

# From Managerial Reform to Democratic Reformation: Towards a Deliberative Public Administration

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**ABSTRACT:** In the State of Victoria, Australia the Kennett government implemented a radical public sector reforms matched perhaps only in Britain and New Zealand. Responding to fiscal crisis, the Government balanced the budget, attracted new investment and capital projects, and instilled new economic confidence. However, the revolution had its costs. This article examines the effects of managerial reform on accountability and democracy. The structures, systems and methodologies of the Government eliminated real deliberation over options, benefits and costs. The quality of public discourse between government and constituents about the democratic process was stifled. An economic and fiscal perspective replaced a political and legal understanding of public bureaucracy. The article provides a case study of Victorian reforms, and a theoretical examination of the case, suggesting that public administration should be reconceptualized in more pluralistic and democratic terms.

## PART 1: AN AUSTRALIAN CASE STUDY

*"I believe in reason and in discussion as supreme instruments of progress. . ."*

Primo Levi—If This is a Man

Between 1992–1997 the Conservative Government of Premier, Jeffrey Kennett, effected no less than a revolution in the State of Victoria, Australia. Following and then extending new managerial principles, the Government introduced the most radical program of public sector reform in the country, a program the scale and pace of which has been rivalled only in Britain and New Zealand (see Dowding 1995; Boston 1996; Kelsey 1996). Responding to a fiscal, economic and psychological crisis of considerable magnitude, the Conservative Government has been successful in balancing the budget, attracting new investment and major projects and creating a new mood of confidence in the State and its economic future. In this, its alterations to the very nature and purpose of public management have been of central concern and importance. Yet the economic and more particularly the managerial revolution has not come without its costs. It is timely, after five years, to examine some of these more closely.

In this paper, therefore, I will reflect upon the effect of the politics and methodology of managerial reform upon accountability and democracy. In short, my argument is this. In its entirely commendable pursuit of fiscal and managerial reform, the Victorian Government marginalized public accountability and generated a democratic deficit of very considerable proportions. In saying this, I do not simply wish to make the obvious point, which is that this Government, like many others, has been ruthless in its pursuit of its reformist agenda and has in the process attacked and disarmed its critics with considerable force and vigor. Rather I wish to argue that the very structures, systems and methodologies the Government and its senior officials set in place have tended to impoverish political and administrative discussion. This impoverishment requires careful consideration and studied correction if Victorian Government, and others like it, is to respond effectively to the major economic and social challenges that it will face in the approaching century.

In speaking here of democratic governance, I do not refer straightforwardly to Westminster parliamentary democracy. I allude rather to what has come to be termed 'deliberative democracy' of which Westminster constitutional democracy forms only the outer shell (Miller, 1993). By deliberative democracy I mean that quality of continuing dialogue and debate between government and its constituents about economic, social and governmental purposes which forms the heart of the democratic project. My argument is that one pivotal effect of the new public management in Victoria has been to reduce the opportunities for and, indeed, the relevance of such an active public discourse. That, in turn, has been one central consequence of the displacement of a political and legal understanding of public bureaucracy by an economic and fiscal one. Where generalized, such a displace-

ment may have profound implications for the capacity of the state to manage the very significant global dilemmas that press ever more heavily upon us.

The Victorian case, while neither national nor international scope, is nonetheless important for a number of reasons. The pace and scale of the 'managerial reform of the state' have been remarkable. Political leadership has been determined and strong. And radical managerial prescriptions have been implemented, providing a window upon the logic, progress, imperialism and limits of the managerial revolution. It is with these limits and their consequences that I shall primarily be concerned.

This article is divided into two parts. In the first, I present the results of a detailed case study of the Victorian reforms and draw the relevant conclusions from it. In the second I re-examine the case in a more theoretical vein in order to suggest that public administration should now be reconceptualized in more plural, reasoned and democratic terms.

### **The New Public Management**

Taken together, the most important components of the new public management appear to be a stress on private sector methods of management practice, a shift to greater competition in the public sector, polycentricity in public sector design, greater emphasis on explicit standards and measures of performance and the primacy of good management as the principal focus of public sector endeavour.

These ideas have been reflected clearly in the basic principles of government advocated by the Victorian Commission of Audit (1993) and later embodied in the Kennett Government's Management Improvement Initiative (MIIV, 1993). The initiative advances a preference for market mechanisms of governance, more business like management of public agencies, the minimization of public bureaucracy, a focus on clear responsibility and accountability for results and the empowerment of consumers of governments services.

In turn, these principles have been crystallized in a number of important reforms to the structure and management of the Victorian public service. The most important of these have been the strengthening of the central co-ordination of strategy and budget, the conferring of greater managerial and personnel authority upon Chief Executive Officers, a shift from tenured to contract employment, the introduction of compulsory competitive tendering and contracting out, the creation of internal markets for governmental services particularly in health and education, open competition for public service positions and the creation of service specific administrative agencies.

These changes have been designed to confine central government to policy formulation and to leave service delivery to external agencies whether public or private. In other words, the new governance seeks to institutionalize a split between purchasers and providers. Government will no longer act as the provider

of services but instead will specify the objectives of public programs in contracts and then purchase the relevant goods and services from the contractor who is best placed whether by price or competence to deliver them.

These reforms not only reflect international 'best practice', but also derive their impetus from the Government's particular ideology and its fiscal and budgetary imperatives (see Alford & O'Neill, 1994):

The Premier's fundamental philosophy is that what the public sector does should be tested against the market place and if it can be performed better by the private sector then it should be. . . What drives him is debt reduction so he is constantly pushing us to test what we do against the market. If something can be done more cheaply, then it should be. (Senior official, Premier's Department)

In the remainder of this part, I explore selected facets of these administrative reforms in more detail. More particularly I examine the structure and method of the reforms and the constriction they have effected upon discussion and dialogue:

1. Within the public service;
2. Between the public service and its independent scrutineers; and
3. In contract between public purchasers and private providers.

In doing so, I illustrate my argument with commentary and quotations from more than fifty senior public servants interviewed for the purposes of the research. The interviewees fell into three categories: those who favored new managerialism; those who regarded it skeptically; and those who observed it at a distance as independent scrutineers of administrative activity. They were interviewed in the ratio of 2:2:1. I shall refer to them as adherents, skeptics and scrutineers respectively.

## **Dialogue within the Public Service**

### ***Politics and Structure***

The central structural characteristic of reform within Victoria's public bureaucracy has been the tightening of political and managerial control. This has been achieved in a number of different but interrelated ways. The new ascendancy of ministers has been marked. Ministers have brought to government a sharp sense of their right to prevail and a clear, ideological agenda that demands implementation. Control of this agenda is centred on the Premier who effects it politically through the Cabinet and managerially through SCAM, the State Co-ordination and Management Committee, consisting of all of the departmental secretaries and known within the public service as 'the Black Cabinet'.

In a significant departure from Westminster convention, every departmental chief executive is employed directly by the Premier, not by their minister. Each

is employed on a contract the terms of which directly reflect the Government's strategic and budgetary objectives. There has also been a change in requirements at senior levels of the administration. Ministers have been less inclined to seek policy advice from their officials and have sought more committed managerial leadership instead. The general effect of this has been to underline the importance attached to managerial competence and to signal a lack of sympathy for the kind of official whose skills rest chiefly in keeping the ship on an even keel. 'Can do' managers have been preferred to the more reflective policy oriented officials who, in the past, occupied the most senior positions in government.

In turn, the *Public Sector Management Act 1992* (Vic), conferred considerably greater personnel and managerial authority upon the new Chief Executives. They were given considerably greater authority to hire and fire, to set performance targets and to ensure that they were adhered to. Contract replaced tenure as the core principle of public employment as every official in the senior executive service entered performance based agreements with their Chief Executive. The terms of these agreements again reflected the Government's strategic and budgetary objectives and provided for substantial monetary bonuses for good performance and termination on four weeks notice for bad.

Rolling systems of review were introduced. The Premier reviewed the performance of his ministers and departmental chief executives. Central agencies reviewed the performance of spending departments. Spending departments reviewed the performance of central agencies. Central to every such review was the assessment of agency and individual performance against measurable output, budget and cost criteria. In short, a whole of government approach was initiated in which the Premier was the pivot around which everything else revolved:

The co-ordination process works because there is greater political will. Cabinet works more effectively because there is less dissension and less territorialism than there was under Cain or Kirner. Now the 12 core CEO's mirror the 12 core elements of Cabinet. There is a 'whole of government approach to management issues, to industrial relations, finance and budgeting to federal relations. . .Clear lines of authority and responsibility have been created from CEO's and Ministers to the Premier in the same way that Chief Executives in the private sector would relate to the Chairman of the Board. The end result is that major operational decisions are made with the full knowledge of the Premier and all the Secretaries. If an issue travels beyond one portfolio, everyone knows about it. (Senior Official, Premier's Department)

Adherents and skeptics alike regarded the centralization of strategic control as a necessary response to the huge financial problems the Government faced upon assuming office. They were, nevertheless, candid in expressing concomitant reservations almost all of which focused upon the constriction such control placed on policy and administrative discussion.

Spending department heads found themselves drawn much more closely into line with corporate objectives. Whereas previously, there had been active

discussion, negotiation and disagreement between spending departments and central agencies over both policy and budgets, such disagreements deriving from the very different and legitimate perspectives of the two, were constrained by the new structural arrangements.

The 'Black Cabinet' had become the strategic heart of the administration. Its members were expected to identify with and advance its objectives in preference to those emerging from the ground of their departmental work. And the Chief Executive's performance agreements provided an effective means of ensuring their adherence to corporate priorities:

One of the major objectives reflected in Secretaries' contracts is the restoration of Victoria's AAA credit rating. In education there have for many years been disagreements between the department and central agencies about budgetary requirements. The department sets out the problems which will arise on the ground if its budget is too low. We still do that but we know that unless progress is made the government will not reduce the debt, therefore we will move further from the rating target and that will affect our contracts and our bonuses. It's quite a substantial change. (Senior official, Education Department)

For this reason, the new contractual regime was the subject of considerable criticism within the public service. The criticism was not principally that the introduction of contracts terminable at four weeks notice inhibited the provision of unpopular advice but rather that the incentive structure was such that there was less room for policy and administrative maneuver. Such was the effect of the new constraints that most senior officials felt themselves bound ever more closely to the chariot wheels of their political masters. For adherents this did not tend to matter. They were generally happy to identify with both the political as well as the administrative objectives of the government. Skeptics were more reticent:

Lip service is given to independence and professionalism but this doesn't fit with the view that the minister has become the CEO. The minister now intervenes much more than previously. He instructs, he deals with individuals in departments. In all this, the departmental head is an adviser, both a professional expert *and* a political adviser. Once the distinction between government and bureaucracy disappears, you can't help but be a political adviser. . . We are within a stone's throw of a system of government in which a change of government will result in replacing the entire senior echelon of the bureaucracy. (Senior Official, Treasury)

It would be unfair to suggest that the Victorian public service has been politicized. However, the preference for 'can do' managers over more reflective, policy oriented officials has meant that there has been a decline in the institutionalised skepticism that has characterized the senior administrators of the past. There is no sense now, in Victoria, in which the public service may be considered as a kind of fifth estate. Instead, tremendous weight is placed on adherence to the Government's political and managerial objectives. In the

process, the reflective neutrality of the professional public servant appears clearly to have been diminished (see Pusey 1991; Halligan and Campbell 1992).

Adherents clearly relished the freedom offered by the delegation of managerial authority within overall political and financial parameters. The reason is clear. Once the Government had set its directions, officials were considerably less constrained than in the past by requirements for inter departmental clearance, community consultation, union clearance and a host of other potential obstacles to implementation that were characteristic of government in the preceding Labor period. This has its advantages for the rapidity of implementation but its costs should not be ignored. There is no doubt that under the preceding Cain and Kirner governments, union power, particularly in transport, education and health, had resulted in substantial policy distortion (see Considine & Costar 1992; Cain 1994). Similarly, consultation with relevant interest groups had become so complex and self defeating that very little could be achieved. Yet the destruction of union power and the desertion of consultation appears to have taken the administration to the other end of the spectrum. In the skeptics' view, ideology and unilateralism had trumped dialogue and measure as the *modus vivendi* of managerial life.

The problem is that we are moving from the middle to the extremes. There is no sense in which Kennett regards the middle ground as important. His eye is on transformation—radical transformation. (Senior Official, Education Department).

These structural changes have been accompanied by a new toughness in managerial style. Those who succeed are rewarded. Those who fail are punished. The environment in the public service, in my view, has become altogether more brutal than it was under previous Labor and Liberal administrations in the 1970s and 1980s. Instrumentalism is the new administrative canon. In part this has reflected the necessity for concerted action to meet serious problems of state. In part, however, it is the inevitable accompaniment of reformist conviction. As one adherent described it:

I've always worked on the basis that people are judged by what they achieve. If you're doing the right thing, even if you go wrong we will always support you. But if you do the wrong thing, knowing that you are, then we'll persecute you till the day you die. (Senior official, Department of Human Services).

Reflecting international trends, and budgetary imperatives, values associated with economy, efficiency, managerialism and competition now occupy a dominant position in Victorian public administration. These values possess a strong affinity with those prevalent in the radical, right wing government that has assumed office in Victoria. This powerful coincidence of interests has cemented the loyalty of officials, old and new, to their political masters. In the process, however, the idea and ideal of an independent, professional public service is now

very much less in evidence. The impartiality of decision and judgement it implies have been overtaken by a new commitment on the part of politicians and senior managers alike to contractual and market governance. The new world view admits of little dissent.

In the next section I explore the methodological aspects of the new hegemony. These are somewhat less obvious but, perhaps, even more important.

### ***Methodology and Control***

The method of managerialism is quantitative rather than qualitative in nature. The new managerial techniques privilege the measurable over the non-measurable. Criteria of performance are set predominantly in calculable rather than evaluative terms. Increasingly, the professional judgement so characteristic of earlier administrative eras is being displaced by enumerative assessment (Pollitt, 1990a; Hood, 1991).

Professional expertise is uni-disciplinary in character. Therefore, it suffers in comparison with numerical logic which is readily transferable from one professional arena to another. Professional judgement has become more contestable, not least by those in other professions. Numbers have a certainty about them which is difficult to supplant.

One symptom of the decline of faith in professional judgement has been the rise of the 'the manager', a person who possesses transportable skills, independent from specialist knowledge and experience, enabling him or her to achieve given objectives in no matter which administrative arena. Another has been the new emphasis on measurement and audit to which the criterion of efficiency lends itself so handsomely.

As audit, rather than professional judgement, becomes the new arbiter of competing policy or financial claims, the public sector activities for which the new managers are responsible must be reconceptualized so as to be capable of audit. And, particularly in times of financial constraint, it is expenditure reduction which can most easily be subjected to measurement. An assessment of output for any given level of input, the efficiency criterion, follows closely thereafter.

The pervasiveness of the numerical criterion in public administration should not be minimized. As the sociologist Nikolas Rose observed recently (Rose, 1996: 54):

These know hows of enumeration, calculation, monitoring, evaluation, manage to be simultaneously modest and omniscient, limited yet apparently limitless in their application to problems as diverse as the appropriateness of a medical procedure and the viability of a university department.

Neither should their force be underestimated. In the face of demonstrable, measurable improvements in managerial performance, it is difficult to argue either that one's professional judgement is sufficient to suggest an alternative course, or



that an accumulation of anecdotal experience might indicate a different, more cogent form of policy analysis. In short, it is 'the bottom line', that pervasive numerical criterion, that has recently been asserting its claim to administrative truth.

The problem, of course, is that any such numerical criterion admits of no contradiction except on its own terms. Against it, claims from professionalism, social science, values or plain human judgement are rendered less persuasive. Further, calculable performance measurement can prove a formidable method of control, particularly when embedded in contract. The following more practical examples may serve to illustrate the preceding analysis.

My discussions with senior officials revealed that while adherents placed very considerable faith in management by measurement, both skeptics and scrutineers had reservations about the heavy reliance that appeared to be placed upon quantitative measures of accomplishment. All three groups agreed that individual and organizational performance had to be improved. But skeptics argued that for all the increased sophistication of performance measurement, ultimately what appeared to matter to the Treasury was year on year reductions in expenditure. Scrutineers expressed doubts about whether chosen quantitative indicators measured what they should:

Education and Health, they have their rafts of statistics but qualitative measures, the quality of health care, the standard of education, no one seems to tackle those. That's the thing that I worry about. They're normally concentrating on throughput. You can improve throughput by putting someone out of the Alfred (Hospital) onto Commercial Road 5 minutes after taking their tubes out. But that doesn't mean very much. (Senior Official, Auditor General's Office)

Adherents are not unconcerned with quality. But they express their concern by colonizing it. Quality is defined by the presence of certain procedures for the measuring, monitoring and documenting of selected variables. Standards are set for key aspects of a service and then actual levels of achievement are recorded and fed back to the staff concerned. This is a highly rational and systematic approach. It is also one that enhances the power and status of the managers themselves (Pollitt, 1990b; Henkel, 1991).

The issue of power is of considerable salience for the new managerialism has reconfigured power in the Victorian public service. Not only has the managerial approach steadily encroached upon the territory previously occupied by the professions, but performance measurement itself has become a powerful tool for control:

Performance is important, but like most systems it's open to exploitation. Performance criteria are being generalized sufficiently to guarantee the success of the people setting them and are being particularized for the people under them so they can keep control. In fact this is not much different to seniority or meritocracy. It's just another

mechanism of control. . . These things are fashions. It's easier for the people determining them to have outputs for themselves, easier to have tangibles, because the idea of weighing values and integrity and principles is just too ephemeral and difficult. (Senior Official, Treasury)

Accompanying these trends, is an attitude among politicians and adherents which tends to discount competing sources of expertise. Either one operates according to economic, fiscal, managerial and mathematical criteria or one does not. The idea that a dialogue between the two might engender deeper and more considered policy, implementation or judgement is one which tends in practice to be discounted. As one scrutineer put it:

We criticized privatization in one of our reports because we didn't think there would be the accountability there had been if administrative law mechanisms were taken out. We had a run in with Stockdale (the Victorian Treasurer) over that. He said to me, what do you know, you're not an expert on privatization. I said, I'm not an expert on privatization but I think I am an expert on accountability. (Senior Official, Ombudsman's Office)

In short, within a framework of tight budgetary constraint and significant structural reform, the methodology of the new managerialism has effected significant changes in the way that the Victorian public sector has been organized and perceived. It has established new relationships of power, relationships which privilege managerial assessment over professional judgement, which privilege enumerative logic over personal or interpersonal experience. Dialogue and deliberation appear to have been incidental casualties of this new colonization. There is a certainty associated with figuring unmatched by any other discipline, a conviction that brooks no argument. When asserted in a time when budget imperatives override any other, when measurable expenditure reduction is the hallmark of success, it assumes a force that is difficult to question or resist. In the process, other voices tend to be dismissed or discounted.

In the next section, I look more closely at the fate of some of the more important competing voices, those of the independent reviewers of government activity.

## **Dialogue between the Administration and Independent Scrutineers**

### ***Political and Structural***

The central fact of modern government has been the rise in the power of the executive at the expense of parliament and the judiciary. The dramatic expansion of the role of government since the Second World War has necessitated the development of a large administration to assist the elected government to perform the many and various tasks that have been required of it. Consequently, public servants have come to exercise considerable independent powers and discretions.

The conventional doctrine that parliament could and would hold the executive to account can no longer be regarded as adequate in the light of the substantial alterations in the shape and context of government (see Marshall, 1989; Woodehouse, 1994; Barker, 1995; Lindell, 1995). It has been for this reason that new mechanisms of scrutiny have developed. They have been created to supplement and reinforce the ability of both parliament and the judiciary to hold executive government to account. Their purpose has been to redress individual grievances, accord administrative justice, increase governmental visibility and foster participation in executive decision-making. In short, administrative tribunals and Ombudsman like agencies have been an important means of enhancing intra-governmental dialogue. It was perhaps inevitable that their position and value would be contested once smaller government became a central tenet of new political manifestos. What was perhaps less foreseeable was the concerted challenge that managerialism, rooted in economic rationality would pose to forms of accountability built in administrative law and founded upon legal rationality. I explore both these themes in what follows.

In Victoria, the story of independent offices designed to scrutinize, report on and alter administrative behavior may briefly be summarized. Since the accession of the Kennett Government, these offices have been subject to concerted political and budgetary attack. The major interventions have been as follows (see also Zifcak, 1997):

- It has become routine for the Government to include a provision excluding the jurisdiction of the Supreme Court in legislation central to the prosecution of its economic and social program.
- The Director of Public Prosecutions resigned after new legislation constrained his prosecutorial independence.
- The Equal Opportunity Commissioner was dismissed and new legislation was introduced constraining the power and independence of her office.
- The Public Advocate resigned and subsequently criticized the Government's attitude towards the Office and the people it serves. He was not replaced for 18 months. The Office was audited.
- The Ombudsman resigned and was not replaced for 18 months.
- The Office of the Auditor General was audited and reviewed.
- The Health Services Commissioner resigned for health reasons but left criticizing political interference in her office, a lack of resources and an external audit.
- The Law Reform Commission was abolished and replaced by a voluntary committee.
- All quasi judicial tribunals were subjected to far reaching review and their amalgamation has now been suggested to reduce cost and increase consistency.

- The budgets of every office and tribunal was cut consistent the government's expenditure reduction targets.

The political rationale for these changes was clear. A radical government facing substantial financial difficulties could little afford to be distracted from its central mission by layer upon layer of judicial and administrative review. Both ideological and budgetary imperatives required strong, rapid and concerted action. A similar view prevailed in the new administration:

The polity can enjoy a non-transitive preference ordering. They can say we want consultation, a humane approach with everyone having their say and nobody doing anything to us that we don't like etc. but we also want to be rich, have low taxes, all services and so on. Somebody actually has to say we can't do both, to determine where the priorities lie, and then live or die by it. Now, I unabashedly say that for all things worth having it's much easier to do them if you're not bankrupt. . .when you're in the hands of the bank you've got no choices. (Senior official, Department of Human Services)

While so much may be admitted, the managerial attack on administrative review travelled considerably more widely than this. One of the more noticeable features of my discussions with senior Victorian officials was the frequency and ease with which oppositional interests were characterized and dismissed as vested. This reproach was not merely confined to political, professional and provider organizations but extended more widely to include new mechanisms of administrative review. Adherents commonly expressed the view that one of the major problems with such mechanisms was that they were subject to manipulation by hostile pressure groups:

One issue you haven't touched on is the role of the special interest group. On all sides of politics these special interest groups have learned to use vehicles like the AAT and the Equal Opportunity Commission and all the others not in the common good but to suit their own particular purpose. In spite of the rhetoric, they end up largely being a vehicle for fairly articulate and well financed groups rather than for the individual who has had their tail kicked in. (Senior Official, Premier's Department)

Of course, such a view tends to assume that a proper appreciation of the common good resides exclusively in the administration. It also assumes that the use of law and legal forums to challenge governmental decisions may be invalidated simply because its users are self interested or partisan. Its characterization of independent review offices as the pliant puppets of manipulative complainants is more opportunistic than realistic. Nevertheless it is a view which has clearly been influential in paring back the authority of the 'new administrative law' in Victoria.

In a related development, adherents appeared more ready to identify with their Ministers' political objectives than might previously have been the case. Conse-

quently, these officials were more willing than I would have expected to dismiss the contrary opinions of their legal interlocutors in expressly political terms. They asked not only whether there was substance in a criticism but also whether their analysis had been colored by a prior or existing political affiliation:

(Justice) Fogarty doesn't like the present government, nor does (Justice) Alastair Nicholson nor does Brian Burdekin (the Human Rights Commissioner), all I might say failed Labor candidates, and they are not intrinsically sympathetic. . . A lot of what they say means we don't like this government. They're not our sort of people. (Senior official, Department of Human Services)

In seeking to establish their own claims to authority, at least some new managers also questioned the popular legitimacy of independent offices. This questioning was cast in very traditional terms. Since it was to parliament that ministers and managers were accountable, on what foundations did tribunals and ombudsmen rest their entitlement to intervene?

I also ask the question, to whom do these people account? And I notice that regardless of the government that is in power, that you put someone on one of these tribunals and they take a view that they are the substitute for Cabinet. They're not elected. So, I have some conceptual difficulty with having all these peripheral institutions being the substitute decision-makers. (Senior Official, Treasury)

The very conventional character of this position may not have presented such a difficulty if the Government had made a concerted attempt to enhance the effectiveness of parliament as the principal forum for executive review. With the single exception of establishing a Scrutiny of Acts and Regulations Committee, however, no comprehensive reform of parliament appears yet to have been contemplated. Beyond that, dialogic accountability, the idea that government rules by consent and that the terms of this consent must be tested and reaffirmed continuously and interactively, before the law as well as in the parliamentary arena, appears to have lost its persuasive power.

### ***Competing Values and Methods***

Administrative review is founded in what may be described as a legal-bureaucratic culture. In this culture, the rationality of administrative decision-making is determined by its conformity with pre-established rules and its adherence to procedural fairness. Managerialism, by contrast, is rooted in a different, functional culture. Its rationality is assessed with reference to its success in achieving pre-determined political and administrative goals.

Both administrative review and managerialism seek to effect an improvement in administrative decision-making but they do so in different ways. Administrative review aims to improve outcomes by subjecting decision-makers to searching procedural, legal and substantive scrutiny. In so doing, it is informed by a concern

with fairness and openness. Managerialism seeks to obtain better outcomes by effecting measurable improvements in the accomplishment of politically mandated objectives. It is an approach informed principally by a concern to achieve greater efficiency and economy.

The potential for conflict between the two is clear. Administrative review places great weight on procedural fairness and the avoidance of error. In management, a willingness to experiment and to take calculated risks is highly regarded. Considered reflection is a hallmark of the legal approach. Decisiveness is more esteemed in management. Conformity with the dictates of administrative justice is expensive. Economy is a primary objective of the managerialism. The value of 'correct and preferable' decisions cannot be quantified. The cost of making them can (Bayne, 1989; Allars, 1991).

These abstract differences emerged tangibly during my discussions. Adherents criticized tribunals and independent offices for their apparent concern with legal form rather than administrative substance. They asked whether the value added by tribunals and scrutineers justified their cost. They reproached independent scrutineers for their lack of appreciation of managerial realities:

I look at this from an administrator's viewpoint. It is very easy to sit back after the event and say what you would do but it is far more difficult to be in a dynamic situation where you rarely know more than 50% of the facts and you have to make a decision with some speed. . . Certainly by applying quasi judicial rules of evidence for assessing these decisions you might make a different decision. But in many cases you end up diminishing the capacity of government to make decisions because people are forever looking over their shoulder saying well, what would Justice X or the AAT (Administrative Appeals Tribunal) say rather than asking what is the best policy decision. (Senior Official, Premier's Department)

Others accepted that review was appropriate but felt that to engage in merits review on a legal model was to meet a legitimate problem with an illegitimate solution.

We've adopted the European model which says in effect that it doesn't really matter whether government achieves anything as long as it does in legally. . . the whole idea that you can improve the delivery of health services by making health practitioners subject to legal processes is pretty bizarre. . . The problem is the assumption that decisions stand by themselves but decisions are embedded in courses of action that move on. . . That kind of rarefied decision-making is so out of touch with reality that one might as well say we should get out of service delivery altogether. (Senior Official, Premier's Department)

Ideology too played its part in both adherents' and skeptics' assessment of administrative review. Both agreed that the adoption of market governance had tended to diminish the importance attached to administrative review. In a time when performance measurement and audit had become the preferred methods of

ensuring managerial accountability, an additional layer of legal review was seen both as less necessary and less relevant than it had been in the past. In the adoption of a private sector model of public management, however, skeptics believed that something of the intricacy and singularity of public governance had been overlooked.

The Government doesn't think about (legal accountability). It is a small business government. It cares about the markets, it cares about balancing the books. It cares about financial restraint. But beyond this it has very little understanding of the complexity and distinctiveness of public administration. (Senior Official, Education Department)

In some instances, the dictates of law and executive action clashed quite dramatically. The cardinal example was a disagreement which arose between the Department of Education and the Commissioner for Equal Opportunity about the propriety of closing two state schools which catered for the needs of aboriginal and other disadvantaged children (Giddings, 1994; Rayner, 1994). The Commissioner accepted a complaint the basis of which was that the schools' closure constituted indirect discrimination against identifiable groups whose interests her legislation required her to protect. Her intervention was interpreted by the Government, however, as an impermissible encroachment upon its entitlement to implement policy. The fact that the *Equal Opportunity Act 1986* obliged the Commissioner to act was not clearly appreciated.

I don't see an accountable system as one where a statutory officer decides which schools we'll close or what sort of trams we'll have. She decided that closing Northlands and removing conductors from trams was an EEO matter. As far as I'm concerned that's not an EEO matter, she decided it was, and the Government decided that it could do without her. (Senior Official, Education Department)

The problem which these examples reveal is a tendency on the part of some adherents to polarize the discussion about accountability. As one official said to me, 'You tell me where I stand. Whose framework is flawed. Mine or the law's.' The answer, in my view, is that neither framework is either correct or incorrect. Instead, they complement one another. Like economy and efficiency, openness and fairness are instrumental values. They are adhered to in order to obtain the best possible fit between means and ends. It would be as wrong, therefore, to achieve mandated ends by unfair means as it would be to accomplish them inefficiently. Both value sets are important, even though at times their requirements may point in different directions.

In the first four years of the Liberal administration, however, it has been clear that what Christopher Hood has described as 'sigma type' values—economy, efficiency and parsimony—have been privileged over 'theta type' values—honesty, fairness and mutuality (Hood, 1991). In part this has been a response to

ideological and budgetary imperatives, in part it has been a defining characteristic of managerialism's new pre-eminence. A reduction in the role and influence of independent mechanisms of administrative review has been one clear result. The net effect has been to weaken administrative accountability in Victoria not only because many scrutineers have resigned, been dismissed or been curbed but also because one very important facet of intra-governmental dialogue has now been constrained. For administrative tribunals and Ombudsman like offices are, if nothing else, the institutional embodiment of theta type values. They exist to represent the case for such values and in so doing play their part in creating a dynamic balance between the legal, functional and political arenas of government. To devalue them is, therefore, to undermine an administrative conversation of very considerable importance. It is also, I might add, to equate the management of governmental dilemmas, which requires a consideration and synthesis of each relevant value cluster, with the management of governmental resources which demands attention only to one. Both good governance and deliberative democracy suffer as a result.

## **Dialogue between Purchasers and Providers**

### ***Politics and Structure***

In its most recent incarnation, managerialism in Victoria has embraced competition. The Victorian Commission of Audit argued, for example, that it is competition which will provide the best guarantee of quality and value for money in the provision of public services. For that reason it proposed a restructuring of Victorian public administration. Just as private sector businesses have increasingly chosen to concentrate on their core business and buy in specialist contractors to provide new ideas, more flexibility and a higher level of expertise, so departments and agencies should do the same. To this end, the Commission recommended that government should be responsible for setting policy, regulating and contracting for the provision of public goods and services. As far as practicable, however, it should be separate public or private contractors who provide these goods and services. The contractors, in turn, should compete for governmental business. Those who offer the best combination of quality and price reflecting departmental and agency objectives should be awarded the contract for service provision. In other words, government should steer and contractors should row (see Osborne & Gaebler, 1992; Jordan, 1994).

Since that time, the Victorian Government has embraced competition and its concomitant, management by contract (see Harden, 1992). While it is still too early to judge the successes and failure of the approach definitively, both skeptics and adherents suggested that very significant efficiencies and cost savings have been generated since its introduction:



The rigor and methodology of defining what you're doing, understanding the price drivers and understanding the way cash incentives work is now much more part of the discipline of our work. You just don't go into a new proposal without being very clear you understand the relationship between price and outcome and relative prices and substitutabilities. In just two years this has become part of our modus operandi. (Senior Official, Department of Human Services)

Contracting out has required managers in government to be much clearer about programmatic purposes, objectives, targets, costs and methods of evaluation. In framing their bids, public and private contractors have had to be considerably more sensitive not only to governmental priorities but also to the preferences and demands of their consumers. As the former Secretary of the Department of Premier and Cabinet, Mr. Ken Baxter, has argued, the disciplines of the market place should replace the pressures exerted by partisan interest groups (Baxter, 1991).

The fundamental premise underpinning this approach is that public services can be made more efficient and more accountable if the functions of policy-making and service delivery can be separated. Policy will remain with ministers and a smaller 'core' administration but the delivery of services will be located separate from departments and will be conducted, as far as possible, on commercial rather than administrative criteria. However, while it may readily be conceded that fiscal accountability may be enhanced by the adoption of a competitive, contractual approach to public administration, this may come at considerable cost to political and democratic accountability. There are a number of reasons for this.

Contractual governance is premised on the idea that an effective distinction can be made between policy and service delivery. In practice, however, the two are likely to be intertwined closely. Is a person's placement on a hospital waiting list or the closure of a local school a matter of policy or management? If no clear distinction can be made between the two, it becomes very difficult to attribute responsibility for the successes or failures of governmental administration. An all too natural tendency will arise for ministers to blame operational factors for failures of policy and for private contractors to blame failures in service delivery upon ministerial intervention. The lines of political accountability may, therefore become very blurred. A similar problem may arise with respect to legal accountability. Will it be the sponsoring department or the contracted agency which assumes legal responsibility for the acts of service delivery staff? Here again, there may be an incentive for government to favor private rather than public service provision if by doing so, a transfer of legal liability can be effected.

In this regard, much will depend on the terms of contracts between central departments and service delivery agencies. These cannot be of a purely commercial variety because they must be embedded within a framework of public as well as private law. They must, therefore, reflect constitutional as well as mercantile values in the designation of terms, conditions, prices and mechanisms for dispute

resolution. Above all they must be constructed in a manner that is consistent with the doctrine of ministerial responsibility. They should, for example, make clear whether and in what way sponsoring departments will retain a residual public law responsibility for contracted activities. Or, in the alternative they might specify that private contractors should be drawn into relevant public law jurisdictions including for example, the Ombudsman's jurisdiction or freedom of information. The latter is particularly important. Information formerly in the public domain might now be considered as exempt from access legislation. The greater secrecy that this implies may have a detrimental effect on political and policy discussion more generally. A failure to incorporate public law principles in contract, therefore, can only reduce or muddy political accountability even further.

Contractualism may also have a significant impact on the practice of public service. While on the one hand it may be expected to increase the quality of communication between service providers and consumers, this may come at a cost to the quality of dialogue and debate which has traditionally occurred within sponsoring departments themselves. Service contractors have a clear interest in retaining their contracts and, hence, in complying with the wishes of their purchasing agency. They may, therefore, feel constrained to temper their criticism of departmental activity. Similarly, if policy functions are contracted out, there will, inevitably, be a tendency for a contractor to provide the advice for which it is paid. Advice based on a commitment to public service or to some wider conception of the public interest is therefore less likely to be heard. As one skeptic observed:

The implementation (of contracting) is problematic because the implementers as contractors have a clear stake in what happens. They make a personal profit. They have a dedicated rather than measured approach to execution. This is an arrangement which will diminish independent advice and criticism. (Senior Official, Education Department)

A commitment to public service may, therefore, give way to the achievement of commercial objectives. An inclination to be 'other regarding' may be displaced by a propensity to be 'self regarding.' Somewhat ironically, given the emphasis in public choice theory on the budget maximizing bureaucrats of the past, private contractors too will have direct monetary incentives to couch their advice in terms which will maximise the demand for their services.

In summary, contract has an important role to play but only within a constitutional, legal and ethical framework which encourages open discussion, debate and dialogue about both policy and management. It is central to such an approach that the progressive development of contractual governance be set within a larger context of political and democratic stewardship.

### ***Methodology and Control***

Contractual government contains an inherent contradiction. The decoupling of central departments and contracted agencies appears to give the latter a degree of autonomy. At the same time, however, the contract into which the parties enter constrains the manner in which service delivery agencies are to behave. More specifically, contracted agencies are made subject to very strict and detailed reporting, measuring and auditing requirements. Hospitals, schools and social welfare agencies, for example, now spend significant amounts of time accounting for their performance against measurable criteria set down by their sponsoring departments. This has required them both departmental and service agency officials to develop a new raft of financial and methodological skills:

You have to understand costs, performance and relate that to what you're doing in a market context, you have to optimize contestability and competitiveness. You never go into negotiations without knowing what you can buy, how much you have to pay and how you measure results. (Senior Official, Health Department).

So, although government has progressively removed itself from service delivery, it retains a significant measure of control by setting the contractual and performance parameters within which its agents must operate. In this way it can still govern but at arms' length.

Consistent with the fiscal and managerial emphasis of the current Government, the principal focus of agency reporting has been on the fulfilment or non-fulfilment of cash and efficiency targets. Those agencies which perform against such measurable criteria are rewarded with contract renewal. Those who do not may lose their organizational livelihood. In the current administrative environment criteria of performance are framed principally with cost, budget, input, throughput and output data in mind. In other words, audit has become the central methodology for evaluation and control.

Despite the fact that its epistemological profile is, if anything, even lower than the knowledges it seeks to displace, and that there is nothing novel in the techniques of audit, the mode of its operation—in terms of procedures rather than substantives, in terms of apparently stable and yet endlessly flexible criteria such as efficiency, appropriateness, effectiveness—renders it a versatile and highly transferable technology for governing at a distance (Rose, 1996: 55–6).

The problem here relates to the focus on procedures rather than substantives. For in the public domain, performance criteria are necessarily much wider than processual calculation will allow. The expressed preference for and prevalence of measurable, efficiency-related benchmarks, may divert attention from other objects government has a duty to pursue. Calculable indicators, for example, can tell us only a limited amount about the extent to which other less tangible goals of governmental policies and services such as equity, accessibility, fairness,

mutuality and respect for the law have been achieved. Governmental performance can rarely, effectively be expressed in quantitative terms alone. It must, therefore, be complemented by qualitative judgments founded upon political, economic, social, administrative and personal experience.

This is not to say that performance measurement has no place. It provides valuable source data. It is to say, however, that such data must inform judgement rather than become a substitute for it. Political judgement is a social and not a technical activity. It not founded the imposition of absolute, external standards but upon freedom, speech, publicity, exchange, persuasion and dialogue, in other words upon an active public discourse. Its improvement relies not upon explicit rules and methods but rather upon expanding the spaces for public deliberation and providing fair access to them. It is an arena in which the expert can claim no dominion. However, the danger as Stuart Ranson and John Stewart recently remarked:

... is that (measures) can too easily substitute for discourse. The language of measures can drive out the language of discourse. The task is to find a vocabulary (or way of talking) that can encompass performance measures but can also encompass the softer views of opinion... Effective performance cannot be achieved if justice is denied, citizenship ignored and equity confounded. Effective performance depends upon the realisation of values, even when the meaning of those values is contested - which is why effective performance has to be judged and the judgement tested in discourse. Performance assessment should be seen as dependent upon public accountability—itsself dependent upon public discourse (Ranson and Stewart, 1994: 232).

### **Conclusion**

It has not been my purpose during this study to deride managerialism. It has made a substantial contribution to producing a more cost conscious, efficient and effective public service. Rather, my aim has been to demonstrate that these achievements have not come without their costs. More particularly, they have come at some cost to the preservation and enhancement of a dialogic democracy in this State. For while one task of government is to manage the state's resources effectively, this is not all there is governance. In a larger sense, governance is about enhancing the state's deliberative capacities so that the social conflicts and problems we experience collectively as citizens may best be mediated and addressed (see also Self, 1993; Stretton & Orchard, 1994).

It is a significant error to think that the marketization of public services will provide anything but a partial answer in this regard. Marketization may increase the volume and efficiency with which public goods and services are provided to individual consumers. But it is only government that can intervene to define and confer the entitlements of its citizens.

Managerialism, therefore, has an important role to play but only within a

constitutional, political and legal framework which, by fostering civic discussion and equalizing citizens' entitlements, contributes to the formation of reasoned, considered and democratic policy-making. In the second part of this paper, I expand upon this theme in both theory and practice.

## **PART II: FROM THEORY TO PRACTICE**

### **Introduction**

In the first part of this paper, I presented a detailed case study of the managerial reform of public administration in Victoria, Australia. I argued there that one very important but little noticed effect of the changes embraced by managerialism in Victoria had been to devalue and marginalize public and administrative deliberation. That marginalization was generated in part by a political preference for a more directive and, some would say, authoritarian mode of governmental leadership. It was also the product of a new administrative preference for technical and calculative methodologies that in turn reflected a commitment to the value of efficiency at the expense, for example, of values associated with equity and democracy.

My contention at the end of this first part was that too much damage had been inflicted upon the deliberative capacities of the state and that active public discourse should, therefore, be revitalized. The impoverishment of administrative and indeed political discussion needed to be addressed and redressed if the state were effectively to meet the threats and challenges posed to our political and social fabric at the turn of the century. A finer and more appropriate equilibrium is now required between the economic and fiscal perspective so dominant in public management in the last two decades and a more plural and democratic one more likely to equip public administration with the capacities it will require in facing the very considerable challenges posed by the unpredictable, global currents of which we are becoming increasingly aware.

This second part, therefore, is devoted to an elaboration of the case for a more deliberative, contextually sensitive, public administration. In the development of this argument, the case study took us only so far. It demonstrated that in Victoria, and I think elsewhere, administrative dialogue and discussion has been undesirably constrained. But the positive case for the reinvigoration of administrative deliberation was assumed rather than argued. It is my purpose here to rectify that important omission.

The argument proceeds in the following way. First, I chart certain changes to the global environment of public administration that will demand a concerted response, both politically and managerially, from governments everywhere. Secondly, I return to the case study to suggest that managerialism, as a technology of governance, is limited in its capacity to respond to the challenge of these

powerful global currents. Thirdly, I consider the work of a number of theorists of deliberative democracy whose thinking in my view offers considerable promise in providing insights into the desirable, future shape of administrative structures, systems, procedures and values. Fourthly, applying these ideas, I suggest four cardinal values that should govern administrative reform into the next century. These values are contestability, accountability, procedural fairness and a commitment to public ethics. Finally, reflecting the structure of the exposition in the first part of the article, I propose a number of measures, founded upon these values, to enhance administrative deliberation within the public service; between the public service and its independent scrutineers; and in contract between public purchasers and providers.

### **The Changing External World**

In recent years, a number of influential social theorists have combined to argue that we, as citizens, have entered a new phase of modernity. As the influential German theorist, Ulrich Beck puts it:

“Modernisation is becoming reflexive: it is becoming its own theme. Questions of the development and employment of technologies are being eclipsed by questions of the political and economic ‘management’ of the risks of actually or potentially utilised technologies. . . The promise of security grows with the risks and destruction and must be reaffirmed over and over again to an alert and critical public through cosmetic or real interventions in the techno-economic development (Beck, 1992).

The new, reflexive modernity is characterised by a number of important themes and developments. The first, as Beck argues, is that modern technology produces both benefits and risks and the regulation of these risks, in turn, creates major dilemmas for democratic politics and policies. Next, there is globalization. Globalization consists of diverse strands in law, politics, security, cultural identity and economy resulting in a new and at times contradictory architecture of power and constraint. States now operate in an ever more complex global environment in which their sovereignty may be preserved but in which their autonomy is ever more restricted (Held, 1995). Then, there is the emergence of a post-traditional social order (Giddens, 1994). Here, traditions do not disappear but are open increasingly to an interrogation the consequences of which may be either transformation or reconsolidation. Religious fundamentalism is perhaps the clearest example of the latter.

Increasing institutional reflexivity has also emerged as an important contemporary phenomenon. In the West, large centralized bureaucracies are progressively being replaced by smaller functional units which combine in new and continuously different ways to produce variegated outcomes relevant to increasingly diverse constituencies and communities. This, in turn, appears to be a response to the steady adaptation of an oligarchic politics to a new polity

characterized by a break from the traditional two party system in favour of a more plural politics of interest groups, community coalitions and social movements (Marsh, 1995; Yeatman, 1998).

Finally, there is a recognition that despite the best efforts of some and the negligence of others, the gap between rich and poor both within and between countries and particularly along the North–South divide is a problem which has increased and to which there appears as yet to be no ready response. The economic, social, cultural and political dangers posed by this inequality are formidable.

The transformation of politics which follows in the wake of these developments would seem to require a rethinking of political and administrative interaction and organization. In the global sphere, science and technology can no longer be regarded as the source of a comprehensive solution to the problems of the new, reflexive social order. In part this is because, as Beck acutely observed, science and technology are now not only risk reducers but also risk creators. In part it is because the new problems specified tend increasingly to be international and multi-faceted. Therefore, they require multi-national, multi-dimensional, increasingly sophisticated and ever more thoughtful responses. Correspondingly, political and administrative decision-making within nation-states will need to alter radically to ensure its relevance and effectiveness in a more uncertain, unequal, plural, and globally interconnected world.

Many social theorists who have been thinking hard about these issues have tended to converge upon the necessity for revitalized democratic discussion, for a renaissance of public reason as one form of response to the challenges of global risk and global development (Beck 1986; Beck, 1998; Giddens 1990; Giddens, 1994; Habermas 1989; Habermas, 1996; Held 1995; Held, 1996). It is through this renaissance, they contend, that the complex web of international problems may best be analyzed and treated. If we are constantly to be surprised by the unintended consequences of scientific change and continuously challenged by the limits of the environment we inhabit, then, these theorists argue, we need urgently to reinvigorate our democratic and deliberative capacities. We need individually, collectively and institutionally to generate form and direction from the intricate social, economic and environmental conditions in which we find ourselves in order to ensure that our continuing survival as a species may more confidently be assured.

Following from Rawls, these theorists attempt to envision nationally and internationally some new, fair and democratic framework for collective deliberation about problems and dilemmas we as local and global citizens share in common. The problem, as Rawls defines it is:

How to conceive of a society as a fair system of social co-operation between free and equal persons viewed as fully cooperating members of society over a complete life. . .

The aim of justice as fairness, then, is practical: it presents itself as a conception of justice that may be shared by citizens as a basis of a reasonable, informed and willing political agreement. It expresses their shared and public political reason (Rawls, 1993: 9).

This formulation leads Rawls to argue that what is required is an ‘overlapping consensus’ in which, through dialogue, a political agreement may be reached on the proper guidelines for public inquiry and on the rules appropriate to the assessment of evidence with respect to the fundamental issues and problems we experience in common. The values inherent in public reason of this kind, he contends, will include not only fundamental concepts like reasonableness and fair-mindedness but also procedural virtues such as common sense knowledge, appropriate rules of evidence and the acceptance of the agreed, functional and non-controversial methods and conclusions of science. (Rawls, 1993: 139).

It is, of course, beyond the scope of this article to imagine and propose creative responses to the telling dilemmas of reflexive modernity. Nor do I have the vision or capability to ground Rawls comprehensively in practice. My concern, therefore, is narrower. Following from the Rawlsian starting point, here I wish simply to examine the limits of the ‘managerial reform of the state’ as a solution to the current difficulties and dilemmas we face. Then I will develop the credentials of a more deliberative, discursive and humane public administration as a critical supplement to the principles and practice of managerialism that have been so prevalent in recent times.

### **Managerialism’s Limits**

Just as the mastery of science and technology has been reduced in the global sphere in the face of intractable and iatrogenic difficulties, so managerialism’s claims to prescriptiveness in the public sphere now require re-examination and re-evaluation. As stated in my introduction, the benefits of the managerial revolution for improved fiscal performance and more efficient service delivery are undeniable. But its claims to have produced better, informed and more enlightened public policy making and more effective and citizen friendly services stand on altogether more uncertain ground (Dunleavy and Hood, 1994).

Again, there are a number of considerations which may serve to cast light on this phenomenon. It will be evident from the case study contained in the first part of this paper that at each and every level of government politicians and senior managers sought to depoliticize decision-making by recasting it in terms of economic necessity or operational imperative. For all the dogma to the contrary, however, it is rarely feasible to make clear distinctions between matters of policy and management, to realize, in other words, that any such distinction is not self evident but socially constructed.

Nevertheless, the prevalent tendency in Victoria and elsewhere has been to



depoliticize decision making, delegating it to managerially controlled organizations in both the private and public spheres. This has, in turn, generated very considerable problems in ensuring the accountability of these new disaggregated agencies and quasi non-governmental organizations particularly given the tendency for governments to appoint rather than elect them. Managerial philosophy, then, has tended to favour guardianship over electoral participation, to prefer fiscally responsible decision-making to democratically accountable participation (Weir, 1996).

Similarly, civil service departments have been broken up into agencies, responsive on the one hand to their consumers and on the other to the small policy core at the heart of ministerial government. In the process, as the case study illustrated, the traditional idea that senior civil servants would enhance ministerial deliberative capacity has been displaced by the twin pillars of the minister as manager and senior executives as the 'can do' implementers of governmental directives. While enhancing operational efficiency, this has led to a 'cycle of decline' in the frankness and candour of civil service advice and alternative sources of problem definition and acuity in policy appreciation. The question, then, is whether the gains of managerialism have justified the directed and unintended costs to state capacity (Self, 1993).

Managerialism's exclusive and linear approach to the direction of the public service has also resulted in the marginalization of competing conceptions of public accountability. It has been argued frequently in the British literature, for example, that market driven accountability should be complemented by the introduction of a new, strong system of merits review of administrative decisions. Legal accountability might then supplement managerial and political accountability and draw the increasing proliferation of quasi-non governmental organisations to account for decisions on their merits. It has been amply demonstrated in this case study, however, that rather than accepting the complementarity of such an approach, both ministers and managers in the Australian context have sought to diminish the impact of administrative law accountability not only because it is politically inconvenient and costly but also because its values are inconsistent with those dominant in the managerial paradigm (Zifcak, 1997).

As will also have become clear from the earlier discussion, the preference for quantitative methodology derived from accounting in the assessment of performance of many different kinds, requires careful evaluation. League tables, funding outcomes, performance based pay and other similar techniques privilege efficiency gains over other forms of outcome. These methods also have the incidental effect of re-orienting organizational priorities to the achievement of measurable outputs, perhaps at the expense of less tangible but equally important goals such as policy effectiveness to take but one example. Their extensive use, as Peter Miller has argued recently, tends to disguise the fact that the deployment and interpretation of quantitative data is and must be dependent upon a clear

appreciation of its meaning, purpose and relevance in very different administrative settings. Some of the criticism now vigorously applied to enumerative methodology in the private sector might also usefully be considered and applied in the public context (Miller, 1996).

The creation of a split between purchaser and provider has encouraged competition rather than cooperation between service providers. The parallel emphasis upon defining and concentrating upon agency core-business linked to output-based funding produces additional incentives which may have a perverse effect upon inter-agency collaboration designed to generate a more comprehensive and multi-faceted approach to social policy and service-delivery dilemmas.

Again, as illustrated in the preceding case-study, the technologies of managerialism have proven a powerful mechanism of control.

One of the perennial problems of reform in public management is pervasive pressure for across-the-board obeisance to fashionable management models, and for non-market organizations to measure their success or otherwise by blanket adoption of the kinds of ritual and rhetoric that important people are assumed to want (Dunleavy and Hood, 1994: p.15).

The great attraction of the managerial reform of the state is that it may conveniently be couched in ostensibly technical and value-neutral terms. Yet it should be apparent that no such 'objective' account of the recent reforms can reasonably be defended and that, like any new program of change, it has tended to favour one cadre of political and administrative leaders over another, one ideological orientation in preference to another.

In summary, then, managerialism has adopted a linear and quantitative methodology that has been highly effective in making public service organizations more focused and functionally structured, more efficient and client-centered, more oriented towards outputs rather than inputs and more responsive and attuned to political command.

At the same time, however, this very effectiveness has come at high cost. In their influential article, Pat Dunleavy and Christopher Hood argue that these improvements have been engendered in the total absence of *any* careful debate 'about what core competencies a national public service ought to retain in these changing conditions' (Dunleavy and Hood, 1994: 16). Even more worrisome, however, the unidimensional managerialization of politics and administration, whether at the behest of people, method or contract, is quite simply unsuited to the enhanced social reflexivity, complexity and uncertainty of the external environment. At least in part this is because managerial politics and technology, as this case study has illustrated amply, has tended to marginalize and diminish that democratic deliberation so necessary to respond to the global challenges that now press in from all quarters.

Managerialism, then, is best viewed as a reasonably effective attempt to

improve public sector working practices, thereby creating a basis of the development of more specifically formulated action criteria combining programmatic objectives and user expectations. But as a method, it has proved incapable of taking the next step to ask what should the state or an agency do; how should the state or an agency respond to ever more novel, complex and turbulent economic, social, cultural and environmental circumstances? In depoliticizing a whole series of social issues and redefining them as problems to be 'managed' or services to be made subject to market discipline, the techniques of commercialism have engendered many new forms of governance at a distance (Rose, 1996). At the same time, however, they have left the cupboard of public policy and argumentation very threadbare indeed. As one writer concluded recently:

Whatever the justification there is for it, the quest for instrumental effectiveness can never generate the kind of inspirations likely to contribute to social transformation (Join-Lambert, 1994).

### **Towards Democratic Deliberation**

If managerialism and/or market governance cannot provide an answer to the novel problems of social and technological reflexivity, how then might they be approached? Among the social theorists referred to earlier, I noted that there was a convergence upon the necessity to revitalize democratic dialogue as one response to the challenges now posed.

We might perhaps do better should we find and use new forms of interpersonal and inter-institutional deliberation that will engender more thoughtful, reciprocal, collective and public responses to the social and political dilemmas we experience. What is required is new forms of public conversation and reason through which new policies and activities can be shaped in the public interest and in accordance with explicitly public values (Yeatman, 1998).

Following from the challenge posed by Rawls, the problem is to create commonly agreed and accepted procedures and rules in accordance with which dialogue in a public space will provide a satisfactory means of living with one another in a relation of mutual tolerance and, wherever possible, reciprocal cooperation. The new response to social reflexivity will, then, be more dialectical than technical, more interactive than methodological and more procedural than substantive.

The essential ground for assuming that this will take us further in responding creatively to reflexive modernity than we have thus been able to is that the creation of a multiplicity of preceptorial relationships between individuals, groups and institutions will generate new, humane, educational and non-directive foundation upon which informed and thoughtful deliberation may take place. That deliberation, founded upon public reflection-in-action should in turn should produce more sophisticated and differentiated responses to the complex problems

of the times. It will enable us, as citizens, through government, to act collectively to secure our common well-being (Marquand, 1988). More specifically in relation to administrative reform, it will have the very positive effect of setting managerial and market tests of service efficiency within a framework of democratic tests of political purpose (Self, 1993). However, before exploring the possibilities of a bias towards public deliberation for administration in government, the idea of deliberative democracy itself requires further elaboration.

### **Deliberative Democracy as Theory**

In the last two or three years, a new and very rich strain of theorizing about democracy has emerged. Republican in origin, it requires, I think, that we re-evaluate many contemporary understandings of the democratic process including our understanding of accountability. Let me begin then by summarising the essential features of the new approach.

In his recent writings, the German social theorist, Jurgen Habermas, has sought to draw a distinction between liberal, republican and discourse theories of democracy (Habermas, 1996). On a liberal view, democracy is understood as the process by which individual voting preferences are aggregated to provide for the formation of government that governs by the consent of the majority, subject, of course, to the observance of certain fundamental human rights. On the republican view, as Habermas posits it, democracy is constituted as the medium through which citizens become aware of their dependence on one another, and through that realisation come together to establish the ethical foundations upon which they can live as free and equal associates under law. Under liberalism, political will is formed through the aggregation of individual preferences in manner that resembles market processes. In contrast, the republican view is that political opinion should arise through a process of public communication that is oriented towards the achievement of mutual understanding. The paradigm is not the market but dialogue.

Habermas differs from republicanism, however, where it assumes a communitarian focus. The communitarian focus he argues, based as it is upon a particular conception of the civic good, has the tendency to constrict public discussion within the parameters of that conception. To avoid this constriction Habermas proposes a related but different form of conceptualizing democracy which he terms the discourse theory of democratic deliberation. Discourse theory relies for its foundation not upon the convergence of settled ethical convictions but rather upon the establishment of certain procedural preconditions for effective political and hence democratic deliberation. The success of deliberative politics, he argues, will rest upon the institutionalization of the procedures and conditions of effective communication. It will rest, in other words, on the establishment by the

constitution of institutions of government that will ensure that democratic deliberation is governed by the standards of procedural fairness:

...deliberative politics should be conceived as a syndrome that depends upon a network of fairly regulated bargaining processes and various forms of argumentation, including pragmatic, ethical and moral discourses, each of which relies on different communicative presuppositions and procedures. . .it conceives the principles of the constitutional state as a consistent answer to the question of how the demanding communicative forms of democratic opinion and will formation can be institutionalized (Habermas, 1996).

For Habermas, three ideas are central. The first is the importance of dialogue as the foundation for the formation of political will. The second is procedure. Only where political discourse takes place within the context of fair procedural rules will deliberative politics serve its democratic purpose. The third is constitutionalism. It is the constitution that will provide the institutional structures within which the conditions for fair procedure will materialize and from which a truly democratic, deliberative politics will emerge.

For the most part, Habermas engages in his discussion at an uncomfortable level of abstraction. Fortunately, there are other republican theorists who, while sharing these core ideas, provide a more tangible edge to the republican project. In my view, the most interesting of these is Philip Pettit, a political philosopher from the Australian National University. In his book, *Republicanism: A Theory of Freedom and Government*, Pettit conceives of liberty as non-domination (Pettit, 1997). People will be free, in other words, when they are not subject to arbitrary interference by others. Interference, in turn, will not be arbitrary to the extent that it is forced to track the interests and ideas of the person suffering the interference. When translated to the exercise of governmental power, what non-domination requires, then, is not principally consent to that power but the permanent possibility of contesting it. The state will not interfere arbitrarily with the interests of its citizens to the extent that acts in full appreciation of the interests and ideas of those affected by its actions:

This does not mean that the people must have actively consented to the arrangements under which the state acts. But what it does mean is that it must always be possible for people in society, no matter what position they occupy, to contest the assumption that the guiding interests and ideas are really shared and, if the challenge proves sustainable, to alter the pattern of state activity.

For non-domination in this sense to prevail, Pettit proposes that three essential conditions must be fulfilled. First, a society must be governed by law. That is, there must be a constitutional state characterized by, among other things, adherence to the rule of law, the dispersion of political power and a respect and concern for minority rights. More than this is required, however. Wherever public power is exercised, Pettit argues, the decisions made by public authorities must be

subject to contestation. For decision-making to be contestable, three further preconditions must be met. The most important of these is the presence of debate. At every level of decision-making, legislative, judicial and administrative, there should be procedures in place which identify the considerations relevant to the decision, thereby enabling citizens to determine whether those considerations are the considerations that should apply in the circumstances. Similarly, there should be procedures in place which enable citizens to determine whether the relevant considerations actually determined the outcome. The decisions made, therefore, must be arrived at under the condition of openness and the threat of scrutiny. What is required, in other words, is a deliberative democracy marked, as Quentin Skinner observes, by a commitment to dialogical reason.

‘our watchword ought to be *audi alterem partem*, always listen to the other side.’ ‘The appropriate model...will always be that of dialogue, the appropriate stance a willingness to negotiate over rival intuitions concerning the applicability of evaluative terms. We strive to reach understanding and resolve disputes in a conversational way (Skinner, 1996: 15–16).

For the most part, Pettit observes, contestation will take place in the cauldron of parliament and in the tumult of popular discussion. But there are clearly circumstances in which popular or parliamentary debate may provide the worst form of hearing. In these cases, a deliberative democracy may require recourse to more detached and reflective forums—it may demand that parties are heard ‘in the relative quiet of parliamentary, cross party committees, or the quasi-judicial tribunal, or the ‘autonomous, professionalized body’.

Like Habermas, Pettit places considerable emphasis on dialogue, on fair procedure and on constitutionalism as the core components of a deliberative and republican democracy. To these he adds the idea of contestability as an essential precondition for the achievement of liberty as non-domination. Underlying each and every one of these elements rests the republican faith in dialogical reason. ‘Under the contestatory image’ Pettit remarks ‘the democratic process is designed to let the requirements of reason materialize and impose themselves. It is not a process that gives any particular place to will.’

Within the framework of these core conceptions, the idea of accountability may now be re-examined. Accountability is one form of contestation. At its core it requires that actors who have the power to interfere in the lives of others, explain and justify their decisions to do so. The process of explanation and justification implies, in turn, that those who possess power must make their case for its exercise in the context of and in response to the criticisms and concerns of those whom their decisions affect. Accountability, then, may be regarded as one very important form of political and democratic dialogue. It embodies the right to be heard and in so doing, promotes thoughtfulness and deliberateness in decision-making.

To be effective, accountability must proceed on the basis of a number of preconditions. Sufficient information must exist to permit informed discussion and debate. The considerations relevant to a decision must be made explicit. The process of explanation and justification must be structured fairly. Sanctions should be in place to ensure against arbitrary or capricious decisions and actions. With these preconditions fulfilled, democratic decision-making is likely to become less arbitrary and more thoughtful as the interests of citizens are tracked and considered.

To this conception of accountability, the organisational theorists March and Olsen add one further gloss (March and Olsen, 1995; Uhr, 1997). Regimes of accountability, they argue, facilitate the development of deliberateness in decision-making when they create the conditions under which deliberation can proceed according to the 'logic of appropriateness'. The logic of appropriateness refers to commonly shared appreciations and perceptions about the standards and fitness of official conduct. Arguments about accountability, they argue, are vivid examples of the logic of appropriateness in action, with competing interpretations of standards and fitness being discussed and contributing to the development of new arguments, justifications and political understandings. The structuring of discussion through mechanisms of accountability is designed, therefore, to generate new interpretative communities in which deliberation and reason will prevail. The discussion itself becomes one form of public learning.

Beneath each of these expositions, rests the assumption that values are plural, that they will conflict and that the central challenge of democracy is to arrive at acceptable formulations of the common good, despite the inevitability of difference. Disagreements about values, about the goods of human existence, cannot be resolved by reference to an overarching religious or moral life without, at the same time, forsaking fundamental liberties. So, agreements in societies characterised by plural values are to be sought not at the level of substantive beliefs but at that of the processes, procedures and practices for attaining and revising these beliefs. Democratic proceduralism, then, is one reasoned answer to the persistence of substantive conflicts of interest and value, one a principled response to the problem of reflexive modernity.

### **Towards a Dialogical Reform of the State**

The managerial paradigm which has dominated recent administrative reform, with its strong implication that only that which is quantifiable, or at any rate, measurable is real, reinforces strongly the conviction that to every administrative question, there is only one true answer. It appears to be so in mathematics, physics and mechanics and the other natural sciences, and so it should have been in a management dominated by an economic rationality of a similar kind (Pusey, 1991).

In response to reflexive modernity, however, the search for a single, functional and quasi-scientific method appears now to be misconceived. To create the balance necessary in facing the issues and problems characteristic of the 'risk society,' this calculative methodology must be complemented by democratic and procedural innovation founded upon the belief that plurality, dialogue and reason too have their role to play in providing an answer to modernity's new challenges; that individual and institutional understanding, empathy, communication and thoughtfulness too must play their part in the development of variegated rather than uniform rejoinders to social and administrative dilemmas.

But what might such a dialogical administration look like? In the remainder of this section, I propose, with a great deal of humility and a touch of audacity, to sketch some possible parameters. Following from the previous discussion of deliberative democracy I propose that dialogical reform proceed on the basis of four cardinal principles.

First, wherever appropriate *contestability* in the sense formulated by Pettit be introduced. Secondly, *accountability* in the sense of instituting a 'deliberateness in decision-making' in both the political and administrative arenas be created. Thirdly, *procedural fairness* should govern interpersonal and inter-institutional dialogue and deliberation in the realms of policy-making and the exercise of managerial discretion. Fourthly, a *public ethic founded in public values* should be recognized and extrapolated to meet the needs and herald the aspirations of relevant jurisdictions, circumstances and times.

With these principles in mind, I return finally to the three arenas identified in the case study in Part I of this paper and explore reforms which, if implemented, might have the effect of re-introducing that political and administrative deliberation so punishingly marginalized by the Conservative Government's managerial revolution.

### ***Dialogue within the Public Service***

It has become almost trite to argue for the reinvigoration of parliament as the principal forum for the review of political and administrative activity. Yet parliament remains the crucible of democratic deliberation and as such requires reforms and resources to play the role for which it is designed in underpinning representative and responsible government (Uhr, 1997). I am not here concerned with the enhancement of individual and collective ministerial responsibility. Rather, I will concentrate on the dialogical relationship between parliament and the administration.

In order to invoke greater contestability in the administrative arena, it would seem sensible to make greater and more effective use of the system of parliamentary committees. Thus, for example, each central department of state should report to and be evaluated by a parallel parliamentary select committee.



Except where confidentiality is clearly justified, the conversation between department and committee should be conducted in public and annually. This may, in turn, require some change to the rules governing the provision of evidence by civil servants to parliament. To make their reviews effective, the relevant parliamentary committees should be provided with sufficient personnel, whether as consultants or permanent staff, and resources to ensure that the both inquiry and dialogue are effective.

With respect to accountability, I am most attracted to the idea proposed by Christopher Foster and Francis Plowden (Foster and Plowden, 1996; p. 181) that departmental chief executives should be required to sign off once a year that ministers have not acted unlawfully against domestic or international law; have not given an instruction or direction to the department, a related agency or quasi non-governmental organization which breached his or her powers or the contractual agreement governing the relationship between them; have not taken a personal part in the awarding of a contract or other legal agreement, and have not been the subject of Public Accounts Committee minutes. A similar signing off procedure should apply to heads of executive agencies and quangos. A refusal to give the relevant assurances should automatically be made the subject of a parliamentary committee inquiry.

The requirement for procedural fairness in the exercise of administrative discretion is already the subject of extensive administrative law jurisprudence. The application of the principle with respect to policy-making, however, is understudied. It should be plain, for example, that policy-making must take place within the context of relevant international and national law, including in particular human rights law, and that in the formulation of policy, individuals and interest groups having a special and identifiable interest in the outcome should normally be consulted. They should, that is, be subject to fair treatment (Galligan, 1996). Beyond this, however, the boundaries of the principle tend to blur. There have been some who have recommended the institution of citizen juries to assist departmental and agency officials to assess the direction and validity of a particular policy and its ancillary programs. The value of randomly chosen and inexpert panels, however, may legitimately be questioned. A better alternative, exemplified by the Australian Assistance Plan which involved the creation of central and regional councils comprising a mixture of expert and elected members to advise departments and agencies with respect to policy development and program implementation in particular spheres of governmental activity might therefore be considered. However a more inclusive policy-making process is constructed, it would be handsomely underpinned if it were made a requirement that parliamentary approval of departmental and agency performance were made conditional on an evaluation of the effectiveness of the regimes of consultation they had established (Uhr, 1997: 234).

The ethical dimension of public service is particularly fraught and a complete

treatment is again beyond the scope of this discussion. Nevertheless, it may fairly be observed that public servants, agency officials and others, while required to be loyal to and to implement the policies and directions of the government of the day also possess a responsibility to a conception of the public interest which transcends the interests and ideology of the government of the day. There are many schemes which can be devised to permit the exercise of this dual accountability. Of these, the enactment of 'whistleblowing' legislation is the most frequently discussed and should, in my view, be given serious consideration.

### ***Dialogue between the Public Service and Independent Scrutineers***

If nothing else, the case study presented should have demonstrated that a government bent on radical reform will give little credence and spend little time on the niceties and conventions associated with the judicial and administrative review of administrative action. This suggests that, to preserve and enhance contestability, the independence of external scrutineers such as merits review tribunals and ombudsmen of various complexions will require more substantial entrenchment than has commonly been afforded. It has been recognized for some time that the simple ultra vires model of judicial review has proven inadequate to the exigencies of modern government. The substantial expansion in the size and scale of governmental operations, the introduction of broad, open-textured legislation and the consequent dramatic increase in the scope and extent of administrative discretion have together required not only that the grounds of judicial review be expanded but also that judicial review itself be supplemented by new ways to legitimate and control the exercise of public power. The introduction of a 'new administrative law' in Australia is a reflection of these trends. Consequently, new tribunals, ombudsmen independent commissioners and corporate regulators have been created. These bodies have been established to restore the balance originally understood to exist between executive, legislature and judiciary, but upset by the fact of the executive's dominance of the political process. As such they have an enormously important role to play. If this is accepted, then it follows that the new mechanisms created to regenerate that original equilibrium require a standing, authority and independence adequate to their task. This in turn suggests that the more important amongst them, such as the Auditor-General, The Ombudsman and any general administrative appeals tribunal be accorded quasi-constitutional if not constitutional status.

The organizational and hence dialogical lines of authority existing between the executive, the parliament and independent scrutineers act as an important form and precondition for effective accountability. So, for example, the willingness of the Auditor-General or the Ombudsman to scrutinize the activities of government carefully and where necessary to report critically can only be discouraged if such scrutineers are responsible directly to a minister or department whose activities

they are responsible for assessing. For this reason, it will generally be preferable if independent scrutineers of the kind described are accountable principally to the parliament rather than the executive and receive their budgets through the parliament rather than from the departments and agencies with whom they are primarily involved.

It is open government that constitutes the sine qua non of procedural fairness in this arena. In practice this requires that governments set effective freedom of information and privacy laws in place which provide that members of the public shall have a legally enforceable right of access to documents in the government's possession subject, of course, to exemptions for documents containing sensitive private or commercial information. Regrettably, the story of freedom of information laws has not tended to be a happy one, with governments seizing on such legislation for electoral advantage but, once in office, seeking almost immediately to pare back their effectiveness (Zifcak, 1993; Zifcak, 1994) It may not be, therefore, that such laws will fulfil their true potential until a constitutionally entrenched right of access to government information is created.

### ***Dialogue between Purchasers and Providers***

It will be recalled that contractual governance is premised on the idea that an effective distinction can be created between policy-making and service delivery. On this foundation, core departments having policy responsibility can be separated from executive and non-government agencies having expertise in program implementation. Thus a split is created between policy purchasers and program providers. The latter are forced into competition for the business of the former. Founded on this structure, contestability may be enhanced in two principal ways. First, it should remain a central principle that agencies and other non-governmental agencies engaged in a contractual relationship with departments of state should be responsible not simply to those departments for their performance under contract but should also possess an active and interactive relationship with the parliamentary committees responsible for the general oversight of their department's activities. Thus, each should submit their reports not only to their contracting department but also to the parliamentary committee concerned. These reports may then inform the general review by the committee of departmental performance. In addition, the reports themselves will provide the basis for the review and discussion of agency performance. This dual, interactive process is likely to place an even heavier load upon the parliamentary committee system. It may be, therefore, that parliament could choose to delegate the scrutiny of agencies and non-government organizations to a series of area specific regulators who would, in turn, report back to the relevant committee on issues and problems that have arisen in their particular areas of responsibility.

This upward form of contestability should be complemented by a different,

downward form. As executive agencies and non-government organizations will have a direct relationship with and responsibility to their clientele, active consideration should be given to the establishment of consumer councils with whom agency officials should be required to consult regularly with respect to the nature, standard, quality and price of the service being delivered. Similarly, many such agencies and organizations will have their own boards of management. Membership of such boards might usefully be expanded to permit interested organizations, interest groups and citizens to play their part in board deliberations.

Underlying all such suggestions the principle of subsidiarity should apply. So, the enhancement of the quality of deliberation which is the aim of all these measures should operate in a way and at the level in which it will produce the most useful discussion and debate. Thus, for example, in a federal system such as that in Australia, explanation, justification, deliberation and debate between parliament, executive, agencies and non-governmental bodies should take place at the most applicable level of government whether federal, state or local. In Britain similarly, it should not be necessary to have every quango report to Westminster but instead, where the principle of subsidiarity so dictates, the dialogical relationship may equally well be created between the relevant agency and elected local government authorities. This should have the incidental effect of enhancing the jurisdiction and responsibilities of local government and, in so doing, strengthen local government in its interaction and negotiation with Westminster and Whitehall.

### Conclusion

These are of course only sketchy and preliminary suggestions. Nevertheless, taken together they indicate, I hope, a new direction for thinking about the future of public administration in an increasingly global and uncertain world. If nothing else, the argument in this article should provoke debate and discussion. And, consistent with the article's major theme, the conflict and deliberation that discussion will generate can serve only to deepen our understanding and inform our deliberations on issues and problems of considerable public and global importance.

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