# The Bureaucrat Who Fell Under a Bus: Ministerial Responsibility, Executive Agencies and The Derek Lewis Affair in Britain

**Article** *in* Governance · December 2002

DOI: 10.1111/0952-1895.981999098

CITATIONS
44

READS
384

**1 author:**

Charles Polidano
Office of the Commissioner for Standards in Public Life (Malta)
**31** PUBLICATIONS **894** CITATIONS

SEE PROFILE

# COUNTRY REPORT
# The Bureaucrat Who Fell Under a Bus: Ministerial Responsibility, Executive Agencies and The Derek Lewis Affair in Britain

CHARLES POLIDANO*

*Various concerns have been raised about the practicability of Next Steps and the adequacy of accountability mechanisms in Britain, particularly after the dismissal of Derek Lewis as chief executive of the Prison Service. This article critically reviews these concerns. It argues that the agency model is viable notwithstanding doubts about the practicability of the policy–operations distinction; that Next Steps is not the cause of defective accountability or the scapegoating of bureaucrats by ministers; and that a commonly proposed solution—making agency heads accountable to parliamentary select committees—has fundamental drawbacks of its own. The "conventional wisdom" that Next Steps cannot work ignores important evidence and badly needs reassessment.*

In 1993, HM Prison Service joined the growing ranks of Britain's "Next Steps" executive agencies. On the insistence of Kenneth Clarke, the Home Secretary, the new agency's first chief executive was brought in from outside the civil service. The chosen man was Derek Lewis. He had no background in either government or prison management, but he did have a track record in revitalizing ailing media companies and turning them around. It was hoped he could do the same with the Prison Service, which was beset by defective security, low staff morale, and turbulent union-management relations.

Initially Lewis appeared to be doing well. In 1994 he received a substantial performance bonus after the agency met 15 out of 16 performance targets. Far from ending, however, the problems came to a head at the end of that year. In November, six dangerous convicts—including five IRA members—broke out of Whitemoor prison in Cambridgeshire, shooting a guard on their way out. An inquiry led to the publication of an embarrassing report in December. Yet only a month later, in January 1995, another three high-risk prisoners escaped from Parkhurst on the Isle of Wight. Two escapes from top security facilities in such quick succession were

*Institute for Development Policy and Management, University of Manchester

*Governance: An International Journal of Policy and Administration*, Vol. 12, No. 2, April 1999 (pp. 201–229).  ISSN 0952-1895

acutely embarrassing to the government, the more so because there had been warning of lax security at Parkhurst.

Home Secretary, now Michael Howard, came under heavy criticism in Parliament. But he refused to resign, saying prison escapes were operational failures and he was responsible only for policy. Instead he ordered an inquiry into the Parkhurst breakout. The inquiry, which reported in October 1995, was highly critical of the management of the Prison Service and indicated that poor management had played a part in making the escape possible. The Home Secretary announced Lewis's dismissal on the same day he released the report.

This aroused a controversy which did not abate when Lewis sued for wrongful dismissal. He claimed that, as chief executive, he had been subject to a great deal of interference from above notwithstanding the supposed operational latitude of agencies. He used to be summoned to the Home Office at least once a day to discuss operational issues. The Home Office chose to settle out of court: Lewis won a total of £280,000 in damages (Adonis and Suzman 1995; Talbot 1996; Barker 1998).

The affair seemed a poor augury for the entire Next Steps agency movement. Next Steps presupposed that responsibility for agency operations could be clearly distinguished from the minister's policy responsibilities and delegated to the agency chief executive, who would be held accountable for his or her achievement of set performance targets. The Prison Service case cast doubt on the practicability of this arrangement. "The attempt to distinguish between policy and operations," said Lewis, "was no more than a political figleaf—such a small figleaf that it was grossly indecent" (*The Independent* 30 March 1996). Heralded as the most important development in the British civil service this century, Next Steps had attracted worldwide attention; yet the Derek Lewis affair seemed to suggest that it was all going wrong.

Questions about agency accountability were already being raised at the time.[1] The doubters had gained impetus from the resignation in 1994 of Ros Hepplewhite as chief executive of the Child Support Agency, which had run into a storm of public criticism over how it operated and what it was trying to achieve. Parallels would be drawn between this and the later Lewis case. The Lewis case seemed to amply justify the skeptical view of Next Steps (see Foster and Plowden 1996; Talbot 1996; Barker 1998).

The debate was also played out in the national press, and it would not die down quickly even here. Almost a year later, following another incident involving the Prison Service—the early release of over 500 prisoners due to a misinterpretation of the law—the *Financial Times* came out broadly in support of the agency initiative but added, tellingly, that "ministers must resist the temptation to wash their hands of all difficult problems by classifying them as 'operational.' The history of Mr Howard's relationship with the Prison Service suggests that he has not always avoided that temptation in the past" (Editorial, 28 August 1996).

And the case came back to haunt Michael Howard in May 1997 during his bid for the Conservative party leadership, when Ann Widdecombe, his former prison minister, said that the decision to sack Lewis was unwarranted and unfair. She accused Howard of having misled Parliament at the time by refusing to admit that he had intervened heavily in prison operations, particularly in putting strong pressure on Lewis to suspend the governor of Parkhurst immediately after the escape. Widdecombe's intervention was widely seen as having scuppered Howard's chances of becoming party leader.[2]

The question of accountability took on even greater importance in the wake of the Scott inquiry into the sale of British weaponry to Iraq. It emerged from the inquiry that improprieties had occurred; yet no minister or official took responsibility or paid a penalty. The episode raised questions about the adequacy of accountability mechanisms throughout the entire central government rather than simply in relation to agencies (Foster 1996; Bogdanor 1996; 1997).

In this article I do not deal directly with the more general issues raised by the Scott report, although I do make reference to the report in connection with agencies. My focus is more limited to Next Steps. I take issue with what appears to be the emerging post-Derek Lewis consensus that:

- the agency model is flawed because it depends on an unrealizable distinction between policy and operations;
- the model allows ministers to evade their constitutional responsibility for failures of government by claiming that these are "operational;"
- agency heads have thereby become liable to be turned into political scapegoats; and, finally,
- the accountability gap can be closed by making chief executives directly accountable to parliamentary select committees.

I will deal with each of these points in sequence in the context of the Derek Lewis case. My argument is that the policy-operations distinction has worked reasonably well in most agencies, the Prison Service being the exception not the rule. Next Steps is not the cause of wider changes to conventions of accountability, whatever one may think of these changes. And while agency heads may indeed be potentially at risk of scapegoating if they take on a high public profile, the same applies throughout the civil service, which has lost much of its old anonymity. Finally, direct accountability to parliamentary select committees would pose new problems without solving the old ones. The emergent academic consensus that agencies cannot work overlooks important evidence and badly needs critical reassessment.

These issues are directly relevant to other countries which have implemented "new public management" reforms. All such initiatives face an inherent conflict between giving managers more autonomy and retaining

political responsibility for, and control over, the executive functions of government (Aucoin 1990). The Derek Lewis affair brought this conflict to a head in the UK; the same can happen quite suddenly elsewhere, as New Zealand's Cave Creek tragedy shows (Gregory 1998). The lessons of the Lewis case are of international importance.

## NEXT STEPS AND THE POLICY–OPERATIONS DIVIDE

After the Parkhurst breakout, the Home Secretary held that the responsibility for prison operations belonged to Derek Lewis as director general of the Prison Service. It was in keeping with this that Howard denied being involved in operational matters. But there was evidence to the contrary even at the time; and after the May 1997 election, his former prisons minister produced more. It seemed that the boundary between policy and operations was distinctly shadowy—if it existed at all—where the Prison Service was concerned. It had merely served Howard as a smokescreen to hide his own actions from parliamentary scrutiny (*The Independent* 20 May 1997).

Other agencies provide more evidence of unclear role delineation. For instance, the creation of six agencies within the Department of Social Security gave rise to tension over the extent of freedom the agencies should have. Ministers involved themselves in matters down to the use of glass screens in Benefits Agency offices. "Certainly initially," writes Greer (1994, 65), "some departments have been exploiting the blurred border between policy and operations in order to become more involved in agency affairs."

Is Next Steps built upon a flawed premise? The policy–operations distinction is embodied in each agency's framework document, which is a public statement of the goals an agency has to meet and the powers that have been delegated to the agency for the purpose. The documents bring the delegation of responsibilities by ministers to senior officials, formerly an in-house, informal affair, squarely into the public domain. At the same time, the documents usually leave plenty of leeway for interpretation (and potential conflict) over precisely what powers and responsibilities are being delegated to agencies and which are being retained by departments.

### The Policy–Operations Divide: Divergent Views

The concept of a dividing line between policy and operations—or, in traditional terms, policy and administration—is a very old one. It was brought to prominence in 1887 by Woodrow Wilson, then in his academic days, who wrote that "Although politics sets the task for administration, it should not be suffered to manipulate its offices" (quoted in Dunsire 1973, 89). It is not known whether he changed his mind once he became president of the United States.

At any rate, the Wilson doctrine has since come under heavy fire, and its unworkability is an article of faith in textbooks on government. We can

let Peter Self speak for all the critics. Not only, in his view, does politics merge seamlessly with administration, but any administrative question can become political. "Politics is like lightning, in that it can suddenly strike into any corner of the administrative system, but rarely does so" (1977, 151).

If one cannot separate policy from administration, then one cannot allocate a separately defined sphere of administrative responsibility to agency chief executives. For instance, agencies remain involved to varying degrees in departmental policymaking: this is commonly provided for in agency framework documents (Greer 1994; Pyper 1995a). To Plowden (1994, 128) and Greenaway (1995, 366), this is evidence that the policy-operations divide is not working.

In an early appraisal of Next Steps, Graham Wilson looked at the doctrine from the opposite end—ministerial intervention in agency operations—and went so far as to predict that the agency model would fail. Political crises, he said, would put the arm's-length relationship under unsustainable pressure:

> The secretary, held accountable politically, will soon resume command, for few politicians will be willing to accept the burden of defending an embarrassing situation in Parliament while allowing an agency chief executive to make the key decisions. The delegation of responsibility for implementation to agency chiefs will be contingent on the agency staying out of political trouble. The wise secretary of state will remain sufficiently involved in its operations to be as assured as possible that trouble is not brewing (1991, 341).

There is no denying the intuitive plausibility of Wilson's argument. It reads like a thumbnail sketch of the Prison Service case even though it was written four years before the event.

Nevertheless, not all authors support his gloomy prognosis. Aucoin takes the opposite tack: he suggests that by bringing bureaucratic accountability into the public forum, initiatives such as Next Steps will turn permanent officials into autonomous policy actors. Such reforms will "increasingly challenge the idea and reality of the administrative organs of government as subordinate to the executive branch, according to the principles of parliamentary government as we now know them" (1990, 203). Barker (1998) offers a similar view.

Foster and Plowden think that the policy–operations divide is "hopeless," though they add the vital rider that "in practice it settled down to be workable for ministers' relations with nationalized industries" (1996, 172). Later on they warn that—as with the nationalized industries—agencies and ministers would "develop an agreed but shifting split between policy and operations which means that agencies would accommodate ministers on the small things that concern ministers while running their internal affairs mostly as they determine, given their budgets" (1996, 179). In other words the problem with the policy–operations divide as perceived by Foster and Plowden is not that it is unworkable, but that it is *too* workable.

Another school of thought considers that the policy-administration distinction as embodied in agencies does not go far enough and needs to be formalized. At one stage Parliament's Treasury and Civil Service Committee wanted ministers to make any alterations to framework documents via a formal procedure involving a report to Parliament. This was not accepted by the government (Foster and Plowden 1996). More radically, William Plowden (1994, 135) suggests—following Bogdanor—that framework documents should be given legal status so that chief executives would be able to fight off ministerial "interference" in agency management.

More radical still is the proposal that Britain should adopt a formal output–outcome distinction on New Zealand lines, with ministers taking responsibility for outcomes and the choice of outputs and chief executives taking responsibility for the delivery of agreed outputs (see Boston 1992). This is advocated by, among others, Greer (1994), Boston (1995), and—in apparent contradiction with their earlier argument—Foster and Plowden (1996, 191-3). This represents the other extreme of the spectrum of opinion on the policy-operations divide.[3] Pyper (1995b) suggests that there may be cultural impediments in the way of importing the New Zealand model to the UK.

**Putting the Debate Into Perspective**

What are we to make of all this? First of all, we must set against the dire predictions of failure Robin Mountfield's observation that serious problems have emerged in only two of 124 agencies (the other being the Child Support Agency). Writing from his standpoint as permanent secretary at the Office of Public Service, Mountfield goes on to say that ministerial intervention in agency management does not necessarily contradict Next Steps:

> We have never argued that a clear and immutable dividing line was possible or even desirable. . . . There could be no question of a self-denying ordinance. The responsible minister must be able to "shine his light" anywhere into an Agency within his department—and direct the Chief Executive if necessary. This is quite compatible with Next Steps principles (Mountfield 1997, 74).

In short, Michael Howard need not have sought to play down his involvement in Prison Service operations. But this is apparent only with hindsight. In the early years of Next Steps there was no such emphasis on ministers' continuing powers of intervention in agency management. Kemp (1990) and Finer (1991)—both writing in their official capacity as members of the project team—hardly mention the possibility of ministerial intervention, though there was some reference in the original Next Steps report (Efficiency Unit 1988).

Next Steps is evolving with experience. Aucoin's thesis that managerial reforms will launch bureaucrats into their own political orbit appears unlikely to be realized, in Britain at least. Ministers would certainly resist any such development: Massey reports that agency heads in one large

department got "hung, drawn and quartered" (1995: 26) when they tried to establish no-go areas for ministerial intervention on the basis of their framework documents.[4]

Nevertheless, Mountfield's observation that only two agencies have encountered serious problems does serve to put things into perspective. It is easy to make too much of the impracticability of the policy-administration distinction. As we saw, Foster and Plowden acknowledge that the distinction evolved into a workable arrangement where the nationalized industries were concerned. Greer suggests that the situation will likewise stabilize in the case of agencies: "some of the early mix-ups over the respective responsibilities of departments and agencies are probably teething problems to be resolved" (1994, 91).

Most agencies are, in fact, subject to a limited amount of political attention. Judge et al. (1997) present important evidence showing that written parliamentary questions and correspondence from members of parliament during 1995 concentrated on a handful of agencies such as the Prison Service, the Child Support Agency, the Benefits Agency, the Employment Service, and the Highways Agency. These got hundreds of questions and letters each, while the majority of the others got few or none at all. Most agency heads do not even have regular meetings with their secretary of state. It appears that ministers rarely exercise their powers of intervention in agency management, however insistent they may be on retaining those powers.

In Self's terms, the operational territory of these agencies stops well short of the zone where administration begins to merge with politics. They would only face infrequent, one-off interventions by ministers in agency management. Such occasional interventions need not bring the house of Next Steps tumbling down. Graham Wilson's early prediction is overstated by far.

Nor are the high-profile agencies necessarily problematic. Greer (1995) looked at replies by the Benefits Agency to parliamentary questions. Parliamentary questions about agencies embody the policy–operations divide in that questions on operations are answered directly by agency heads, whereas questions that raise policy issues continue to be dealt with by ministers.[5] Although the Benefits Agency is highly political—it pays most social benefits—and so the problems of boundary clarification should be at their worst, questions concerning the agency have usually fallen quite readily into policy and operational categories. As Peter Kemp forcefully argued before Parliament's Public Services Committee, even complex and potentially contentious agencies such as the Benefits Agency and the Scottish Prisons Agency have worked. The committee itself concluded that "most agencies appear to have little or no difficulty in working within the responsibilities as they are at present mapped out in the Framework Document" (quoted in Judge et al. 1997, 108).

The prison service is not the rule—it is the exception. Its experience cannot be extrapolated to Next Steps as a whole. It is not even typical of other agencies with a high political profile.

What about the exception itself? It has been suggested that agency status may be inappropriate for the Prison Service. But this conclusion is not as neat as it might seem. The Parkhurst inquiry was only the latest in a series to call for less political intervention in the management of prisons and a sharper role delineation between ministers, the director general, and prison governors (Pym 1996). It is precisely for this reason that the Service was set up as an agency. After his dismissal, Derek Lewis called for the Service to be made an authority independent of ministers; whatever one may think of this, some means has to be found to solve this agency's essential problem of a lack of management autonomy. Simply to take agency status away from the Prison Service would be to leave it in the lurch.

As a final point, there is no reason why agencies should refrain from contributing to policymaking. Woodrow Wilson's own conception of the policy–administration divide was much narrower than that of his later critics: he was essentially arguing against political patronage (Campbell and Peters 1988). Plowden and Greenaway are beside the point when they offer agency provision of policy advice as evidence of something amiss.

To sum up, Next Steps can live quite well with a policy-operations "boundary" that is shadowy, permeable, and prone to shifting from time to time. This implies uncertainty; but administrators have lived with uncertainty since time immemorial in the complex world that is government. Indeed it can be argued that by making more information available and setting out performance targets as the basis of chief executives' accountability, Next Steps *reduces* the level of uncertainty. If the opposite appears to be the case, that is only because current arrangements are still relatively new whereas the previous set-up was in place far longer.

This is not to imply that previous accountability mechanisms were static and unchanging. As we shall see next, part of the current uncertainty stems from changes in conventions of accountability and ministerial responsibility that were already in motion at the time Next Steps got under way.

## AGENCIES AND MINISTERIAL RESPONSIBILITY

"It is at least arguable," say Foster and Plowden (1996, 179), "that the heads that should have rolled in the Prison Service and Child Support Agency [cases] were those of the ministers, not those of the chief executives." This is a common view. The implication is that ministers can take advantage of agency arrangements to evade responsibility for failures of government: that Next Steps is a retrograde step for ministerial accountability. O'Toole and Chapman claim that

> Despite questions about the ways in which ministers have discharged their responsibilities to Parliament, it is true to say that, by-and-large, the doctrine of ministerial responsibility remained, until the Next Steps programme, intact. . . . Civil servants remained largely anonymous, ministers took both the credit and

> the blame for the actions of those civil servants, and citizens knew where the "buck" stopped (1995, 121–2).

But this ignores the many concerns that were expressed when the doctrine of blanket ministerial responsibility for administration was still seen as operational. The convention was widely thought an *obstacle* to accountability because it camouflaged the extensive role played by officials in government and shielded them from public scrutiny. It was felt that holding ministers personally responsible for administrative errors would merely turn politicians into civil service scapegoats.

There is a strange discontinuity in the pre- and post-Next Steps debate on accountability and ministerial responsibility. We have gone from saying that civil servants are running the country behind ministers' backs to saying that ministers are too deeply involved in management decisions for the agency model to work. For the sake of a more balanced perspective, we need to revisit the old questions of civil service power and ministerial responsibility.

## "The Lords of the Backstage:" Civil Service Power

In Britain, civil service power has been a concern since before the second world war (Fry 1985). But the issue shot to prominence in the 1960s and 1970s when two former Labour ministers, Tony Benn and Richard Crossman, publicly accused the civil service of undermining their efforts to introduce new policies. Their accusations came to be echoed from the other side of the political spectrum after the Conservative government's U-turn away from new-right economic policies in the early 1970s. Some Conservatives blamed the U-turn on the influence of civil servants, supposedly the guardians of the old Butskellite middle-of-the-road policy consensus (Hennessy 1989; Theakston 1995).

This theme was taken up by other writers, notably Kellner and Crowther-Hunt (1980) and Young and Sloman (1982). It was popularized, famously, by the *Yes Minister* television series. Civil servants were cast as the lords of the backstage: they were seen as stage-directing government while hidden from the roving spotlights of public scrutiny. These concerns were echoed in other Westminster democracies at the time (Aucoin 1995, 79; Boston et al. 1996, 56; Halligan 1991).

But the administrative revolution wrought by the Conservative government after 1979 laid such concerns to rest. The civil service had its numbers slashed from 700,000 to 500,000; radical changes to its structure and organization were pushed through; and civil servants who incurred ministers' dislike were forced from office.[6] The authority of the political executive was proved beyond doubt. The lords of the backstage were evicted from the show.

This is probably why the tenor of the debate changed so drastically. Once government was so evidently being driven by the political executive, the concern switched from civil service to *ministerial* power. Where

the bureaucracy had been attacked as a deadweight on radicalism, it was now defended as a beleaguered source of "institutionalized scepticism" (Hugo Young, quoted in Plowden 1994, 104). The civil service came to be seen as a necessary, though dangerously worn, brake on ministers' ideological fervor (Campbell and Wilson 1995; Foster and Plowden 1996).

But the great change in the power relationship between ministers and civil servants is almost certainly more a matter of impression than reality. Civil servants were never running the country behind ministers' backs; nor have they now become pliant yes-men concerned only with doing what ministers say. Even if their role in top-level policy-making has declined, civil servants continue to take many decisions of considerable importance themselves. Reverting to the old doctrine of personal ministerial responsibility for administrative failure would be a step backward, not forward. It would merely revive the specter of an unaccountable civil service acting as lord of the backstage.

In short, those who charge Next Steps with having undermined the doctrine of ministerial responsibility ignore past concerns that the doctrine merely served to make bureaucrats unaccountable. They ignore something else too: the fact that the doctrine ceased to operate in its "pure" form long before the agency movement began.

**An Evolving Convention—and Its Implications**

It was recognized at least twenty years ago that the convention of personal ministerial responsibility for administrative failures had fallen into disuse: ministers were no longer willing to resign, if they had ever been, for mistakes committed by their officials (Wright 1977). On current interpretations, no minister has ever resigned on such grounds (Marshall 1989; Woodhouse 1994). The same applies in Canada (Sutherland 1991a). Marshall goes so far as to say that this convention never existed—it was a misinterpretation of ministers' *legal* responsibility for administrative acts.

Are we to resurrect this old canard now, years after it was buried? Let us beware of constitutional fundamentalism. One must acknowledge, following Woodhouse (1994), the "multi-layered" nature of the convention of ministerial responsibility. She distinguishes between—among others—explanatory responsibility (giving an account to Parliament), amendatory responsibility (taking remedial action to deal with a problem), and sacrificial responsibility (resignation). The latter only applies to failures attributable personally to the minister: "There must . . . be identifiable fault for the political pressure for resignation to be successful, and resignations without *this constitutional requirement* are rare" (Woodhouse 1994, 163, emphasis added).

The value of ministerial responsibility in relation to administrative errors lies not in what Marshall calls "pure vicarious headrolling" (1989, 11), but in the explanatory and amendatory aspects of the convention. This is now recognized in official doctrine, which has it that ministers are

*accountable* (answerable to Parliament) for all that their officials do, but only *responsible* (personally culpable) for actions which they know about or which are in accordance with their directions. As Mountfield (1997) admits, this reinterpretation of ministerial responsibility met with skepticism. But even the Scott inquiry endorsed it as the only workable option given the complexity of government (Foster 1996).

For all the skepticism, the new formulation is belated recognition of changes that took place many years ago. But those changes have further implications which are only just beginning to make themselves felt. For instance, junior ministers have traditionally had no part in the convention of ministerial responsibility owing to their lack of legal status. The secretary of state retained personal responsibility for matters delegated to a junior minister and would still be the one to resign if some sufficiently calamitous event occurred. Yet Woodhouse suggests this is now changing: there is growing acceptance of the idea that junior ministers can take responsibility and resign on their own account. This is a logical consequence of the narrowing of the boundaries of sacrificial ministerial responsibility to personal error.

Also, under the old doctrine the question that had to be asked when a failure of government occurred was whether or not it was serious enough to justify the resignation of the responsible minister. This was hard enough to answer, but now there is one more. Have the minister's personal actions (or inactions) contributed to the failure to such an extent that he or she can be held primarily to blame for it? It can be very, very difficult to answer this question, for a number of reasons.

First of all, most policy problems in government go back a long way. Many years of neglect or half-hearted action may elapse before an issue finally erupts into crisis. When it does, the current minister may not appear particularly blameworthy by comparison with his or her predecessors. It could be hard to argue that all the blame for the crisis should fall upon the incumbent's shoulders. This is the more so if the minister has been in office a short time only—a distinct likelihood given the rapid turnover of ministers in Britain.

Second, government is complex. Complexity makes for convoluted reporting relationships and overlapping organizational jurisdictions. This can, in turn, mean that

> . . . power is simply too widely diffused in most instances to hold specific individuals answerable or blameworthy in any meaningful sense. Not only is power shared within a department through the process of delegation, but it is also shared with central agency bureaucrats, bureaucrats in other line departments, and even more corrosively for accountability purposes, with public servants in other levels of government (Langford 1984, 516-7).

The Scott inquiry is a case in point. It found clear evidence of wrongdoing, but could not pin responsibility unequivocally on the shoulders of anyone (Bogdanor 1996). Perhaps we should not be so surprised at this outcome; nor should we think of it as an aberration.

Third, there is what may turn out to be the most controversial issue of all: mitigating factors. Ministerial responsibility for policy remains sacred, but it may be growing harder to pin blame on a minister even here. Ministers may take a wrong decision or fail to act decisively because of the sheer pressure of work to which they are subjected. Or they may be led astray by faulty advice of a highly specialized nature.

The use of such arguments in defense of ministers is not as outlandish as it sounds. An inquiry into a 1983 prison escape in Northern Ireland exonerated the responsible minister because he was "overworked and under-resourced." And when the Home Secretary was found in contempt of court in the early 1990s for deporting an immigrant in spite of a court order to the contrary, he pleaded that he had acted in accordance with legal advice (Woodhouse 1994).

Such excuses sound like weasel-words—an unworthy attempt by ministers in crisis to escape the iron maiden embrace of ministerial responsibility. Many would argue that if ministers could legitimately disclaim responsibility for policy decisions, for whatever reason, this would be a mortal blow to accountability in government. But if a minister's resignation is a reflection of direct personal fault rather than ritual *hara-kiri*, then it is only logical to take mitigating factors into account in establishing that guilt. We may have to start taking the weasel-words seriously.

So far we have sidestepped the most critical question of all. Suppose it is possible, in spite of all the above, to establish that a minister is inextricably implicated in a serious failure of government: how does this then translate into a decision that the minister has to go?

At one point in her wide-ranging review of ministerial responsibility, Woodhouse (1994, 143) discusses a particular minister's failure to resign in terms of its constitutionality—implying that there is some independent criterion by which to determine when sacrificial responsibility should come into effect. But as she recognizes, resignations depend very much on the situation and the political balance of forces. A minister goes when he or she loses the support of the prime minister and government backbenchers. The merits of the case have little to do with it. There is no objective standard, no impartial process by which to judge whether politicians should lose office for misgovernment, however evident their own personal involvement. That is the hard political truth.

Objectively speaking, should Michael Howard have resigned over the Parkhurst escape? Objectively speaking, there is no way to tell—even if we agree that Lewis was a scapegoat. Sacrificial ministerial responsibility has become so clouded by doubts and qualifications that it may well be nearing the end of its usefulness as a mechanism of accountability for failures of government.[7] The process was set in motion not by Next Steps, but by the longstanding recognition that ministers' liability to resign does not extend to administrative failures in which they are not personally implicated. The present situation is merely the logical conclusion of that development.

But if ministerial resignations are surrounded by so much uncertainty, that makes it all the more possible—and tempting—for ministers in crisis to seek to divert the blame onto their officials. The higher the public profile of an agency head, the more suited he or she would be for this purpose. Has Next Steps brought about a new practice—the scapegoating of chief executives?

## NEXT STEPS AND BUREAUCRATIC SCAPEGOATS

"Mr Lewis has already outlived one Home Secretary," wrote William Plowden the year before Derek Lewis was dismissed, "and, unless he falls under a bus, is likely to see out several more" (1994, 99). A fateful prediction, but Plowden can hardly be faulted for it. That year the Prison Service met fifteen out of sixteen performance targets—and the number of prison escapes fell by 80%. As chief executive, Lewis received a substantial performance bonus. His star was high, and there was no telling how soon it was to fall.

Was Derek Lewis the Home Secretary's scapegoat? The *Financial Times* editorial which was quoted in the introduction to this article implies, with a subtlety worthy of the best bureaucratic penmanship, that this was indeed the case. Lewis's record up to 1994 lends support to this view, as does the out-of-court settlement in his favor. And then there are Ann Widdecombe's allegations. Widdecombe was supported by another former prisons minister, Sir Peter Lloyd, who said that Howard "should have congratulated Mr Lewis on the job he was doing, instead of sacking him. What he did was totally unjust" (*The Independent* 16 May 1997). It seems that managerial accountability clashed head-on with crude political accountability—and lost.[8]

But before we blame Next Steps for enabling ministers in the firing line to see to their own safety by offering up agency heads as diversionary targets, let us take a brief look at two prison escapes dating from *before* the Prison Service was set up as an agency. Both are well documented in Woodhouse (1994) and Barker (1998), the account below being no more than a brief summary.

### The Ones Who Got Away: Two Previous Prison Escapes

Our first case is the breakout of no less than 38 IRA prisoners from Maze Prison, Northern Ireland, in September 1983. The second concerns the escape of two IRA prisoners from Brixton in July 1991. Each case had its own quirks, particularly a rather odd saga of covert police involvement in the Brixton breakout. But we need only be concerned here with some core features in common.

First of all, in both cases the responsible secretary of state ordered an inquiry, saying that prison management was the responsibility of prison governors and expressing readiness to resign only if the inquiry blamed

government policy or the minister's own negligence. This was essentially the formula later used by Michael Howard. In the first instance, says Woodhouse, it did not go down well in Parliament; the second time round, following Brixton, it went uncontested. Rightly or wrongly, the precedent had been set.

Second, the inquiries attributed both escapes primarily to deficiencies in the management of the prisons concerned. Both prison governors took their retirement as a result. But the blame also extended to higher-level officials, and it was here that unanswered questions remained. The Maze inquiry held the Northern Ireland Office culpable for the inadequacy of the prison's physical defenses and pointed a finger at the official in charge of the department's security and operations division. There was also a junior minister responsible for prisons, but—as has already been mentioned—he was exonerated because he had too much on his plate.

In the case of Brixton, there had been prior warning that the prison was not fit for high-risk prisoners. To cap it all, the Home Office had been warned by the police that a breakout was going to take place. This warning had not been passed to the prison by the relevant directorate in the Home Office. After the inquiry Brian Bubbear, head of the directorate, was transferred. The Home Secretary insisted that he knew nothing of the warning, and that the prison's security status was something for the Prison Service to deal with. He kept his job (for a time) in spite of allegations that he was covering his tracks and had used Bubbear as a scapegoat.

These two cases and that of Derek Lewis might almost have been played to the same script. Barker recognizes this, though he still suggests that Next Steps allowed ministers to shed responsibility for operations while retaining control (1998: 2, 8-9). Likewise, Campbell and Wilson (1995) acknowledge the pre-Next Steps erosion of ministerial responsibility yet still believe that agencies further undermined it. But surely the Maze and Brixton escapes prove that Next Steps merely formalized an approach to accountability that was already well established.

Officials began to get publicly blamed for administrative failures well before agencies were set up. This was a natural consequence of ministers' longstanding non-acceptance of vicarious responsibility. It was this, not Next Steps, that opened up the possibility of scapegoating. Parallel trends have been observed in Canada (Sutherland 1991a; Sutherland and Mitchell 1997): here too, this has happened quite independently of such limited experimentation with agencies as has taken place.

### The Visibility of Agency Chief Executives

But there is still the question of whether agency chief executives are at a greater risk of scapegoating because of their *visibility*. After all, one key difference between the earlier breakouts and the Parkhurst escape is the presence, in the latter case, of a high-profile senior official who could be made to walk the plank along with the prison governor. There was no

Derek Lewis around in 1983 or 1991, though in 1991 Brian Bubbear played a subdued version of the same role. Appointing a high-flying television executive as head of an agency would naturally draw public attention to the appointment and give the new head a high profile.

The impression that agencies lend their heads high visibility is reinforced by the case of Ros Hepplewhite, chief executive of the Child Support Agency. This agency was set up to ensure that absent parents (usually divorced fathers) fulfilled their maintenance obligations toward their children. Hepplewhite ran into trouble after the agency failed to meet key performance targets and became mired in controversy. It was plagued by cost overruns, severe delays, and processing errors. Her resignation in September 1994, following a management review of the agency, can be seen in straightforward terms as a consequence of the agency's operational problems. But much of the public controversy surrounding the agency derived from the policy framework within which it operated.

First of all, the agency decided for itself what level of child maintenance should be paid, frequently raising it even where an amount had been agreed between the parents or set in court. Second, it emerged that most of the extra maintenance income generated by the agency was expected to find its way to the Treasury in the form of benefit clawbacks from mothers on social security. And finally, cost overruns led priorities to switch to revenue generation. Instead of pursuing parents who had not been traced and were paying no maintenance, the agency focused its efforts on getting more money out of those who were already making some payments—the easier cases. In August 1993 Hepplewhite and her minister were deeply embarrassed by the leak of a memo to staff setting out the change of priorities in the baldest of terms (James 1997).

It is difficult to argue that Hepplewhite was a scapegoat, and impossible to judge whether a minister should have resigned along with her. But it may be fair to say that her departure did enable ministers to close the book on the *policy* as well as the operational problems. Hepplewhite herself undoubtedly facilitated this by making no bones about her personal commitment to the agency's mission and publicly identifying herself with it. She saw herself as a new, mission-oriented breed of civil servant: a breed which, arguably, Next Steps helped emerge via its provision for external appointments to agency headships (Greenaway 1995).

But Next Steps is not the only factor behind the erosion of civil service anonymity. Once again, this is a trend which has been under way throughout the post-war period (Wright 1977) and which gained its strongest impetus from the establishment of parliamentary select committees in 1979 (Campbell 1993). Even career bureaucrats in traditional departments have suffered from a loss of anonymity. William Armstrong, head of the civil service in Edward Heath's time, became too closely identified with the prime minister and would have been compelled to resign in 1974, when Labour came to power, had he not left for health reasons (Hennessy 1989). Peter Kemp, another career official,

took on a high public profile as the driving force behind Next Steps: he lost his job in 1992 because the public services minister had different policy priorities (Plowden 1994; Pyper 1995a). Extraordinarily, the same Kemp (1996, 309) later openly named Terence Burns, the former advisor who became permanent secretary of the Treasury, as someone whom a new Labour government should consider sacking. Burns took early retirement in June 1998, a year after Labour returned to office, after becoming "semi-detached" from the political leadership of the Treasury (*The Sunday Times* 12 July 1998).

**Relearning the Lesson of Anonymity**

As Self says, lightning can strike anywhere. But it is more likely to hit those who stand out from the crowd. High personal visibility makes bureaucrats' heads liable to roll—whether because of personal error, identification with out-of-favor policies, or scapegoating by ministers. The headship of an agency can confer visibility, but it is only one factor. Next Steps is certainly not the original or even main cause of the erosion of officials' anonymity.

The lesson of anonymity may have been forgotten to some extent. But there are signs that it is being painfully relearnt. Mountfield acknowledges that ". . . the higher profile resulting from the naming and greater exposure of senior civil servants can lead to their identification with policies, with unfortunate results as we saw in the case of the Child Support Agency. This is something we need to guard against" (1997, 74). Again, Next Steps is evolving with experience. But this particular lesson is not specific to the initiative. It applies throughout government.

Is there any defense available to bureaucrats in danger of becoming political scapegoats? Yes—Next Steps. A chief executive with responsibility for the achievement of targets set through an agency framework document has an objective test of performance to which he or she can point if his or her career appears under threat.

One might object that the achievement of targets did not prove of much help to Derek Lewis. Yet even if an agency head is dismissed, a good track record will serve as the basis for a claim for redress. That is the route Lewis took, and he was successful. His suit established the principle that performance contracts are legally binding documents (Elizabeth Symons, quoted in Barker 1998, 15), and this will strengthen the hands of any chief executives who find themselves in a similar situation in the future.

It might also be argued that Lewis could publicly contest his dismissal only because he was not a civil servant and had career prospects outside government. Yet we should remember that Lewis did not jump of his own accord: he was pushed. The question of claiming redress arises only if a chief executive is fired. At this point there is no longer anything to be lost by kicking up a fuss.

What are the alternatives? The one most commonly put forward is making chief executives directly accountable to parliamentary select committees. But this is a cure that is likely to be worse than the disease.

## DIRECT ACCOUNTABILITY TO PARLIAMENTARY SELECT COMMITTEES

The idea of making agency chief executives directly accountable to parliamentary select committees—referred to henceforth, for brevity's sake, as direct accountability—is brought up repeatedly. It has been put forward by MPs (*The Economist* 1997) and it appears in the work of several authors, including Plowden (1994, 135); Woodhouse (1994, 296); Giddings (1995b, 237); Jones et al. (1995, 163); and Theakston (1995, 168).

Direct accountability is felt necessary mainly to clarify and delineate the boundaries of both ministerial and bureaucratic accountability in the wake of the supposed confusion brought about by Next Steps. Plowden suggests that "Agency framework documents could be converted into legal documents; chief executives could be made formally accountable to the relevant select committee." Theakston takes as his starting-point the official distinction between responsibility and accountability and says that if chief executives were made directly accountable to select committees, "responsibility (including blame and sanctions) and accountability can be more closely aligned in clearly-defined spheres."

On the other hand, Pyper (1995a, 125) believes that *de facto* direct accountability to select committees is already a reality. "After all," he says, ". . . select committee hearings provided opportunities for civil servants to be directly questioned in person." Whether or not one accepts this view depends on how much importance one gives to the Osmotherly rules, which govern the appearance by civil servants (including agency heads) before select committees. These rules have themselves been a focus for controversy.

### The Osmotherly Rules

Under the Osmotherly rules, civil servants give evidence not in their own right but on behalf of ministers. The rules suggest that civil servants should decline to answer awkward questions, referring the committee to the minister instead. Civil servants are barred outright from revealing what advice they gave to ministers, what policy options they presented, and what other departments felt about a policy issue. These restrictions are intended primarily to maintain the anonymity of civil servants (in the limited sense of not revealing their own policy views) and to preserve the façade of collective ministerial responsibility.

The Osmotherly rules are often seen as an unacceptable limitation on parliamentary scrutiny of the executive. Sir Richard Scott, author of the Scott report, wanted civil servants to give evidence in their own right on matters of fact (Bogdanor 1996). Parliament's Treasury and Civil Service

Committee likewise recommended that chief executives should give evidence on their own behalf about their conduct as agency heads (O'Toole and Chapman 1995). Woodhouse (1994: 297) suggests that the rules should be abolished altogether. Much of the debate about direct accountability centers upon "liberating" civil servants from the constraints of the rules.[9]

However, Pyper does not see the Osmotherly rules as a significant constraint on select committees. After the first few years, he says, the rules were "rarely invoked" by officials (1996, 68). In practice the rules can be reduced to a formality: already in 1991 a select committee was questioning the head of one agency, the Queen Elizabeth II Conference Center, in terms such as "the problems 'you' have and 'your' aims to bring down costs" (Jones et al. 1995, 170).

Pyper errs on the side of optimism. The rules can indeed have little effect on the routine work of select committees. But they can be brought into play, with major impact, in serious crises. For instance, the government stopped five civil servants from giving evidence on the 1986 Westland case, which had brought about the resignation of two ministers and implicated the prime minister's office in misconduct. It is extraordinary events such as these which give rise to dissatisfaction with current mechanisms for accountability and generate calls for direct accountability to select committees. The case for direct accountability must be assessed in the light of such situations.

Pyper is able to make his case partly because the proponents of direct accountability are none too clear about how it would work or what additional powers select committees would have, even in extraordinary situations such as these. It would clearly be impractical and out of place to give select committees direct authority over agency heads in the sense of being able to tell them what to do. That leaves two possible roles for select committees: to hold agency chief executives accountable for operations; or to enforce accountability for failures of government by finding out what happened and deciding who was responsible. Let us look at each in turn.

**Direct Accountability for Operations**

Giving select committees the power to hold chief executives accountable for agency operations is a tempting option in that all it appears to do is formalize existing practice and take the framework document concept a stage further. Agency heads would account to select committees in their own right for their agency's performance on the basis of the annual targets set out under the framework document. Something along these lines is suggested by Plowden, Theakston, and Jones et al. This concept will be referred to here in shorthand as direct accountability for operations.

It is not clear who would have power of reward and sanction over chief executives in such a system. Even with no sanctions attached, however, this form of direct accountability would serve to rigidify the framework

document and exacerbate the problem of multiple accountabilities (Polidano 1998). An agency head may feel compelled to resist any ministerial directives which imply failure to achieve a target because he or she would have to account for this to an outside body. Alternatively, such directives would need to be made through a cumbersome procedure involving the formal notification of the select committee. Giddings (1995b) argues that there is already a template for this in the procedure by which departmental accounting officers report to the Public Accounts Committee before carrying out any ministerial spending instruction with which they disagree. But this is much more limited in scope.

There can be little doubt that making chief executives formally accountable to select committees for operations would considerably sharpen the policy-operations distinction. Currently, responsibility for policy and operations are unified at the minister's level; direct accountability for operations would split the two apart altogether. Even New Zealand, with its output–outcome divide, does not go that far. To the contrary, reform was designed to make departmental chief executives accountable solely to the minister, though this aim was not quite achieved (Boston 1992; Polidano 1998).

One cannot call for direct accountability for operations while casting doubt on the feasibility of the policy-operations distinction. Yet a number of writers have done precisely that. Plowden (1994, 128), Jones et al. (1995, 178), and Theakston (1995, 137) all add their voices to the chorus on the unworkability of the distinction even as they support direct accountability. An exception is Giddings (1995b), who recognizes the contradiction but argues that the difficulties would be no worse than under current arrangements.

Yet the real problems with direct accountability for operations do not stem from the policy–operations distinction as such, but from two factors: its impact on ministerial control, and its implications for the role of select committees.

First, a more rigid framework document means weaker ministerial control over agencies. Some critics of Next Steps consider this desirable, though others are concerned with upholding ministerial control (still others adopt both standpoints simultaneously). Governments, however, will be quite decided about keeping agencies under ministerial control.

Second, direct accountability for operations can work in a stable, predictable way only if select committees are willing to restrict their role to questioning a chief executive about his or her agency's performance in relation to targets. This represents a reduction in, not an extension to, the powers of select committees. The difficulty can be appreciated if we picture the home affairs committee tied to questioning Derek Lewis about the overall reduction in prison escapes and ignoring Parkhurst even as the controversy raged outside the committee room. It is a positively unnatural scene.

Agencies "do not represent the most politically interesting part of departmental life" to select committees, so far at least (Natzler and Silk 1995, 78). There is sustained parliamentary interest in only a handful (Judge et al. 1997). It is unlikely that committee members would be willing to restrict themselves to agency performance targets; or that, once armed with the weapon of direct accountability, they would avoid seeking to extend its reach to high-profile failures of government. The first of our two options for direct accountability, that for operations, would merge into the second—that of enforcing responsibility for administrative failures.

This is not simply a problem of tidy boundaries. The latter form of direct accountability is so unstable and brings such serious problems in its train that its workability is in grave doubt.

**Enforcement of Responsibility for Failures of Government**

The second type of direct accountability involves after-the-fact investigation into failures of government in order to clearly establish who was responsible for what. This type of direct accountability involves the least unnatural change to the role of select committees, and it is also seen as a potential solution to the problem of evasion of blame by ministers in cases such as the Parkhurst escape. To make it work, select committees would need clear power to call upon officials of their own choosing. The Osmotherly restrictions on civil servants giving evidence in their own name would also need to be lifted.

More is expected of this form of direct accountability than it may be able to deliver, particularly in highly complex cases. Even given the necessary freedoms, a select committee would not be as well equipped as a fully-fledged inquiry such as that held by Sir Richard Scott into the sale of arms to Iraq. Yet even this failed to pinpoint blame for misconduct. Would a select committee investigation succeed where the Scott inquiry failed?

Moreover, if agency chief executives gave evidence in their own right, a committee could be faced with conflicting statements. The chief executive might blame a failure on ministerial policy decisions; the minister might blame it on the chief executive's incompetence. The committee could well be unable to resolve the conflict and establish who is in the right. Far from clarifying accountability, lifting the Osmotherly restrictions could leave the waters at least as muddy as they were before. The agency head who is caught in such a situation might find only that it has done his or her tenure in office no good.

This applies even if one assumes that the committee is going about its business and seeking to apportion responsibility in an impartial manner. But this assumption is not realistic in a political forum such as a parliamentary select committee. There is no British experience to go by, but a Canadian case gives us a good example of what can go wrong—the Al-Mashat affair of 1991, as recounted by Sutherland (1991b).

**Direct Accountability in Practice: the Al-Mashat Affair**

Mohammed Al-Mashat was the Iraqi ambassador to the United States prior to the Gulf War of 1991. When the Gulf confrontation began, Iraq recalled its diplomatic staff from the US. But Al-Mashat did not go home: instead he went to Canada as a landed immigrant in March 1991, having applied less than a month before. When it became known that a senior official of Iraq, a country against which Canada had just fought a war, had gained landed immigrant status after an extremely short waiting period by normal standards, there was a public furor.

The government's response to the controversy was to say that while Al-Mashat's entry to Canada was perfectly legal, ministers had not been informed. A weekend's internal investigation laid responsibility for negligence on two persons. One was Raymond Chrétien, a senior public servant in the Department of External Affairs, who coincidentally was related to the then leader of the opposition. The other was David Daubney, chief of staff to the minister for external affairs (a political appointee).

The House of Commons standing committee on external affairs was allowed to question the two on their involvement in the affair. It is enough to say that the committee's inquiry immediately took on a partisan slant. The opposition members' sympathies clearly lay with Chrétien. The government majority had a discernible interest in ensuring that the official version of events was borne out. Government spokespersons countered claims that Chrétien had been singled out because of his family background by pointing to Daubney's party affiliations.

The only thing that the committee could agree on was a chronology of events: each party's representatives produced a separate report. All throughout, no explanation was given of why Al-Mashat's application for landed immigrant status was processed so speedily. Papers were at times heavily censored before release to the committee. Nor was there any indication how far Raymond Chrétien's tongue was tied by obligations of secrecy during questioning by the committee.

It is pertinent to add that the minister responsible for external affairs at the time Al-Mashat gained landed immigrant status was Joe Clark. Very shortly thereafter, he moved to a new ministry with responsibility for constitutional affairs. He was deeply involved in urgent negotiations on issues of national unity with Quebec and the other provinces by the time the Al-Mashat case became public. As the controversy grew and fingers were pointed in Clark's direction, he offered his new responsibilities as a reason why he should be left to get on with his job as minister of constitutional affairs (Sutherland 1991b).

A year later, the head of the Canadian public service issued a statement of policy on accountability which reaffirmed the traditional system of ministerial responsibility (Tellier 1992). This was very probably an attempt to calm the consternation of public servants following the Al-Mashat case. It also appeared to signal an end to experiments with direct

accountability to parliamentary committees. Aucoin (1995, 220) criticizes this statement for failing to clarify how public servants should behave before parliamentary committees—effectively pointing to the need for something along the lines of the Osmotherly rules.

If we set the Al-Mashat case against that of Derek Lewis, remarkable parallels emerge. In both cases governments disclaimed political responsibility for what they passed off as bureaucratic foul-ups. In both cases officials were identified and paraded as the true culprits. In both cases there were strong suspicions that ministers were covering their own tracks. The problems of accountability hitherto blamed on Next Steps—unclear responsibilities and bureaucratic scapegoating—plague the proposed solution, direct accountability to parliamentary select committees, in full measure.

Would British select committees prove themselves of sterner stuff than their Canadian counterparts and conduct investigations untainted by partisan bias—no matter how politically controversial the case at issue? The signs are not promising. Norman Lewis looks at the relationship between the committee on employment and the Employment Service Agency. He finds that the agency came in for tough questioning on various occasions, but:

> It would be no exaggeration to say that much of the cross-examination to which senior officials were subjected appears bad-tempered and a little spiteful. As well as party political points being scored, a great deal of the questioning appears to be pedantic and self-serving. (1995, 210)

More generally, Pyper says that select committee investigations vary in quality, can be superficial, ". . . and for most of the time [they] simply provide another forum for the continuation of the party battle" (1996, 61). According to Woodhouse (1994, 214–5), the Conservative government was not above seeking to influence its committee members and manipulating committee places to keep "unreliable" backbenchers out.

In a political setting, the allocation of responsibility for failures is itself a highly political act. To the minister who has to answer for the latest crisis, the doctrine of ministerial responsibility is something to be locked away in the bottom drawer. To the opposition spokesperson, it is to be brought out as a fundamental point of principle. Brian Cubbon, a former permanent secretary, puts it bluntly but aptly: "conventions, like statistics, are primarily useful in political arguments in order to refute those produced by the other side" (1993, 11). The investigation of permanent officials by a select committee would easily become a continuation of the same political game.

Direct accountability to select committees would be an unpredictable, unstable, and arbitrary process. Current problems of accountability would pale by comparison.

One may argue that such problems would only make themselves felt in politically charged cases such as those of Al-Mashat and Derek Lewis. But

it is precisely in such situations that problems of unclear responsibility and scapegoating have arisen. The proponents of direct accountability need to show that it can cope with such situations better, not worse, than present arrangements. They have a heavy weight of evidence to argue against.

## CONCLUSION

It is fast becoming the conventional wisdom—at least in British academic circles—that the executive agency model is flawed and unworkable and has confused the hitherto clear picture of accountability in government. This article has sought to reexamine this view via four specific issues: the workability of the policy–operations distinction; the impact of agencies on ministerial responsibility; the scapegoating of agency heads; and the feasibility of making agency heads directly accountable to parliamentary select committees. Let us summarize each in turn.

First of all, the distinction between policy and operations is more workable in practice than is commonly supposed; and Next Steps does not depend on as sharp a divide as its critics imagine. Critics who base themselves on the impracticality of the distinction are attacking a straw man of their own making.

Second, the doctrine of ministerial responsibility prior to Next Steps was nowhere near as clear-cut as is nowadays imagined. The argument that ministers no longer resign for failures of government following the creation of agencies is not tenable. Ministers never did resign, even if they were personally at fault, unless a large enough number of backbenchers wanted their heads. There is no such thing as an objectively verifiable case for resignation. The doctrine of ministerial responsibility has evolved, and continues to evolve, irrespective of Next Steps—even though the direction of change is not to everyone's liking.

Third, agency heads may indeed be liable to sacrifice as political scapegoats. They are so, in part, thanks to the visibility inherent in their office. But only in part. The loss of anonymity has been a general trend emerging from the evolution of ministerial responsibility; it applies throughout the civil service and well predates Next Steps. If anything, agency accountability mechanisms offer chief executives a degree of protection against scapegoating.

Finally, the commonly proposed solution to current problems—making officials directly accountable to select committees—has serious problems of its own. One version diffuses responsibility for the working of government while offering no guarantee of improved accountability in return, even if it works as intended (which is very doubtful). The other is highly political and risks turning into an arbitrary dispensation of rough justice.

This is not to say that there are no problems of accountability in government—merely that such problems are not specific to agencies and Next Steps is not the cause. Can we expect a better accounting for failures of

government in the future? The government which took office in May 1997 appeared to signal that the evasion of responsibility by ministers would become a thing of the past. Yet two incidents which took place in 1998 suggest that little has changed.

The first concerns the publication of the biography of Mary Bell, a convicted murderess. This gave rise to media outcries against criminals profiting from their crimes. Both the prime minister and the home secretary publicly allied themselves with this sentiment, only to be embarrassed when it emerged that the Home Office had known for two years that the book was in the making. This prompted Jack Straw, the home secretary, to order an inquiry into why officials had never informed ministers (*The Times* 1 May 1998).

The principal conclusion of the inquiry was that the officials concerned were indeed at fault for not forewarning ministers about the Bell biography—even though the book was outside their remit, which was to ensure that life sentencees out on probation kept to the terms of their release and did not put the public at risk; and even though they could hardly be expected to predict two years in advance what issue would be suddenly turned by the media (and ministers themselves) into a hot political potato. This, that is, was the outcome of the inquiry as reported by Jack Straw to Parliament: the report itself was not released. But at least no action was taken against the officials concerned, and they were not publicly identified (House of Commons 1998).

Officials involved in the second incident were not so lucky. This case involved the illegal exportation of weapons to Sierra Leone by British mercenaries, apparently with the tacit approval of Foreign Office staff who kept ministers in the dark—or so the Foreign Secretary later claimed after having erroneously denied the whole incident in Parliament. The press instantly ferreted out the names (and photographs) of the officials concerned, even though they could not speak in their own defense amid the welter of claims and counter-claims (*The Guardian* 9 May 1998). In the well-established manner, the Foreign Secretary refused to accept responsibility for the matter and commissioned an inquiry instead.

There followed a period of wild political ups-and-downs. The prime minister dismissed the whole affair as a "hoo-hah," allegedly causing the abandonment of possible criminal charges in the case. There was the delicious irony of Michael Howard, now opposition spokesman for foreign affairs, arguing that ministers had to take responsibility for the affair. In the meantime the Select Committee on Foreign Affairs held its own parallel investigation at which the Permanent Secretary of the Foreign Office, under hostile questioning, said that ministers had indeed been briefed about what was going on, only to retract his statement hours later. The Foreign Secretary had his own turn before the select committee, but he was given a much easier time.

After all this, the inquiry report came as something of an anti-climax. No, ministers were not properly informed; yes, Foreign Office staff made

mistakes and fell victim to internal misunderstandings; no, they should not be held to blame because of their high workload and lack of resources (*The Independent*, *The Times* May-July 1998). As with the previous Scott inquiry, no one was held responsible in the end; but reputations were certainly damaged.

A full assessment of the significance of these cases cannot be made here: they need and deserve a separate analysis. But it is clear that problems of accountability in government have not gone away, even though such problems are by no means limited to, or the result of, agencies. How, then, can these problems be solved?

I shall not risk overreaching myself by prescribing any ideal solutions. The truth may simply be that in government, as elsewhere in real life, there are no tidy solutions. Imperfect options have to be assessed against other imperfect options, the choice going to the one with the fewest fundamental snags.

On this basis, retaining ministerial responsibility in its current form wins out. It is not foolproof, and it can be abused. But the convention means that there is always one person, the current minister, available to explain what went wrong and put matters right—even if all the minister does is to commission an inquiry.

Inquiries are likely to take on increasing importance as a means of naming and blaming those responsible for serious failures of government (in so far as this can be done, which will not always be the case), gaining confirmation as the main instrument of accountability in this regard. This is not a bad thing—better an independent inquiry than a parliamentary select committee—but it is clearly worth considering procedural changes that would strengthen the instrument.

For instance, it should be clearly established that officials who are named and blamed by an inquiry are entitled to make their own defense and have it published along with the report. There should be no problem of breaches of confidentiality here: presumably, documents cited by officials in their own defense would already have been made available to the inquiry. Thorny issues would, however, be raised concerning the officials' ability to function in their posts if they implicated ministers in their defense. There is a dilemma here that is hard to resolve; but it should at least be up to the officials concerned to decide for themselves, without pressure from any quarters, how far they want to go and what career risks they are willing to incur in presenting their side of the story.

Most importantly, the inherent subjectivity of each inquiry—and the attendant risk of the outcome being determined by the choice of the person to head it—makes it possible, if not necessary, to strengthen public confidence in the process by seeking bipartisan agreement for the choice of inquirer. The relevant select committee may have a part to play in securing such an agreement. To avoid prejudging the outcome of the inquiry, as arguably happened in the arms-to-Sierra Leone case, the committee should then wait for its report before holding its own hearings.

This might not sound like a great deal compared to the far-reaching constitutional changes that have been proposed by others. But we must not, in Pyper's words, turn away from the "flawed but functioning reality of Parliament, in the search for the El Dorado of a constitutionally reformed UK" (1996, 75). Politics, as the saying goes, is the art of the possible. New reporting relationships that add to the diffusion of responsibility within and beyond government will make the boundaries of the possible narrower, not wider.

**Acknowledgements**

This is a revised and updated version of a paper presented at the University of Manchester conference "Public Sector Management for the Next Century," June/July 1997. I owe thanks to Peter Aucoin, Anthony Barker, Francesca Gains, Joseph R. Grima, Derek Lewis, Martin Minogue, Robin Mountfield, Sharon L. Sutherland, Edward Warrington, and Graham K. Wilson for advice, criticism and encouragement. Naturally, they should not be held responsible for the errors which they did their best to stop me from making: the usual disclaimer applies.

**Notes**

1. See, among others, Wilson (1991), Greer (1994), Plowden (1994), Woodhouse (1994), Giddings (1995a), and O'Toole and Jordan (1995).
2. See, for example, *The Times* and *The Independent*, May 20 1997.
3. New Zealand's output-outcome doctrine reincarnates the policy–administration divide in particularly stark terms. Its workability has not escaped questioning on such grounds (Wistrich 1992), and indeed this country has found it no easier to deal with major political controversies than Britain. The Cave Creek tragedy, in which several people died at a national park when a viewing platform newly built by the Department of Conservation collapsed beneath them, has been to New Zealand what the Derek Lewis affair has been to the UK, although there was no scapegoating of senior public servants. See Gregory (1998).
4. A statement issued by the Labour public service minister in March 1998 makes it clear that the government envisages no change in the constitutional position of agencies. "Ministers would work to dispel the confusion that had been allowed to grow up about the extent of their accountability for the work of their agencies . . . the creation of agencies does not affect Ministerial accountability to Parliament" (Cabinet Office 1998).
5. Shortly after the 1997 election, the new home secretary stated that he would reassume personal responsibility for replies to parliamentary questions concerning the Prison Service.
6. Examples include Ian Bancroft, who was "despatched by the Prime Minister into early retirement" (Hennessy 1989: 604) after Margaret Thatcher abolished his Civil Service Department in 1981; and Peter Kemp, Next Steps project manager, who fell afoul of the public services minister in 1992 over the introduction of market-testing (Pyper 1995a). Unprecedented involvement by the prime minister in top appointments led to fears of politicization, which an important study found to be unwarranted (RIPA 1987).

7. This does not, of course, apply to personal misconduct or unethical behavior by ministers, in which case resignation remains a vehicle of accountability. Indeed, it can be argued that sacrificial responsibility is far more relevant here than where failures of government are concerned.
8. This raises questions about the inquiry on the basis of which Lewis was dismissed. The report by Sir John Learmont can be criticized on at least three counts. First, it uses evidence of poor staff morale as backing for its conclusion that the Prison Service was poorly managed without giving weight to external factors: the standoff between the government and the prison officers' association, or moves to contract out the management of some prisons (Adonis and Suzman 1995; *Keesing's Contemporary Archives* 1995, 40376-7). Second, it finds that senior management in the Prison Service was too orientated towards dealing with Home Office queries and concerns rather than operational issues, yet it blames this exclusively on the Service rather than the Home Office (Talbot 1996). Finally, it is easy to see the influence of Learmont's army background in his calls for more discipline in prison management. There is no suggestion that Learmont was politically biased, but the inherent subjectivity of inquiries such as this is a matter of concern.
9. How "liberated" civil servants would feel on being allowed to give evidence to select committees in their own names is a matter of doubt. The rules protect civil servants as much as they do ministers: they prevent civil servants from being caught in a conflict of loyalties, or being forced to give evidence against the minister (which could create a lot of difficulty subsequently in their working relationship with the minister). The rules were probably written with this end, among others, in mind.

   In February 1997 the government negotiated a compromise parliamentary resolution with the Public Service Committee which reaffirmed the principle that civil servants give evidence on ministers' behalf while requiring ministers to see that officials were "as helpful as possible in providing full and accurate information" (*The Economist* 1997; House of Commons 1997). This is a better approach than allowing civil servants to give evidence in their own names: it puts the onus of openness on ministers and avoids placing civil servants in positions of conflict of loyalty.

## References

Adonis, Andrew and Mark Suzman. Breaking Free from Policy. *Financial Times* 23 Octorber, 1995.

Aucoin, Peter. 1990. Comment: Assessing Managerial Reforms. *Governance* 3:197–204.

_____. 1995. *The New Public Management: Canada in Comparative Perspective*. Montreal: Institute for Research on Public Policy.

Barker, Anthony. 1998. Political Responsibility for UK Prison Security—Ministers Escape Again. *Public Administration* 76:1–23.

Bogdanor, Vernon. 1996. The Scott Report. *Public Administration* 74:593–611.

_____. 1997. Ministerial Accountability. *Parliamentary Affairs* 50:71–83.

Boston, Jonathan. 1992. Assessing the Performance of Departmental Chief Executives: Perspectives From New Zealand. *Public Administration* 70:405–28.

_____. 1995. Lessons from the Antipodes. In O'Toole and Jordan, eds.

_____, John Martin, June Pallot, and Pat Walsh. 1996. *Public Management: The New Zealand Model*. Melbourne: Oxford University Press.

Cabinet Office. 1998. Press release no. 71/98. 12 March.

Campbell, Colin. 1993. Public Service and Democratic Accountability. In *Ethics in Public Service*. Chapman, R., ed. Edinburgh: Edinburgh UP.

_____ and B. Guy Peters. 1988. The Politics/Administration Dichotomy: Death or Merely Change? *Governance* 1:79–99.
Campbell, Colin and Graham K. Wilson. 1995. *The End of Whitehall: Death of a Paradigm?* Oxford: Blackwell.
Chapman, Richard A., ed. 1993. *Ethics in Public Service.* Edinburgh: Edinburgh University Press.
Cubbon, Brian. 1993. The Duty of the Professional. In Chapman, ed.
Dunsire, Andrew. 1973. *Administration: The Word and the Science.* London: Martin Robertson.
*The Economist*. 1997. Covering Up. 8 February.
Efficiency Unit. 1988. *Improving Management in Government: The Next Steps.* London: HMSO.
Finer, Elliot. 1991. The Next Steps Program: Executive Agencies in the United Kingdom. *Optimum* 22:23–30.
Foster, Christopher. 1996. Reflections on the True Significance of the Scott Report for Government Accountability. *Public Administration* 74:567–92.
_____ and Francis J. Plowden. 1996. *The State Under Stress: Can the Hollow State Be Good Government?* Buckingham: Open University Press.
Fry, Geoffrey K. 1985. *The Changing Civil Service.* London: Allen and Unwin.
Giddings, Philip, ed. 1995a. *Parliamentary Accountability: A Study of Parliament and Executive Agencies.* Basingstoke: Macmillan.
_____. 1995b. Next Steps to Where? In Giddings, ed.
Greenaway, John. 1995. Having the Bun and the Halfpenny: Can Old Public Service Ethics Survive in the New Whitehall? *Public Administration* 73:357–74.
Greer, Patricia. 1994. *Transforming Central Government: The Next Steps Initiative.* Buckingham: Open University Press.
——. 1995. The Department of Social Security and its Agencies. In Giddings, ed.
Gregory, Robert. 1998. A New Zealand Tragedy: Problems of Political Responsibility. *Governance* 11:231–40.
Halligan, John. 1991. Career Public Service and Administrative Reform in Australia. *International Review of Administrative Sciences* 57:345–60.
Hennessy, Peter. 1989. *Whitehall.* New York: Free Press.
House of Commons. 1997. *Parliamentary Debates* 290:297–93. February 10–20.
_____. 1998. *Parliamentary Debates* 316:546–8.
James, Simon, ed. 1997. *British Government: A Reader in Policy Making.* London: Routledge.
Jones, George, and June Burnham, with Robert Elgie. 1995. The Environment Agencies. In Giddings, ed.
Judge, David, Brian Hogwood and Murray McVicar. 1997. The Pondlife of Executive Agencies: Parliament and Informatory Accountability. *Public Policy and Administration* 12:95–115.
Kellner, Peter, and Lord Crowther-Hunt. 1980. *The Civil Servants.* London: Macdonald.
Kemp, Peter. 1990. Next Steps for the British Civil Service. *Governance* 3:186–96.
_____. 1996. Handling the Machine: A Memo to Labour. *The Political Quarterly* 67:303–10.
Langford, John W. 1984. Responsibility in the Senior Public Service: Marching to Several Drummers. *Canadian Public Administration* 27:513–21.
Lewis, Norman. 1995. Accountability and the Employment Service Agency. In Giddings, ed.
Marshall, Geoffrey. 1989. Introduction. In Geoffrey Marshall, ed., *Ministerial Responsibility.* Oxford: Oxford University Press.
Massey, Andrew. 1995. Civil Service Reform and Accountability. *Public Policy and Administration* 10:16–33.

Mountfield, Robin. 1997. Organizational Reform within Government: Accountability and Policy Management. *Public Administration and Development* 17:71–76.
Natzler, David, and Paul Silk. 1995. Departmental Select Committees and the Next Steps Programme. In Giddings, ed.
O'Toole, Barry J. and Richard A. Chapman. 1995. Parliamentary Accountability. In O'Toole and Jordan, eds.
_____ and Grant Jordan, eds. 1995. *Next Steps: Improving Management in Government?* Aldershot: Dartmouth Publishing.
Plowden, William. 1994. *Ministers and Mandarins.* London: Institute for Public Policy Research.
Polidano, Charles. 1998. Why Bureaucrats Can't Always Do What Ministers Want: Multiple Accountabilities in Westminster Democracies. *Public Policy and Administration* 13:35–50.
Pym, Mike. 1996. Accountability and Leadership in the Prison Service. *Teaching Public Administration* 16:36–53.
Pyper, Robert. 1995a. *The British Civil Service.* Hemel Hempstead: Prentice Hall.
_____. 1995b. Ministerial Responsibility and Next Steps Agencies. In Giddings, ed.
_____. 1996. Parliamentary Accountability. In Robert Pyper, ed., *Aspects of Accountability in the British System of Government.* Wirral: Tudor.
RIPA. 1987. *Top Jobs in Whitehall: Appointments and Promotions in the Senior Civil Service.* London: Royal Institute of Public Administration.
Self, Peter. 1977. *Administrative Theories and Politics.* 2nd ed. London: George Allen and Unwin.
Sutherland, S.L. 1991a. Responsible Government and Ministerial Responsibility: Every Reform Is Its Own Problem. *Canadian Journal of Political Science* 24:93–120.
_____. 1991b. The Al-Mashat Affair: Administrative Accountability in Parliamentary Institutions. *Canadian Public Administration* 34:573–603.
_____ and J.R. Mitchell. 1997. Parliament and Administration. In *Public Administration and Public Management: Experiences in Canada*, Bourgault, Jacques, Maurice Demers, and Cynthia Williams, eds. Sainte-Foy: Les Publications de Québec.
Talbot, Colin. 1996. The Prison Service: A Framework of Irresponsibility? *Public Money and Management* 16:5–7.
Tellier, Paul. 1992. *Public Service 2000: A Report on Progress.* Ottawa: Supply and Services Canada.
Theakston, Kevin. 1995. *The British Civil Service Since 1945.* Oxford: Blackwell.
Wilson, Graham K. 1991. Prospects for the Public Service in Britain: Major to the Rescue? *International Review of Administrative Sciences* 57:327–344.
Wistrich, Enid. 1992. Restructuring Government New Zealand Style. *Public Administration* 70:119–135.
Woodhouse, Diana. 1994. *Ministers and Parliament: Accountability in Theory and Practice.* Oxford: Oxford University Press.
Wright, Maurice. 1977. Ministers and Civil Servants: Relations and Responsibilities. *Parliamentary Affairs* 30:293–310.
Young, Hugo, and Anne Sloman. 1982. *No, Minister.* London: BBC.