The issues involved here concern public law and have no clear analogy in the private sector. Typical questions asked in the area concern:

- competence: Is an official authorized to make a particular decision?
- procedure: Is the decision made in the correct way (e.g. with adequate consultation)?
- fairness: Does the decision accord with natural justice?
- liability: What should be done if a decision were incorrectly made, or led to undesirable results?

How can administrative justice be realized? Liberal democracies handle the problem of legal regulation of the administration through either a separatist or an integrationist approach, with the chosen method reflecting and reinforcing differing conceptions of the state.

The first solution, common in codified legal systems, is to establish a separate system of administrative courts concerned exclusively with legal oversight of the bureaucracy. This **separatist approach** marks out a strong public sphere operating within a civil law framework. Where this approach is used, the work of civil servants is seen as legal in character, based on the uniform application of codes and leading naturally to judicial oversight.

The **separatist approach** to administrative justice (as in France) is to establish special courts and laws to review the interaction between citizen and state. By contrast, the **integrationist approach** (as traditionally favoured in the United Kingdom) seeks to control the bureaucracy by reviewing disputes in ordinary courts, relying in large part on the ordinary law of the land.

France is the most influential example of the separatist model. The country has developed an elaborate structure of administrative courts, headed by the Conseil d’État, founded in modern form in 1799 but with roots in the thirteenth century (Figure 13.3). The Council is the final court of appeal within the hierarchy, and also assesses administrative decisions taken by government ministers and their officials as part of its original jurisdiction. By developing its own case law, the Council has established general principles regulating administrative power. The Council’s prestige, which exceeds that of the ordinary courts, expresses the autonomy of the public realm and reinforces its capacity to check the executive.

The separatist solution speaks directly to the specific problems arising in public administration but raises difficulties of its own. These include boundary disputes over whether a case should be processed through administrative or ordinary courts. Such debates can be especially awkward when, as is increasingly the case, a public task has been outsourced to a private contractor. In addition, special administrative courts reinforce a legalistic interpretation of public service which can lead to inflexible and unresponsive decision-making (as those with experience of the French bureaucracy will testify).

The second solution, favoured in Anglo-American countries with a common law tradition, reflects a less exalted view of public authority. The **integrationist approach** asserts that one set of courts should address legal issues arising in both the public and the private sector. The philosophy here is ‘one law for all’. That is, the same principles should span both sectors: for instance, employment in the public