail regulator in allocating funds without any direct accountability to Parliament for the consequences. In particular, the ORR was strongly criticised for writing off debts and overspends. This action demonstrated the extent of the power which the former structure allowed the ORR to accumulate at the expense of all the other parts of the railway and the government. In its report the Parliamentary Select Committee believed the Regulator should be restraining costs and seeking value for money.[85]

Parliamentary scrutiny of the regulator and the Dft has continued to make a significant contribution. For instance, the Public Accounts Committee reported that achievable value for money savings had not been realised and that the sanctions and incentives offered to Network Rail were not effective in improving efficiency. In addition, the regulator is criticised for not intervening to drive down costs by preventing Network Rail from going ahead with an over generous financial settlement for its staff.[86] The Transport Committee has been active in overseeing the involvement of the Department of Transport in regard to its role in the franchising process. After the flawed decision to discontinue Virgin's contract to run the West Coast main line the Committee stated inter alia that: 'One of the most significant and disappointing aspects of this episode is that money which could been spent on transport projects to yield tangible benefits to people across the country has instead been spent on consultants, lawyers and review teams; on work which achieved nothing; and on compensating train operators for the Dft's incompetence.'[87]

Regulation of Banks and Financial Services

This selective review of regulation concludes by pointing out that the near collapse of the UK banking sector in 2008 prompting a financial crisis across Europe and the United States was, in part at least, attributable to major regulatory shortcomings. To prevent the catastrophic failure of the Royal Bank of Scotland (RBS) the government was forced to inject £45 billion, part nationalising the bank and it acted in a similar way to save Bank of Scotland/Lloyds. The light touch regulation encouraged by the Chancellor of the Exchequer in 2005 involving no inspection by the Financial Services Authority without justification had not identified the reckless decision-making in taking over toxic debts which had exposed Royal Bank of Scotland and other banks to unacceptable levels of risk.[88] No individuals were found meaningfully accountable in the FSA report but the Treasury Committee were in no doubt that the FSA should have intervened at an early stage.[89] Since the crisis a tide of recent legislation has been introduced to modernise the regulatory framework for the financial services and banking industry which originally had been set up under the Financial Services and Markets Act 2000.[90] The 2012 Act establishes a new regulatory framework comprising the Bank of England, the Financial Policy Committee (FPC), the Financial Conduct Authority (FCA) and the Prudential Regulatory Authority.[91] As a committee of the Bank of England the FPC is formed to perform the task of macro prudential

regulation.[92] The previous Financial Services Authority is replaced by the PRA and the FCA. Miselling of financial products is targeted by the Act. The emphasis is changed towards the protection of customers. The new bodies have powers of intervention in relation to products and promotions including the power to ban or restrict financial products and the power to publish details of misleading products without consultation. The Treasury Select Committee argued that the Financial Services Bill should have been amended to ensure that Parliament through the Treasury Committee could request retrospective reviews of the work of the FCA and that the appointment of the Chief Executive of the FCA should be subject to pre-appointment hearings before to Scrutiny by the Committee.[93]

The question of banking sector regulation reform legislation led to Parliament setting up a special Parliamentary Commission on Banking Standards as a joint select committee of the House of Commons and the House of Lords which reported on proposals for banking reform[94] and stressed the importance of the enforcement of ring fencing to ensure a separation between the risk-taking elements of banking of entering financial markets from the ordinary provision of banking services. This 'ring fence' provision is incorporated as a central feature of the legislation.[95] The committee also looked into how the regulators powers to break up banks should be exercised.[96] Perhaps, surprisingly one of the conclusions of the Committee was 'That regulation is well-intentioned is no guarantee that it is a force for good. Misconceived and poorly-targeted regulation has been a major contributory factor across the full range of banking standards failings. Regulators cannot always be expected to behave as disinterested guardians who will pursue the "right" approach. They are faced with complex challenges to which the appropriate solutions are ambiguous and contested. … They need to resist the temptation to retreat into a comfort zone of setting complex rules and measuring compliance.'[97] There appears to be consensus that a new culture of responsible corporate governance in the banking sector is an essential requirement but that this goal cannot be achieved by regulation alone.

Conclusion

In terms of the refashioning of the administrative state the structural transformation referred to in this essay has resulted in a relatively rigid, hierarchical and well ordered institution recognised by Jennings in the 1950s evolving into an increasingly complex, fragmented and polycentric structure.[98] Some influential commentators have stressed that since the advent of New Public Management the state has changed while parliamentary oversight mechanisms have been struggling to keep up.[99] Such a realisation has led us to consider the extent to which the channels of accountability have been revised. Part I concentrated on how the reforms associated with the agencification of the civil service, NPM and contracting out impacted on not only the functioning of the executive, but also on the way that the executive branch has been called to account under the concept of individual ministerial responsibility. Although the attempt by some members of the Major government (1991-97) to draw a distinction between policy matters, attributable to the Secretary of State, and operational issues, attributable to the

Chief Executive, proved untenable, this episode drew attention to how such changes were capable of negating what serves as the pivotal constitutional convention describing the accountability relationship between the executive and Parliament. It has been argued that 'Parliament and its committees continue to make an outstanding contribution to the central constitutional task of holding the Crown's government to account'.[100] Moreover, since the Wright reforms were implemented in 2010 it can be further argued that the select committees have been re-enforced by the revised processes of selection to emerge stronger and more independent of the government.[101] Of course, at the same time new disciplinary mechanisms have become integral to the contemporary administrative state. Martin Loughlin identifies that: 'fiscal rules devised in the regulatory network discipline ministers, monetary policies laid down by central banks constrain governments, audit regulations structure the programme of public bodies, and performance targets established through these arrangements structure the ways in which they undertake their responsibilities.'[102] Such changes taken together have impacted on underlying values that determine what constitutes successful decision-making in what is now described as a 'contract state'.

In Part II which focused on accountability as part of what is a now also post-privatisation a regulatory state of burgeoning proportions, there has been particular attention to the emerging inter-play between parliament, ministers and regulators in response to regulatory shortcomings that emerged from the policies pursued from the mid 1980's onwards. As will be evident from the discussion above the quest for accountability of these industries has been in continuous waves and has often proved elusive to achieve. Tony Prosser has advocated a more coherent regulatory philosophy based on developing sound criteria for regulation but at the same time he recognises the impossibility of reducing the range of regulatory principles to a limited number of determinate rules limiting regulators from responding to the rapidly changing environments under which they function.[103] Nevertheless, to some extent the governance problems relating to regulation are being addressed. For instance, Julia Black believes that: '… it is through the "better regulation" agenda that we have seen the marked re-centring of control by the core executive over regulatory processes, if not directly over regulatory decisions, particularly with respect to those regulators with considerable inspection and enforcement functions. Indeed, the development of better regulation processes … can be largely explained as attempts to develop intra-executive mechanisms of control by the core over the periphery.'[104] A recurring criticism of the initial regimes of regulation was that too much emphasis was placed on promoting competition and too much discretion was left in the hands of regulators in approaching their task. This study has attempted to show that not only has there been a tightening up of regulation, often in line with criticisms voiced by Parliamentary select committees, but also we have seen that some aspects of free market activity have proved so harmful to the public interest and been so problematic to manage (eg rail and banking) that government has been forced back onto centre stage as one of the main actors.

Peter Leyland, Professor of Public Law, Emeritus, London Metropolitan University; Professorial Research Associate, School of Oriental and African Studies, University of London. This essay is based on a lecture delivered at the University of Catania in March 2014.

---

[1] N Bamforth and P Leyland Public Law in a Multi-Layered Constitution (Oxford: Hart Publishing, 2003), 4.

[2] C Harlow and R Rawlings Law and Administration (Cambridge: Cambridge University Press, 2009), 279.

[3] See Scotland Act 1998, Government of Wales Act 1998 and Northern Ireland Act 1998. V Bogdanor Devolution in the United Kingdom (Oxford: Oxford University Press, 1999).

[4] P Leyland 'UK Utility Regulation in an Age of Governance' in N Bamforth and P Leyland (eds) Public Law in a Multi-Layered Constitution (Oxford: Hart Publishing, 2003), 189.

[5] P Leyland and G Antony Textbook on Administrative Law (Oxford: Oxford University Press, 2012), 119.

[6] Harlow and Rawlings (2009), 305.

[7] Bamforth and Leyland (2003), 6.

[8] At national level, attempts have been made to promote accountability mechanisms with, for example, the enhancement of Westminster Parliament procedures for overseeing European affairs and the scope for input into law-making at a European level. The House of Commons European Scrutiny Committee reports on the legal importance of EU documents and important EU proposals may be referred by the House of Lords' Select Committee on the European Union. The European Scrutiny Committee in seeking to hold the government to account for its actions at EU level. See P Craig 'Britain in the European Union' in J Jowell and D Oliver (eds) The Changing Constitution (Oxford: Oxford University Press, 2011), 109; C Harlow Accountability in the European Union, (Oxford: Oxford University Press, 2002), 23ff.

[9] Craig (2011), 111.

[10] Harlow (2002), 2.

[11] A King The British Constitution (Oxford: Oxford University Press, 2007),

217ff.

[12] R Brazier Constitutional Practice: The Foundations of British Government (3rd edn, Oxford: Oxford University Press, 1999), 230ff.

[13] P Leyland The Constitution of the United Kingdom: A Contextual Analysis (2nd edn, Oxford: Hart Publishing, 2012).

[14] One example which is often cited concerned the resignation of Foreign Secretary Lord Carrington over the Argentinian invasion of South Georgia in 1982 as a prelude to the Falklands war. Despite Mrs Thatcher urging him to continue in office he insisted on tendering his resignation.

[15] I Jennings The Law and the Constitution (University of London Press, 1959), 196. See also R Crossman, 'Introduction' to Walter Bagehot, The English Constitution (London, Fontana, 1963 edn.).

[16] Jennings (1959), 207/8.

[17] The foundations of the modern service were laid after the Northcote Trevellyan Report of 1854. For a detailed historical account see Hennessy P Whitehall, (3rd edn, London, Pimlico, 2001).

[18] G Drewry 'The Executive: Towards Acccountable Government and Effective Governance' in J Jowell and D Oliver (eds.) The Changing Constitution (7th ed. Oxford, Oxford University Press, 2011).

[19] The abstract principle set out in the legislation set against the ultimate goal to be achieved. Of course, in both nations judicial review as a corrective remedy may be available if reasonable limits are exceeded.

[20] W Wade and C Forsyth Administrative Law, (10th edn, Oxford : Oxford University Press, 2009), 260ff.

[21] V Bogdanor 'The Civil Service' in V Bogdanor (ed) The British Constitution in the Twentieth Century (Oxford: Oxford University Press, 2003), 258.

[22] D Marsh, D Richards and Martin J Smith 'Re-assessing the role of departmental cabinet ministers' Public Administration, Vol 78, No 2, [2000], 321.

[23] Ibid. p.315ff ; One such category of political appointments are press secretaries whose role is to assist the minister with media management and opinion forming. This role has changed from putting the best possible interpretation on issues that come up to actually taking the initiative in

setting the political agenda for a particular area of government policy. Alistair Campbell who served PM Tony Blair as Press Secretary and then Directory of Communications and Strategy (1997-2003) was criticised for wielding power over career civil servants without being directly accountable to Parliament for his activities. See Bogdanor (2003), 266.

[24] See generally D Richards and Martin J Smith Governance and Public Policy in the UK (Oxford: Oxford University Press, 2002).

[25] C Harlow and R Rawlings Law and Administration (3rd edn, Cambridge: Cambridge University Press, 2009), 57.

[26] F Gains 'Implementing Privatization Policies in Next Steps Agencies' [1999] Public Administration Vol.77 No.4, 713-730 at 718 and at 724. The Laboratory of the Government Chemist is cited as an example of an agency that was actually privatised in April 1996.

[27] N Lewis Choice and the Legal Order: Rising above Politics, (London, Butterworth 1996), 153.

[28] G Drewry 'The Executive: Towards Acccountable Government and Effective Governance' in J Jowell and D Oliver (eds.) The Changing Constitution (7th ed. Oxford, Oxford University Press, 2011), 199; J Burnham and R Pyper Britiain's Modernised Civil Service (Basingstoke, Palgrave Macmillan, 2008); R Austin 'Administrative Law's Reaction to the Changing Concept of Public Service' in P Leyland and T Woods (eds) Administrative Law Facing the Future: Old Constraints New Horizons, (London, Blackstone, 1997); T Daintith 'The Techniques of Government' in J Jowell and D Oliver The Changing Constitution (3rd ed. Oxford, Oxford UP, 1994).

[29] Harlow and Rawlings (2009), 57.

[30] See Cabinet Office http://cabinetoffice.gov.uk/civilservice/2000/statistics/review.htm; see Drewry (2011), 192ff.

[31] Martin J Smith 'Reconceptualising the British State' [1998] Public Administration 48-72 at 63.

[32] C Harlow 'Accountability, New Public Management and the Problems of the Child Support Agency' Journal of Law and Society, [1999] 150-174 at 151.

[33] The Civil Service code was first introduced in 1996. It was placed on statutory footing under the Constitutional Reform and Governance Act 2010 and the latest version was published in June 2011. See

http://civilservicecommission.independent.gov.uk/civil-service-code.

[34] Drewry (2011), 200.

[35] Cabinet Office Next Steps Briefing Note September 1998, 1.

[36] Leyland (2012), 180.

[37] D Woodhouse 'Ministerial Responsibility' in V Bogdanor (ed) The British Constitution in the Twentieth Century (Oxford: Oxford University Press, 2003), 317ff.

[38] M Loughlin Foundations of Public Law, (Oxford: Oxford University Press, 2010), 448.

[39] This includes the need to formulate assessment criteria for continuous improvement, people survey scores and the achievement of strategic objectives.

[40] The Civil Service Reform Plan, June 2012. http://www.civilservice.gov.uk/wp-content/uploads/2012/06/Civil-Service-Reform-Plan-acc-final.pdf.

[41] Cabinet Office: continuous improvement – A Strategy and Action Plan: http://www.cabinetoffice.gov.uk/resource-library/cabinet-office-continuous-improvement-strategy

[42] See Harlow and Rawlings (2009), 61.

[43] 'Competing for quality: buying better public services, HM Treasury, HMSO, November 1991, (Cm 1730).

[44] J Tonge The New Civil Service (Tisberry: Baseline Books, 1999), 67ff.

[45] See Local Government Act 1988.

[46] Freedom of Information Act 2000 s 43.

[47] Home Affairs Select Committee, Seventh Report of Session 2012-13, Volume II, HC 531-II, Ev 1.

[48] Harlow and Rawlings (2009), 70ff.

[49] A Davies 'Beyond New Public Management: Problems of Accountability in the Modern Administrative State' in N Bamforth and P Leyland Accoutability in the Contemporary Constitution (Oxford: Oxford University Press, 2013), 337ff.

[50] T Powell and S Heath 'The reformed health service, and commissioning

arrangements in England’ House of Commons Library, SN06749, 1 November 2013.

[51] Davies, (2013), 344.

[52] See eg R (Rogers) v Swindon NHS Primary Care Trust [2006] 89 BMLR 211; Leyland and Anthony (2012), 291.

[53] http://www.ombudsman.org.uk

[54] I Harden The Contracting State (Buckingham: Open University Press, 1992), 69ff.

[55] ‘Landlords in driving seat at Southern Cross’ Financial Times, June 19, 2011.

[56] ‘Four Seasons to take Southern Cross’s mantle as biggest care home operator’, The Observer, 4 September 2011.

[57] See A Hanson and M Walles Governing Britain (5th edn, London: Fontana, 1990), 207ff.

[58] This is the term used for cabinet rank minister.

[59] C Graham Regulating Public Utilities: A Constitutional Approach, (Oxford: Hart Publishing, 2000), 76.

[60] See Harlow and Rawlings (2009), 56.

[61] See T Prosser The Regulatory Enterprise: Government, Regulation and Legitimacy (Oxford: Oxford University Press, 2010), see chapter 1 Introduction: Two visions of Regulation and Four Regulatory Models.

[62] The main state-owned industries which were privatised: British Aerospace (1981-84), Britoil (1982), British Telecom (1984), British Airways (1987), British Airports Authority (1986), Gas (1986), Water (1989), Electricity (1990), Power Generation (1991), British Rail (1995); R Seymour ‘A short history of privatisation in the UK: 1979-2012’ The Guardian, 29 March, 2012.

[63] The regulatory agencies which were originally set up included: the Office of Telecommunications (Oftel) under the Telecommunications Act 1984; Office of Water Services (Ofwat) under the Water Industry Act 1991. Each of these regulatory bodies was headed by a Director-General in whom the powers were personally invested, although the exact scope of these powers varied for each regulator.

[64] See C Graham Regulating Public Utilities: A Constitutional Approach, (Oxford: Hart Publishing, 2000).

[65] The Littlechild Report (Regulation of British Telecommunications Profitability), (London, HMSO, 1983).

[66] J Black 'Calling Regulators to Account: Challenges, Capacities and Prospects' in N Bamforth and P Leyland (eds) Accountability in the Contemporary Constitution (Oxford: Oxford University Press, 2013), 363.

[67] See eg C Foster Privatization, Public Ownership and the Regulation of Natural Monopoly (London, Blackwell, 1992).

[68] P Leyland 'Rail Privatisation, Regulation and Regulation: Reviewing the Lines of Parliamentary Accountability' Utilities Law Review, 16 [2006/2007] 6, 247.

[69] For example, the chief executive of British Gas who retired in 1996 and Railtrack executives who resigned in 2000–2001.

[70] EDF (France), EON (Germany) and Scottish Power (Spain).

[71] Utilities Act 2000, s 69, s 98.

[72] 'Energy Prices, Profits and Poverty' Energy and Climate Change Committee, Fifth Report of Session 2013-14, HC 108.

[73] Ibid, 71.

[74] See eg 'Energy Prices, Profits and Poverty: Government and Ofgem Responses to the Committee's Fifth Report of Session 2013-14, Fifth Special Report of Session 2013-14, HC 717.

[75] Yorkshire Water paid generous additional dividends to its shareholders without any intervention by the regulator and the regulator neglected to ensure infrastructural investment against the contingency of drought. As a result of this failure in 1995 many customers in Yorkshire experienced cut off of supplies and severe water shortages.

[76] For detailed discussion and analysis see C Harlow and R Rawlings Law and Administration (3rd edn, Cambridge: Cambridge University Press, 2009), 293ff.

[77] The Water Act 2003, Part II, s.39.

[78] Ibid.

[79] Ofwat Price Review 2009, Environment, Food and Rural Affairs Committee, Fifth Report of Session 2008-09, HC 554.

[80] Ibid .

[81] P Leyland 'Back to Government? Reregulating British Railways' Indiana Journal of Global Studies, Summer 2005, Volume 12, Issue 2, 435-470.

[82] The access charges which made up the bulk of Railtracks income were fixed periodically by the ORR. The train operating companies were mostly unprofitable and depended on subsidy paid by OPRAF from public funds.

[83] Three rolling stock companies were created to lease the passenger and freight trains, and maintenance companies were contracted to take care of upkeep.

[84] See C Wolmar On the Wrong Line, (London, Aurum Books, 2005), see Chapter 8 'Hatfield: The Accident that broke the railway'; The Ladbroke Grove Rail Inquiry, Part 1 Report, Lord Cullen, Health and Safety Commission, 2001.

[85] The Future of the Railways, Transport Select Committee, Seventh Report of Session 2003-04, Volume I: HC 145-1, 3.

[86] 'Office of Rail Regulation: Regulating Network Rail's Efficiency' Public Accounts Committee, Forty-first Report of Session 2010-12), HC 1036, para 1 and 2.

[87] 'Cancellation of the InterCity West Coast franchise competition' Transport Committee, Eighth Report of Session 2012-13, HC 537, para 30.

[88] See e.g. 'The FSA's Report into the Failure of RBS' Treasury Committee, Fifth Report of Session 2012-13, HC 640, 13.

[89] Ibid, 47.

[90] See eg Banking Act 2009, Financial Services Act 2012, Financial Services (Banking Reform) Act 2013.

[91] The Financial Services Act 2012, Parts I and II and schedule 3.

[92] See also The Financial Services (Banking Reform) Act 2013.

[93] 'Financial Services Bill' First Report of Session 2012-13, House of Commons, Treasury Committee, HC 161, Paras 62-65.

[94] 'Banking Reform: delivering stability and supporting a sustainable economy' White Paper, Cm 8356, June 2012.

[95] The Financial Services (Banking Reform) Act 2013, Part I.

[96] 'Banking reform: Towards the Right Structure', Parliamentary Commission on Banking Standards, Second Report of Session 2012-2013, HL Paper 126, HC

1012.

[97] ‘Changing banking for good’, First Report of Session 2013-14, Volume I, Summary, and Conclusions and recommendations, First Report of Session 2013-14, Para 21.

[98] See P Barberis 'The New Public Management and a New Accountability' (1998) Public Administration Vol.76, 451, 455.

[99] C Scott ‘Accountability in the Regulatory State’ Journal of Law and Society, Vol 27, No 1, March 2000, 38-60 at 42/43.

[100] A Tomkins Public Law (Oxford: Oxford University Press, 2003), 169. For a more sceptical interpretation, see C Turpin ‘Ministerial Responsibility’ in J Jowell and D Oliver (eds) The Changing Constitution, 3rd edn (Oxford: Oxford University Press, 1994) 117ff.

[101] M Russell ‘Never Allow a Crisis to Go To Waste: The Wright Committee Reforms to Strengthen the House of Commons, Parliamentary Affairs, Vol 64, No 4, 2011, 612-633 at 628-629.

[102] M Loughlin Foundations of Public Law, (Oxford: Oxford University Press, 2010), 452.

[103] T Prosser ‘Regulation and Legitimacy’ in J Jowell and D Oliver (eds) The Changing Constitution (Oxford: Oxford University Press, 2011), 331.

[104] J Black ‘Calling Regulators to Account: Challenges, Capacities and Prospects’ in N Bamforth and P Leyland (eds) Accountability in the Contemporary Constitution (Oxford: Oxford University Press, 2013), 369.

Tag:Breaking News