Boardization and Corporate Governance in the UK as a Response to Depoliticization and Failing Accountability

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Abstract

Administrative leadership in UK central government has been reformed through the creation of boards in all departments and agencies. This ‘boardization’ is modelled on principles of private sector corporate governance and is a civil service designed response to the administrative implications of depoliticization. It raises issues of political accountability and adaptation of private sector models to the public sector and therefore poses a challenge to the UK Whitehall model. Boardization has been variously implemented across accounting units of central government involving the negotiation of a variety of public sector bargains. It highlights a de-synchronization of administrative and political reforms but provides a potential for boards to become alternative locations for governance and accountability. The article registers concerns about the suitability of reform based on private sector corporate governance and identifies new research agendas.

Keywords
accountability, boardization, civil service, governance, Parliament

1. Introduction

Boards of directors are a central element in private sector corporate governance. There has been a remarkable and under-researched trend also to reproduce the board of directors in British central government. Every accounting unit of central government now has a board although they vary in composition, nomenclature and influence. Fully developed examples are found in non-ministerial departments but, in all cases, boards are being explicitly encouraged to reproduce private
sector organization, financial control and normative frameworks. This process can be termed ‘boardization’.

While administration through boards has a venerable pedigree in British government the distinctive feature of contemporary boardization is reliance on private sector models. The resort to boards is analysed as the counterpart to the fragmentation of UK administration, which is variously theorized as the hollowing out of the state, distributed public governance, or agency delegation (Flinders, 2004; Thatcher and Stone Sweet, 2002). This aspect of state restructuring under Labour has stimulated a body of research focused on ‘depoliticization’, concerned with the motives for, and effects of, transferring governmental activities away from direct control by politicians. As a contribution to the debate on depoliticization this article analyses the leadership and management of bodies granted a high level of autonomy. It argues that delegation has prompted a search for alternative models of governance and accountability operating at the level of the individual agency. In a path-dependent process the reformist influence of the new public management has led senior civil servants to turn to private sector models and to reproduce the corporate governance arrangements developed for UK listed companies.

The creation of boards in departments, agencies and non-departmental public bodies (NDPBs) establishes a significant and systematic level of governance within the public sector that is capable of acting as a location of accountability as an alternative to ministerial accountability. Hence, it is argued, boardization emphasizes the disjuncture between administrative reform and managerial accountability on the one hand, and the persistent expectations of Parliamentary control and ministerial responsibility on the other. Boardization is inconsistent with the Whitehall model and has the potential radically to alter power relations. The article is doubtful about the merits of corporate governance that will tend to reinforce managerialism. But at present the reforms are still in progress, the position is fluid and in some ways experimental so the article ends with the identification of choices about whether constitutional reform is necessary to redefine the Whitehall model or, alternatively, whether politicians will rethink the level of delegation and seek to reassert political control, as has happened in Australia and Holland (Howard and Seth-Purdie, 2005; Van Theil, 2006: 131). Although this article is restricted to the UK, equivalent boardization reforms have been seen in several countries and Australia, in particular, is further along this cycle of reform (Bartos, 2005; Halligan and Horrigan, 2005). Nonetheless, this area is seriously under-researched and this article is intended as a preface to further research on the spread of boards in British central government, their impact and implications for policy making and accountability. Section 2 deals with the theoretical framework of depoliticization, Section 3 outlines the civil service corporate governance innovations while Section 4 analyses the suitability of transferring corporate governance principles from the private to the public sector. Section 5 draws conclusions.
2. Depoliticization and Accountability: Escaping the Whitehall Model

Since Labour came to power in 1997 a number of autonomous agencies have been created on the Bank of England model of legislatively independent boards. Further, across the whole of Whitehall, in executive agencies, NDPBs and ministerial departments, every accounting unit has created or adapted boards. These boards take ownership of the mission, approve strategy and undertake corporate governance functions through an apparatus of financial scrutiny, performance monitoring and risk assessment involving the chief executive, finance director and non-executive directors (NEDs). This can be seen as further stage of administrative reform inspired by ‘the new public management’ (NPM). Yet management in the public sector has always had a tentative nature prompted by awareness that the public sector is not market driven, and by the political imperatives of ultimate responsibility to democratically elected ministers and to Parliament. A paradox of accountability has bedevilled public managers and their political masters. Should managers have autonomy to pursue clearly defined goals over a sensible time frame, or should they respond to the immediate preferences of a political leadership? There are significant pressures towards the former goal of creating greater managerial independence or ‘managerialism’ (Clarke and Newman, 1997). But there are also powerful pressures pushing towards political intervention and the rapid development of policies by politicians, this could be termed ‘politicization’. The traditional British civil service coped with this tension through the ‘Whitehall model’ in which civil servants administered within a dispassionate public service ethic in response to party-political preferences.

A crisis in the Whitehall model was anticipated by Campbell and Wilson (1995) in their interrogatively titled The End of Whitehall: Death of a Paradigm? They identified a breakdown in executive leadership and put particular emphasis on the corrosion of the concept of ministerial responsibility arguing that the concept is central to the health of British democracy but that it is ‘in tatters’ (Campbell and Wilson, 1995: 313–14). In part they attributed this to a breakdown in the tacit understandings between ministers and civil servants arguing that ‘at the heart of the Whitehall model is a bargain between bureaucrats and politicians which serves both their interests’ (Campbell and Wilson, 1995: 33). Boardization is assessed against this context of a failing but symbolically powerful Whitehall model of political accountability. Boards may represent an ingenious institutional adaptation that provides an alternative structure and culture of accountability. The argument developed later suggests that a set of institutional pressures that are congenial to an evolving civil service, combined with a ministerial preference for a degree of depoliticization, has encouraged the creation of formalized, legitimized boards as alternative locations of leadership and accountability.

Depoliticization provides a structural interpretation of the changed relationship between political control and managerial autonomy. In a valuable conceptual
discussion Flinders and Buller (2006) point out first, that depoliticization does not purport to argue that ‘politics’ is taken out of administration, only that representative politics is excluded. Second, that governing elites (including the Labour Government) ‘have explicitly stated their principled commitment to depoliticization’ (Flinders and Buller, 2006: 20). Third, that depoliticization takes a number of forms; and in doing so they analyse institutional, rules based and preference-shaping variants. They define depoliticization as ‘the range of tools, mechanisms and institutions through which politicians can attempt to move to an indirect governing relationship and/or seek to persuade the demos that they can no longer reasonably be held responsible for a certain issue, policy field or specific decision’ (Flinders and Buller, 2006: 4) and in so doing they point to an aspect of this approach that is underdeveloped. The bulk of work on depoliticization stresses the motives and strategies of elected politicians when they depoliticize a policy area and transfer responsibility to agencies and quangos (Van Theil, 2004,2006). A well-established body of work also recognizes that this transfer raises fundamental issues of accountability in that the traditional modes of political accountability need to be replaced by alternative modes, such as Majone’s (2002) emphasis on ‘output accountability’. Far less research has dealt with the new location of accountability in the depoliticized bodies (but see Flinders, 2004: 901; see also Farrell, 2005). How can they be expected to respond to the challenges of leadership, decision-making and managerial responsibility that detachment from a political hierarchy involves? Analysing the impact of depoliticization on administrative leadership is complicated by the amorphous literature on the new public management that is strangely silent on the role of politicians (Hood and Lodge, 2006: 174). While some studies have engaged creatively with the responses of public sector managers to a renegotiated relationship with politicians (Newman, 2004), the relative power of independent boards remains under theorized. If boards in government become more corporate, more self-confident, more professional and more autonomous will they increasingly take responsibility and displace ministers? It is one of the limiting conditions of the NPM that it sidesteps the role of elected politicians. As Pollitt and Bouckaert (2004: 157) observe, in the NPM literature there has been very little attention paid to the roles of politicians and any rethinking ‘ought to focus at least as much on the induction and training of politicians, and on the framework of incentives and penalties surrounding them’. Ministers could adapt, they could redefine their roles to work through board machinery, to confine themselves to steering through strategic frameworks, and leave the boards to do ‘the rowing’. The motives of ministers in pursuing depoliticisation do have important implications for administrative leadership and, in particular, whether they conceive of delegation as being real or symbolic.

One initial and sceptical interpretation is that senior ministers are content with the ambiguity of board accountability and are happy to maintain the principle of ministerial responsibility. They wish both to retain the executive dominance that Parliamentary sovereignty allows and to exploit the principal-agent relationship
with their boards as a mode of ‘blame avoidance’, which allows ministers power without responsibility. Principal-agent theory suggests that one reason for the creation of independent agencies is the opportunity to avoid responsibility for unpopular agency actions – such as raising interest rates or blocking mergers (Pollack, 2002; Wilks, 2002). Thus, argue Pollitt and Bouckaert (2006: 147), ‘politicians have also been cunning. They have, in effect, reasserted the distinction between politics and administration (though now calling the latter management), making managers responsible for achieving targets, but at the same time they have frequently retained powers of intervention’. It is therefore possible to regard boardization as a façade that protects, rather than excludes, ministers.

A more positive response is to see boardization as a genuine attempt to craft a major adaptation to the Whitehall model. It can be seen as a civil service led response to the problems created by the political strategy of depoliticization. Corporate governance allows boards, which will incorporate and supplement civil servants, to ‘govern’ by undertaking delegated policy making within a managerial setting. As Feldman and Khademian (2002: 544) note, entrepreneurial management means that ‘change in management practices . . . are being exercised outside traditional governing structures, and hence pose an accountability problem – a challenge for democracy’. The greater the independence of the board the greater the degree of challenge and the growth in agency independence has given rise to extensive analysis. The study of administration outside the direct control of elected politicians, sometimes termed ‘non-majoritarian’ governance, was pioneered by Majone (2002) and developed in dialogue with a principal-agent framework (Coen and Thatcher, 2005; Thatcher and Stone Sweet, 2002) but it tends to reify the agent and does not offer propositions about the nature of agency organization and leadership. In the UK setting ministers have endorsed some general organizational principles, such as chief executives and boards, and endorsed a level of day-to-day managerial freedom in what Flinders and Buller (2006: 6) call ‘institutional depoliticization’. It is, however, the contention of this article that the civil service has responded to the challenge of delegated governance by turning to the principles of private sector corporate governance. This has allowed a flexible response to the variability of depoliticization and delegation while retaining instruments of control, expectations of performance and ethical standards of behaviour.

It is argued later that institutional depoliticization has required the renegotiation of the bargain between bureaucrats and politicians identified by Campbell and Wilson and analysed in depth by Hood and Lodge. These public service bargains are located in several distinct arenas of depoliticization but they constitute variants on a ‘managerial form of agency bargain’ (Hood and Lodge, 2006: 182), which is seen most clearly in independent regulatory agencies established as non-ministerial government departments. The bargain consists of ceding control of a policy area (whether sectoral or functional) to an independent agency on two levels. On the routine level the agency operates independently in conformity with
four main parameters. First, pursuit of its duties that are typically incorporated in legislation but which are subject to interpretation. Second, conformity with the standard framework of internal government regulation including audit, inspection and budgeting. Third, negotiating and delivering targets set by the Treasury and sponsoring departments. Fourth, undertaking its own policy-specific processes of accountability across the whole range of modalities from the traditional accountability to Parliament to novel expedients including consultation, open meetings and informative web sites. As Flinders and Buller (2006: 11) points out ‘a paradox of institutional depoliticization is that the process of delegation away from elected politicians may well stimulate greater political and legislative attention than would otherwise have been the case’. On the second, or exceptional, level ministers take responsibility for the agency rather than for the discharge of its functions. This will include CEO and board appointments and, in the case of agency failure or exceptional policy redesign, it will involve legislative change and even agency abolition. This slightly idealized description applies nicely to what might be termed ‘regulatory bargains’ between ministers and regulatory agencies although Hood and Lodge (2006: 187, 196) regard these bargains as fragile and vulnerable to cheating. Nonetheless, we go on to examine the emerging variety of bargains between ministers, agencies and their boards.

The most influential example of board independence and a ‘regulatory bargain’ is the Bank of England, which was reconstituted under the Bank of England Act, 1998 as an independent agency. Extreme independence within the limits of their founding statutes is similarly enjoyed by the boards of the 21 non-ministerial departments including HM Revenue and Customs, and the utility regulators. Competition policy offers a striking parallel to the Bank. The Office of Fair Trading (OFT) and the competition regime was given independence as one of the first acts of the 2001–5 Labour Government in the Enterprise Act 2002. The OFT Board comprises a non-executive Chairman, a Chief Executive and five NEDs, and constitutes a classic example of institutional depoliticization by completely excluding ministers from the controversial and highly political process of competition decisions and merger control.

A lesser degree of independence is enjoyed by the boards of the 211 executive NDPBs who account for about one third of central government expenditure. These are the quangos that have been the subject of much controversy and dispute over their constitutional status for decades (Van Theil, 2004). Flinders’ (2004) study nicely summarizes the UK debates and in this area we might point to a ‘quango bargain’ in which quangos enjoy independence, observe the accountability requirements of good corporate governance, but do not have the security and stability of functions defined in primary legislation. Even more conditional independence is experienced by the 86 Executive Agencies that are located within departments. Agencies have independence defined by framework agreements with their sponsor departments. They have chief executives and have boards, many of which include independent NEDs. There has been great ambiguity about
the channels of accountability dramatized by problematic cases such as the Prisons Agency and the Child Support Agency (CSA) (Barberis, 1998; James, 2003: 79; Talbot, 2004). Finally, at the core of Whitehall, are the 22 ministerial departments each of which are now required to operate through a board under the Treasury code. Central departments provide the most challenging arena and it is uncertain how departmental boards will evolve. In this arena there are stark rivalries between Cabinet ministers, senior civil servants and a new player in the form of NEDs. It is striking, however, that boards are a major focus of the ‘capability reviews’ being undertaken by Sir Gus O’Donnell, the Head of the Civil Service. In an interview timed to coincide with the publication of the first four reviews, Tony Blair indicated that ‘the reviews are expected to lead to strengthened boards, with more outside non-executive directors’ (Timms, 2006). The reviews press for ‘stronger, strategic civil service boards’ while the highly critical Home Office Review had as its first area for action ‘strengthen the board’, which included ‘how best to achieve appropriate ministerial engagement with the Board on strategy and priorities’ (Cabinet Office, 2006: 20). Having located boardization within the theoretical debate about depoliticization the article goes on to look in more detail at the way in which the civil service has created new modes of administrative leadership and accountability.

3. The Evolving Features of Boardization

Administration through boards has a venerable tradition in British governance. Willson identifies extensive administration through boards up to 1855 when they went out of favour and then a renaissance of boards after 1905. He underscores the longevity of accountability debates by noting that the most important constitutional question is ‘What is the relationship between (the administrative board) and ministers, to what extent is it independent of ministerial control?’ (Willson, 1955: 47). Accountability has remained a perennial concern (Foster, 2005: 15) but at the end of the 20th century public service on boards was still a bulwark of administrative activity across a swathe of services including education, health, local government and the huge range of quasi-independent ‘quangos’ (Skelcher, 1998; Smith et al., 2006). The Commissioner for Public Appointments was created in 1995 to bring some consistency and transparency to the process of ministerial patronage and oversees no less than 21,000 appointments to public bodies (Office for the Commissioner of Public Appointments [OCPA], 2005). Taking the whole range of appointments the Independent Commission on Good Governance (ICGG) estimated that ‘over 450,000 people in the UK hold governance positions’ (excluding civil servants and elected councillors) (ICGG, 2006).

The boardization reforms differ in three major respects from the historic legacy. First, they extend the principle of board responsibility into the heartland of central government. Second, they import the structures and norms of private sector corporate governance explicitly into the public sector. Third, they prioritize finan-
cial management and incorporate a set of principles, norms and criteria represented and defended by professional accountants. This section picks out the main features of these recent reforms starting with the reform of financial management, which has been clear and comprehensive. The introduction of corporate governance has been more flexible and voluntaristic allowing self-managed units to select optimum arrangements. Although still nominally voluntary, the adoption of corporate governance became unavoidable after the issuing of a Treasury Code in 2005 and this section places emphasis on that Code both as a statement of policy and as a major landmark in the comprehensive enforcement of that policy.

Reform of public sector financial management has acted as an important transmission belt for further alignment of public management with the private sector and has, in particular, ushered in corporate governance and boards. The Treasury has undertaken a fundamental shift in accounting policy away from the traditional appropriations and towards conventional company accounts. This introduction of ‘resource accounting’ involves accrual accounting, which ‘brings the public sector on to as near as possible a comparative basis to the private sector’ (Pollitt and Bouckaert, 2004: 72) and follows in the footsteps of Australia, New Zealand and Sweden. It was introduced under the Government Resource and Accounts Act 2000, which permits the Treasury to specify the form and content of the accounts of government departments. New resource accounts reproduce the whole paraphernalia of company accounts with a balance sheet, operating statement, cash flow statement, notes to accounts (including director’s remuneration) and reports on audit, internal control and risk. The alignment with private sector standards has been criticized (Ellwood, 2003) and the accounting changes involve a major shift in the infrastructure of parliamentary accountability since they abandon the Gladstonian system of cash-based appropriation accounts. The changes have therefore been closely monitored by the National Audit Office (NAO) and the Public Accounts Committee as befits ‘the most significant overhaul of the public finances for well over a century’ (Treasury cited in Likierman, 2003: 50). The advantages claimed for resource accounting are substantial. They prevent the absurd year-end panic spending to avoid Treasury clawback, they provide for a more accurate understanding of finance by taking account of known liabilities (this is the ‘accruals’ element of the accounts), and they record government assets and encourage them to be exploited and renewed on a systematic basis.

Having modernized government accounting the Treasury proceeded to ensure that accounting units should have a board of directors capable of understanding the data so it is insisting that every public sector board should include a professionally qualified finance director by December 2006. Guidance on board practice was already provided by the Treasury and the Cabinet Office, which combined exhortation, training and a programme of convergence with private sector reforms. The Treasury, for instance, commissioned a report from a leading management consultant that affirms the relevance of the Cadbury and Higgs Reports on the boards of quoted companies and notes that ‘despite some clear differences
around ownership and accountability, the corporate governance challenge of the public and private sectors are similar’ (Barker, 2004: 1). At the same time the Cabinet Office, with the National School of Government, has a ‘board effectiveness’ work stream that includes guidance and training for NEDs (Cabinet Office, 2003). These initiatives fed into the July 2005 Treasury Code, Corporate governance in central government departments: code of good practice, which was designed by a distinguished group under the chairmanship of Sir Andrew Likierman, the Head of the Government’s Accounting Service. The use of the word ‘governance’ was symbolic, suggesting something beyond mere management and, indeed, the Code declares that ‘corporate governance is the way in which organisations are directed and controlled . . . including the process through which an organisation’s objectives are set’ (Treasury, 2005: 3). The Code adds new guidance, especially on NEDs, and is path breaking in its innovation, coherence and authority. The group consisted of 11 senior officials from parliament, the private sector and the civil service (including 2 permanent secretaries) but without direct ministerial involvement. The Code was issued in the low profile aftermath of the May general election, with no formal launch and minimal press coverage. This was a civil service, rather than a ministerial, initiative.

The Code is directed at central government departments but reflects arrangements in NPDBs and provides guidance for executive agencies. It affirms that ‘nothing in the code is intended to disturb the existing roles and responsibilities of ministers’ but it does clearly offer an alternative route to accountability. Thus, although the code is ‘guidance on good practice’, ‘the board of each department should give a clear account of how it has complied with key aspects of the code . . . This report on corporate governance should form part of the material accompanying its annual report and accounts’ (Treasury, 2005: 3–4). This provides an intriguing parallel with the private sector Combined Code, which is similarly voluntary but is policed through the listing rules of the London Stock Exchange. The Code makes boards virtually mandatory by stating that ‘each department should be managed by an effective board which . . . supports the head of the department by advising ministers and taking ownership of the department’s performance’ (Treasury, 2005: 7). The novelty lies in the stress on collective board responsibility, on a set of expectations and processes analogous to those of private sector boards and on the appointment of NEDs. It makes the appointment of NEDs mandatory, ‘the board should include independent non-executive members to ensure that executive members are supported and constructively challenged in their role . . . appointed by the head of department . . . in consultation and agreement with the minister’ (Treasury, 2005: 11). There should be a minimum of two NEDs, and preferably more. It also empowers NEDs by mobilizing the weight of private sector practice and building self-confidence through risk and audit procedures in which NEDs take the lead. In a direct parallel with the Turnbull Report (1999) the Code states that ‘the board should be independently advised by: an audit committee chaired by an independent non-executive member’ (Treasury,
2005: 13). The emphasis is on ‘independence’ and independent NEDs constitute a new and unpredictable management cadre. Although their formal role is to ‘constructively challenge’ the executive members, equally the board is enjoined to ‘collectively provide leadership’ and to ‘take ownership’ of performance, which implies a decision-making influence for NEDs. The Cabinet Office had 433 NEDs voluntarily enrolled in its board effectiveness network in mid-2006. The total of NEDs will be much higher and they could be expected to influence board dynamics and relationships between chief executives, boards and ministers.

The most intriguing section of the Code is a speculative Annex on possible future developments. This includes the possibility that the board might take responsibility for day-to-day management; that a board member should report to the Parliamentary Public Accounts Committee; that the proportion of non-execs should be increased; that reports should be made on meetings and attendance; that consideration could be given to a Chief Operating Officer appointment, to a Senior Independent Director, and to an Appointments Committee. The whole flavour is captured by the proposal that departments could define NED independence ‘adapting the definition of independence in the Higgs Report, and in the Combined Code for listed companies’ (Treasury, 2005: 18). This underlines reproduction in the public sector of the evolving private sector Combined Code. Treasury oversight of these reforms will come through appraisal of the resource accounts produced under the new Code in the 2005–06 accounting cycle, which covers every accounting unit of central government. It therefore influences 21 non-ministerial departments, 211 Executive NDPBs, 86 Executive Agencies and 22 ministerial departments, a total of 340 units of central government.

These managerial reforms should be seen as consistent with a comprehensive programme of change in the civil service. It has been led by the Treasury and the Cabinet Office with support at the highest level. Sir Andrew Turnbull, while Cabinet Secretary, took a strong lead arguing that civil servants ‘looked at the models of CEOs of big business . . . and convinced ourselves that they were not for us. We have overturned that orthodoxy. We’ve swept away the belief that we aren’t leaders of public services’ (Turnbull, 2005). The present Cabinet Secretary, Sir Gus O’Donnell, has been more cautious on the private sector arguing that ‘there is much we can learn from the private sector. But we must also realise that the challenges we face are often different’ (O’Donnell, 2006). He is in a particularly strong position to initiate reform as former Permanent Secretary to the Treasury where he became the trusted confidante of Gordon Brown. Reform initiated by the civil service indicates a process of institutional adaptation that constitutes major change but does not represent a rupture with prevailing institutional arrangements. It could be expected that civil service elites would design changes that facilitate achievement of their missions, which extend existing programmes of reform, and which are congenial to the senior civil servants that bureau-shaping theory predicts will seek to avoid direct managerial responsibilities (James, 2003: 10). Following this hypothesis of reform dynamized by existing power relations
within the civil service, and with a strong element of path dependency, we can go on to explore the implications of introducing a private sector model into the administration of central government. In pursuing boardization the Treasury is not necessarily adopting neo-liberal reforms (Bevir, 2003). On the contrary, it is borrowing models of industrial organization by which the private sector itself seeks to manage and control the market. There is an intriguing read-across from the theory of the firm in the market to a theory of administrative organization in a networked system of multi-level governance.

4. Corporate Governance and the Private Sector Model

The choice of a private sector-type board and an associated baggage of corporate governance principles is surprising in the intensity of change, but resort to borrowing from the private sector borrowing is less surprising. A move to private sector boards occurred in the NHS in the early 1990s (Skelcher, 1998: 44) and, by the end of the 1990s, private sector corporate governance had become more sophisticated, comprehensive and respectable through the development of the Combined Code. The private sector has, of course, been the source of inspiration for many of the reforms associated with the NPM, and to adopt ‘the board of directors’ was to some extent natural. The private sector offers the company and the board as an institutional alternative to a bureaucracy directed by politicians. Officials could take their cue from the very top. In his June 2006 speech to the C21st Public Services Conference Tony Blair observed that ‘we use the obvious truth that the purpose and ethos of public services are not like business, to ignore the fact that, in many respects they do indeed operate like businesses’ (Blair, 2006).

These tendencies towards mimicry of private sector models, what DiMaggio and Powell (1991: 69) call ‘mimetic isomorphism’, are further reinforced by the changes in the public sector environment created by depoliticization and the massive expansion in network and partnership working. Agencies must work with the private sector from which they increasingly recruit senior staff and chief executives. In order to understand and collaborate with business it may be necessary to share accounting routines, generate joint data, and assess profitability. This applies especially in cases such as Private Finance Initiative (PFI) schemes, where efficient working with private partners is mission-critical. It is, however, only recently that private sector corporate governance has been articulated, regulated and sanctioned by society. It is necessary to examine the peculiar nature and more effective regulation of UK corporate governance before exploring its suitability as a model for the public sector.

The British system of corporate governance has evolved in a distinctive variant of capitalism. Hall and Soskice (2001) propose a distinction between Liberal Market Economies (LMEs) and Co-ordinated Market Economies (CMEs). Britain is a stock market LME, it is distinctive (indeed, it is a polar example) and man-
agement reform in the UK public sector must be assessed by reference to management practices that are conditioned by the peculiar nature of British capitalism. This aspect of the diffusion of the new public management is invariably overlooked, with the exception of a path-breaking article by James (2001) who emphasizes that management practices are nationally grounded. The context for UK corporate governance is provided by a highly liquid stock market, which assesses companies in terms of market share, profits, dividends, return on capital and shareholder value. The UK legal system allows companies extensive freedom to pursue the wealth of their shareholders in an autonomous fashion, disciplined primarily by their product and financial markets. Neither law nor post-war practice offered very much guidance on how shareholders, boards and managers should discharge their responsibilities. The inadequate accountability of private sector boards was brought to a head by scandals and corporate collapses in the late 1980s that revealed three glaring chasms in the way companies performed and were held to account. The chasms were:

1. the divorce of ownership and control and the inability of multiple shareholders to control ‘their’ boards of directors.
2. the dominance of CEOs (who were often also Chairmen) who could autocratically operate the company and avoid control by the board.
3. the independence of management who could mislead, distract or ignore a weak board.

Rather than passing legislation the Conservative Government turned to the City and voluntary self-regulation. The fruits of this approach came with the Cadbury Committee of 1992 and the rise of the corporate governance movement.

The Cadbury Committee drew up a series of principles for good corporate governance and embodied them in a Code of Conduct. Since then any major critique or scandal has produced further codes (Greenbury on executive pay, Hampel on wider corporate governance, Turnbull on internal control, Higgs on NEDs, and Smith on audit committees). These codes have been debated and accepted by industry and the financial community. They are, in principle, very weak modes of control since they are voluntary (Aguilera and Cuervo-Cazurra, 2004: 424) but, in practice, they have become powerful through the very mechanisms that they are intended to reinforce, namely shareholder pressure, the financial markets and City opinion. The various codes have been consolidated to form the ‘Combined Code’ of Corporate Governance (Financial Reporting Council [FRC], 2003) and the key mode of policing is the listing rules of the London Stock Exchange. Any company whose shares are traded on the Exchange must be formally listed and among the requirements are the ‘comply or explain’ provisions, companies must comply with the Combined Code or explain why compliance is not appropriate. The spate of corporate frauds, misrepresentation and corporate collapse in the early 2000s, of which WorldCom and Enron were the worst examples, prompted City leaders, the CBI, the Accountancy bodies and the
Government to strengthen regulation. Accordingly, the FRC became a NDPB and a formal regulator in April 2004. The FRC has statutory power to regulate auditors but only promotional powers in respect of corporate governance involving exhortation and the refinement and monitoring of the Combined Code (FRC, 2005).

The Combined Code therefore offers a governance model whose reproduction in the public sector implies a momentous normative shift that will be congenial to reformers who draw a close parallel between the public and private sectors, and will be anathema to those in the social democrat tradition who see fundamental differences between public and private (Marquand, 2004). Few would argue that the voluntaristic principles of corporate governance work perfectly in the world of private business, indeed, current company law reform had highlighted many of the problems, and it is evident that those principles require fundamental adaptation to operate effectively in the public sector. It is instructive to take the three principal-agent problems from the private sector and apply them to public sector governance. First is shareholder control of the board. There is no strict equivalent of shareholders, or ‘owners’ in the public sector and, of course, no property rights, and no equivalent of maximizing profits or shareholder value. Legal controls based on ownership therefore have a limited purchase and some key controls such as election of directors through the AGM are absent. Market controls exerted by the trading of shares on the stock exchange, the threat of takeover and the market for corporate control are also absent. The private sector model is therefore ill-fitting to providing accountability to the public and requires parliamentary and organizational proxies.

The second key relationship is board control of the chief executive. In public agencies the chief executive may be a senior civil servant, an outsider appointed on a short-term contract, or a minister. Can the board control such a chief executive? In the public sector there is no legal control of appointment since it will be a civil service or ministerial appointment. The series of market controls are also problematic and remuneration packages are limited. NEDs are typically mandated to ‘advise, support and challenge’ the executive, but without powers of appointment and remuneration the power must be modest, and moral as much as mandatory. And in any case, should boards control chief executives? Where they are civil servants running next steps agencies there is an alternative form of control in the form of departmental strategy frameworks. Where they are ministers it would appear to usurp both the electoral process and parliamentary sovereignty for boards to aspire to control, here agency autonomy and ministerial responsibility clash directly. Third, there is board control of management. The private sector board controls management through appointment of senior executives, monthly financial reports and the processes of internal and external audit. These processes have taken on a far more elaborate and demanding legal character after the passage in 2002 of the US Sarbanes-Oxley Act, which requires boards formally to certify internal control procedures. Until these latest developments this was perhaps the least developed area of corporate governance. This area of internal control
presents the closest analogy between the public and private sectors. If the new public management is soundly based then a whole range of management practices can be transferred and public boards can adopt private sector techniques. For the public sector board effectively to control management it must appoint senior staff, fix remuneration and operate stringent audit and risk policies. But the key area of difference is, of course, the discipline embodied in product and financial markets. To replicate the market the Treasury has put huge emphasis on financial transparency, the apparatus of Public Service Agreements (PSAs) and the creation and policing of performance indicators. It is in this area of internal control that the Treasury appears to see the greatest potential for efficiency gains.

Overall, in assessing the relevance of private sector corporate governance to the public sector it is important to ask whether we are comparing like with like. Corporate governance in the UK is a concept nested within an institutional setting that takes its meaning from financial markets. This institutional setting is based on an assemblage of norms and tacit understandings that centre on the importance of access to finance, market positioning, margins, profits, dividends and the maximization of shareholder value (including getting the best price in a hostile takeover). This framework simply does not apply in the public sector. But it is too crude to point out that the public sector does not have a concept of profit. The more sophisticated observation is to question whether public sector managers interpret their world, and attribute meaning and value to their activities, using proxies comparable to the financial markets. If they do not then corporate governance in the public sector is likely to be marked by ritual, hypocrisy and perverse incentives. UK-style corporate governance appears to require fundamental adaptation to work in the public sector.

5. Conclusion

Boardization is a clumsy neologism but it is intended to capture a significant institutional dynamic generated by the confluence of political strategies of depoliticization and administrative reform strategies of managerialism. Depoliticization extends across a wide spectrum from extreme delegation to regulatory agencies to operational independence for executive agencies, but it is not a phenomenon peculiar to the UK. It constitutes a major strand in EU administration and in a wide range of countries creating a sense of transition that caused Olsen (2006: 2) to remark that ‘contemporary democracies are involved in a struggle over institutional identities and institutional balances’. Institutional counterparts to depoliticization are unambiguously managerial and this article argues that alternative locations of leadership and accountability can be found in public sector boards. In the UK this accentuates inconsistency with the traditional Whitehall model of ministerial responsibility that, although widely seen to be failing, is extraordinarily persistent and impervious to constitutional reform (Flinders, 2002: 39). Behind the façade of the Whitehall model, however, it is suggested that new
bargains are being negotiated between politicians, civil servants and the leaders of agencies enjoying delegated powers. The range of possible bargains has been explored by Hood and Lodge (2006) but this article concentrates on the resort to a private sector model in the shape of the board of directors and the non-property rights components of corporate governance.

It is argued that civil servants, rather than ministers, have engaged in an incremental process of boardization that has become more systematic and formalized over the past five years. The extent of reform is remarkable and has generated very little comment. There are strong elements of path dependency in this process, driven partly by the financial management elements of the NPM, so that boards consolidate and extend two decades of private sector inspired management reforms. But they have the capability to go beyond management to become locations of 'governance' with a level of autonomy, legitimacy and entrepreneurial license, which was in the past seldom exercised by senior civil servants. Boardization in the public sphere thus offers several of the advantages of good corporate governance in the private sphere, including a location of responsibility, ethical expectations, transparency, consistency, performance measurement and accountability. Despite these advantages, the article points to a mismatch between the private sector model and its operation in the public sector. Among the potential pathologies that could ensue are a resort to formalistic compliance, a failure of mechanisms of control, creation of biased or inadequate boards, lack of coordination, or a crude managerialism emerging from a preoccupation with a simplified bottom line. Alternatively, boards may become efficient, inclusive and develop new and more effective modes of accountability. This brings the argument back to the future of Whitehall. A new overarching public sector bargain would require a redefinition of ministerial responsibility and would, in effect, require a constitutional redefinition of the role of the civil service and of boards within it. This is a far larger issue than can be encompassed within a single article so we conclude on three points which constitute a new research agenda. First, that research on the institutional development of Whitehall should recognize and measure the growing importance of boards and private sector corporate governance. Second, that analysis needs to include a critical comparative appraisal of the suitability of business models. Third, that good governance alternatives to ministerial accountability will put exceptional demands on public sector boards that should be analysed as more politically significant players in a more pluralistic administrative landscape.

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