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THE ILLUSION OF A MINIMUM STATE

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by
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My topic is the illusion of the minimum state.¹ By calling the minimum state an illusion I do not mean that in current circumstances it is an unrealisable ideal. I mean that it has no definite content. The idea of the minimum functions of government is so radically indeterminate as to be lacking any definite meaning. Those who argue for minimal government think they know whereof they speak; but they do not. The idea of minimum government has been used hitherto as a rationale for policies of market testing and contracting out of hitherto 'core' governmental functions. *A priori* theories of minimum government has been invoked to justify the whittling away of this historically constructed core. Yet the intellectual merits of these ambitious theories are slight.

In truth there is no defensible theory that can set *a priori* limits to the functions of the state. What I will call the *paleo-liberal theory of minimum government* - favoured by many at the Institute of Economic Affairs and similar bodies - suggests that a theory of minimum state functions can be specified demonstratively. That libertarian theory, its background idea something akin to Herbert Spencer's night-watchman state, lacks solid intellectual foundations. There is no intellectually respectable or credible theory that specifies a set of functions as belonging uniquely to government; too much - indeed, everything - depends on time, place and circumstance.

Doctrines of rights do not help, since the contents of the rights are themselves hopelessly indeterminate. In the absence of any such account, paleo-liberal theory typically expresses nothing more profound than the wish to cut the state down to size. But what size? Different states may have the same size - as measured, say by the proportion of GDP they pre-empt - but vary vastly in the

¹ Throughout I follow common usage in treating 'state' and 'government' as synonyms. I am conscious of the solecism that is thereby committed, but I think no point of importance in my argument turns on it.

uses to which they put the resources they control. In one they may be deployed primarily for purposes of political repression and corruption, in another well-conceived and well-administered programmes of public health, education and law enforcement. Size is no criterion of legitimacy in states. States having the same functions may themselves vary enormously in size, depending on the circumstances in which these functions must be discharged. A state that is restricted in its functions to a Spencerian minimum of national defence and the enforcement of criminal and civil law might yet be judged to be a very large one, if national defence were judged to demand the acquisition of expensive weapons systems, or levels of crime thought to justify high levels of incarceration. Twentieth-century totalitarian states which pre-empted nearly all of their societies' economic resources, such as the former Soviet Union, devoted the greater part of those resources to military purposes, as prescribed by paleo-liberal theory, not to welfare provision. The pretensions of the economic theory of public goods to set such limits are similarly spurious. Notoriously, the publicness of public goods is a matter of degree; and goods that are not technically public goods may nevertheless be valued as inherently valuable components of a good society.² In fact the paleo-liberal view scarcely qualifies as a theory of legitimate government functions at all. It is better described as an expression of anti-governmental prejudice.

A more serious and also more practically influential view is what might be called the *right-wing social market theory of limited government*. In this view there is no attempt to specify a unique set of functions of the state. Instead the agenda of government is to be determined by what it is best competent to achieve – by, in the broadest sense, a utilitarian assessment. Furthermore there is a strong presumption made within this theory in favour of market mechanisms. It is this presumption, rather than the paleo-liberal preference for small government, that has underpinned the introduction of forms of market testing, and procedures aiming to mimic markets, into many governmental institutions and publicly-provided services. In the social market view, a large public sector is an unavoidable concomitant of democratic institutions as they operate in our

² Even Hayek, who came to doubt whether the provision of a sound currency was among the core functions of government, never wavered in his conviction that they encompassed a state

historical context; it is utopian to hope as some liberals did in the early Eighties in Britain and some paleo-conservatives did in the United States in the early Nineties, that the state can be rolled back to the size or functions it had in those countries in the mid-nineteenth century. So far so good. Within the right-wing social market view however, there is the presumption that market mechanisms should be introduced wherever possible in public services, so that they achieve the level of efficiency attributed to commercial and other private-sector organisations.³

It is difficult to see what supports the presumption that public-sector institutions should mimic commercial enterprises in their internal organisation or methods of delivery of services. Market mechanisms have costs, which may reasonably be assessed, and compared with those of other modes of organisation and delivery of services. Did those who conceived the internal market in the NHS, in the late Eighties, consider the transaction costs its operation would incur? The question has a broader application. Public service occupations have in the past attracted personnel because of the ethos they embodied. The introduction within them of a culture of contract modelled on the business culture of the private sector tends to weaken this ethos. It thereby acts to diminish the distinctive appeal of a career in a public-sector institution. The shift in the internal culture of public-service institutions resulting from the construction of quasi-markets, and from the quasi-privatisation that often results from market testing, inexorably raises some costs, even if it succeeds in its objective of lowering others. Central among these costs may be its impact on the quality of recruitment.⁴

In a somewhat longer historical perspective than is ordinarily adopted by politicians, the proposition that public-service institutions should replicate the practices of business must appear incongruous. This is especially so when their historic record – for probity and efficiency, for example – is as good as it has been in Britain. Against such an historical background, the introduction of quasi-

opera.

³ Among exponents of what I have called the right-wing social market view, there is also support for the injection of private finance into public services (as in the PFI); but this is a distinct issue, which I cannot consider here.

⁴ Evidence from the New Zealand experience may be salient here.

markets and the supplanting of ethos by a culture of contract looks like an exercise in rationalism in politics, an ideologically-driven departure from the institutional conservatism that is supposed – on precious little evidence, it must be said – to be characteristic of British public policy. (Can we envisage the educational experimentation of the past thirty years in Britain, incorporating the abolition of grammar schools and a vast unplanned expansion of the university sector, occurring in France – supposedly dominated by a Cartesian administrative culture?) Certainly it represents a departure from the pluralist view of civil society, in which it is recognised that different institutions appropriately have different modes of regulation, of which regulation by contract is only one. It may be worth noting that the business culture that provided the model for policies of marketisation of public-service institutions is a distinctive Anglo-Saxon one in which the character of firms as social institutions is neglected or denied. The record and prospects for business cultures animated by a conception of firms as merely artefacts of contracts among essentially free-floating agents remain controversial. It is difficult to imagine a rationale whereby cost-effective and well-functioning institutions such as the Civil Service should be reconstructed on the model of business enterprises of this kind.

There are many reasons why the scope and size of government is a reasonable subject of concern in a country such as Britain. Aside from reasons of fiscal prudence, there may be benefits in particular contexts in purchaser-provider splits, in the devolution of pension provision to agencies which are state administered but not themselves governmental institutions, and in many similar proposals. If there are such benefits, however, they are always particular and contingent, and must be weighed against possible losses. Though there are often many good reasons for reassessing and reforming the institutions of government, the pursuit of the mirage of the minimum state is never among them.

SUMMARY OF DISCUSSION

8 March 1996

CONSTITUTIONAL AND ADMINISTRATIVE REFORM: THE ILLUSION OF THE MINIMAL STATE.

PARTICIPANTS

Public-service practitioners: Sir Robin Butler, John Oughton (discussant), Robin Mountfield, Chris Kelly, Stephen Hickey, David Normington, Nicky Oppenheimer, Joe Pilling, David Wilkinson.

Academics: John Gray (presented paper), Christopher Hood, George Jones, Rod Rhodes, Patrick Dunleavy, Ken Minogue, Michael Barzelay, Rodney Lowe, Anthony Seldon.

DISCUSSANT'S RESPONSE

The discussant responded that there was no simple explanation for the administrative reforms brought in over recent years. Over time the responsibilities of the state change as is typified by the relative emphasis placed upon the delivery of defence and the armed services in the past (from private militia to state armed forms). In terms of how the state organises its activities the pendulum swings between broad distinctions between "public" and "private" forms of service delivery. "Higher quality" is however a one-way pendulum. So is "affordability". The political and cultural traditions of the UK require that public-service institutions should exist but the central question (in the past as in the present) is how should services be provided. Small may be beautiful but only if it gets the job done.

He saw the key role of administrative reform as defining Core and Non-Core activities. Decisions affecting how government organised itself, affecting which tasks should be contracted out, involved the determination of delivery mechanisms that best met the primary functions of the state. This often involves difficult decisions where traditional methods were called into question as a result of being subject to change. Here, the state is obliged to distinguish between Core versus Non-Core

activities in determining how services are delivered in choosing the form of service provision. He did not agree that a "contract culture" necessarily weakened the ethos of public service. The pressure of market testing forces the civil service to reassess the contribution it makes to the work of the state and the past efforts they have made. The recent white paper on administrative reform reflects both continuity and change as is borne out in its title. The nature of these administrative changes is reinforced by the support for ministerial initiatives from the non-political civil service: There is no simple choice to be made between a "planned mechanism" or a "market mechanism". The choice is made to determine the best form by which services can be delivered to the public. There is no "normative view" on which choice should be made. That choice should reflect not whether the state should be large or small, vast or minimal, but how it best delivers the services it is obliged to provide.

THEMES OF THE DISCUSSION

The chairman opened the discussion by asking participants to focus on practical aspects of administrative reform in relation to the presenter's characterisation of the "paleo-liberal theory of the minimal state". He suggested that there is an irreducible core of the administrative state without which the nation as a state cannot exist and offered as minimal functions:

- (1) law making;
- (2) the conduct of inter-state relations;
- (3) the establishment of a system of justice;
- (4) the appointment of public officials to administer these functions.

Which actors and what principles determine what the state does and how it does it?

An academic suggested all too often we speak of the state as an abstraction without attempting empirically to measure it or even understand it. Attention should be focused on what the state did in terms of policy formation rather than with regard to implementation and delivery. Change should not be feared if it is a reform designed to alter the role the state plays for the better. The functions of the state and the obligations it has to respond to social and economic needs should be at the heart of

any analysis; this is a different question from that of understanding how the state does what it does.

An academic cited the ungovernability thesis which suggested that an overextended state was unable to govern effectively in the crisis years of the 1970's. He argued that government is all too often too large: large does not mean better, it often means worse. The state is inefficient and unable to work properly. Rather than concentrate on the question of the scope and size of the state the issue of what should the state do is more significant. Public services are more visible than other services: the more social functions are appropriated by government the more corrupt society becomes. He suggested pension provision (characterised by state compulsion rather than voluntary contribution) was a case in point. The reality of the "nanny state" was the case in favour of minimal government: government should do nothing unless there is a good reason for it doing something.

An academic argued that the state should not be wholly distinguished from society. Corruption, for example, was all too often an issue in society not just the state. He suggested the aspiration to roll the frontiers of the state back to the form it took in the 19th century was utopian. First, it was not possible to do this. Second, it was not permissible. The idea of the minimal state was therefore a technical question: could it be achieved? He believed it could not be achieved.

An academic made the point that introducing a historical perspective was a helpful way of examining the impact of administrative reform. In the 1950s the Conservative governments of Churchill, Eden and Macmillan inherited a series of social reforms generated by the Wartime Coalition and established by the post-war Labour government. While they might have wanted to roll back the extended state in health care and pension provision they found they were unable to do so. Here, state provision of public services had been enacted in response to a reform agenda which saw such provision as a precondition for active citizenship, a "spring board" not a "sofa", which empowered citizens and so brought a national benefit through the pursuit of a public good. The targeting of priorities in the provision of public services is the focus of political action: state subsidies are not in themselves debilitating but they may be empowering. Hence, there is always a role for the state.

A civil servant argued that public opinion helps to shape the form and functions of the state and suggested that the development of the NHS since 1948 illustrated that fact. The state reflects public expectations in the services they need and use and, often, the employment they hold: 1 million workers earn a living delivering a service in the NHS. With few exceptions we are all patients of the NHS. Recent administrative reforms have covered the question of service delivery and funding. This had an enormous impact upon both the NHS and its employees (less so the users). The question of whether a contract culture weakens the public-service ethos is the subject of much comment within the NHS. A great many employees are at present unhappy, as is demonstrated by departures from within the NHS and the fall in Medical School applications. This affects practitioners, professionals, health-care workers and managers. There is a public-sector ethos, one that is reflected not only in a series of unchanging attitudes to employment in the public sector and the civil service but also in the duties the state has and the functions and responsibilities it must discharge.

A civil servant echoed the observation that health service employees were uncomfortable with the purchase/provider divide in the NHS. The tradition of the civil service was that accountability is unwelcome and is often denounced as commercialism. He suggested the state should seek both external and internal contracts which laid down minimum specifications that would be required. The state had and will always have functions to discharge but the method by which those functions were discharged may well change over time: attitudes governing the functions of the state also change over time. Adjudication was a core function by which the state decides what people should have. Such wants in the form of, for example, social security benefits, should be provided effectively and it is to this end that administrative reforms should be directed: service delivery.

An academic offered the view that many of the functions of the state were defined legally and could be exercised only by the state. Punishment and prohibition were socially-arrived-at criteria to regulate social conduct and could therefore only be imposed by the state with the consent of the citizenry.

A civil servant suggested the tasks allocated to the state change over time according to expediency and circumstance. For example court systems were administered locally via the Courts Act. The function of state officials is to ensure that a system is in place to deliver services rather than to deliver a service itself. The state has services to deliver and, when necessary, is therefore well placed to establish the framework for agencies working to the state to deliver the services the state is obliged to discharge.

An academic argued that a moral dimension had to apply to any re-examination of the functions of the state and the responsibilities it discharged. The privatisation of prisons meant prisoners held at Her Majesty's Pleasure were a means to profit. That was wrong. He did not accept that government was necessarily or automatically 'corrupt'. Voluntary service (enacted within the framework of the state) was wholly desirable and many forms of government intervention (from race and sex legislation to housing) were also good. This was to be encouraged; government has to do certain things which is why the state exists. The state exists because it is necessary and desirable; people have need of it. The delivery of state services cannot be easily reducible to a contract and the state should and will continue to exercise an influence even though many of its services have been contracted out.

A civil servant asked if there was a real market around which all services can be organised for natural monopolies and other monopoly services citizens expect should be in the public sector?

An academic suggested recent administrative reforms had whittled away the traditional historical core of the Whitehall state. Agencification and the intervention of the EU had brought about the beginning of a process that "hollowed out" the state and in so doing eroded the public-service ethos which lay at the heart of the civil service. The central question was whether officials would lose control over the contracted service. Will the public state suffer from a lack of expertise as a result of these changes? Surveys demonstrated that 80% of employees were unhappy at the scale and scope of recent changes which brought about rapid and far reaching changes which generate job insecurity. This undermines the ethos of public-service and brings about an absence of accountability and the danger that that implies.

A civil servant suggested administrative reform may actually impose accountability where previously there was none. In 1983 Sainsbury's head, Roy Griffiths, was appointed by the government to initiate a review of the organisation of the NHS. On one visit to a regional hospital Griffiths asked if he could meet the individual in charge of the hospital only to be told that no one, as such, was in charge. Griffiths then invented NHS line management.

An academic suggested, while the concept of the state has changed in recent years, the range and influence of the government and the state had not. Through administrative reforms the state may contract out certain services but it remains ultimately responsible for them. Should a local authority employ private traffic wardens by contracting out the service the range and influence of the localised state remain the same: it is responsible for traffic; it forms the policy and imposes the rules (even if it does so at arm's length through agencies). Wherever reform is enacted in the form of hiving-off state activities government is still involved from, say water, to the national lottery. In the case of water, consumers in Yorkshire may denounce the incompetence of fat cats but they will also blame the government. There is a dislocation between an ideology of a minimal state and one which intrudes into every public decision. For example the Channel link cost the state £2 billion to build but it also handed over £6 billion to the private sector. The state is still involved. In the case of water shortages in Yorkshire the government is influenced by what happens there but it chooses not to be involved because through privatisation its statutory function has changed. The ideal of the minimal state is a myth: the state in the form of government is still involved in what happens but is standing back; rather than take responsibility when it should it is allowing the private sector to mess things up.

A civil servant drew a distinction between (1) the role of the state and (2) the manner in which it discharged that role. He suggested that over time that role has changed as a result of the experience of the 1980's but it has not diminished. In the case of privatisation the government is no longer owner and provider but watchdog and regulator. It still has responsibility for the "public good" and as such exercises some control over the market which is not compatible with the theory of a minimal state. It both buys in and contracts out services and exercises control over the services it

procures; it is the consumer and as such exercises power over the producer it chooses within the marketplace in which it operates.

An academic said minimising the size of the state could also involve introducing subsidiarity to define at what levels the state should do what it does. This is typified in Germany by the question of ownership with regard to the distribution of responsibilities between the Länder and the Federal Government. Moving away from the subjugation of the citizen to the state in certain areas can also be helpful. This can increase the power of the state in other areas and so strengthen citizens' ability to act against the state.

A civil servant emphasised that in the UK the ambitious goal of administrative reform was to change government and service delivery. This involved a great deal of effort to change the habits of a lifetime and to get away from routine and standardised methods of working. Re-evaluating the traditions of public service involved a steep learning curve of finding newer and better ways to do the same old things. The ethos of the public service remained the same although the relationship of the Minister -Agency -Whitehall -Parliament -Citizen association remained open to future developments.

The presenter accepted the distinction between Core and Non-Core functions but emphasised the theory of the minimum state is always historically constructed. The present government had introduced a presumption in favour of marketisation which characterises attitudes toward government and the state including definitions of Core and Non-Core functions. Indeed the distinction between Core and Non-Core functions was being reworked because of the marketisation presumption of the present government. Reform should involve empirical questions such as speed, magnitude and type. It should be in keeping with the best of past practice: making the existing system work better not simply introducing new incentives and practices which conflict with past experience. The best reforms are incremental and not radical. The effects and consequences of the administrative reforms enacted in the previous ten to fifteen years should be evaluated with this in mind.

An academic argued that "rules of thumb" are necessary to understand both what the

state is and what it should do. The state may be commonly defined as a mechanism for the achievement of common purposes. Questions dealing with the "efficacy" of the state rather than its "efficiency" should be at the heart of any reform of its functions and purposes. Does the state do what it does well? In his view the experiences of the past 15 years demonstrate the state is no more efficacious in the achievement of common purposes. This is easily testified by the state response to rising levels of crime and welfare provision. It is not effortlessly in control and while it may previously have done certain things badly it now invariably does them worse. The failure of the state to do what it does better is itself a criticism of reform. The responsibilities of the state far exceed those listed by the chairman. From this perspective the notion of a minimal state is a non-starter. The essential aspects of statehood require an exhaustive list of state and bureaucratic functions which both proscribe and devise essential services and then deliver and achieve them in the public sphere.

A civil servant argued there are degrees of "efficacy" or the lack of it. The Russian Federation is a non-efficacious state; compared to this the UK is a paragon of efficacy. While Russian citizens would support the welfare state as devised by Beveridge and implemented in the UK, post-1947 UK citizens should demand something better. Administrative reform in the UK involves trying to improve on the status quo: reforming the already existing state so that it does what it does better.

CONCLUSION

The presenter concluded that modernity makes the pursuit of a minimal state utopian because the modern state as provider of essential services was a given and unalterable historical fact reflected in deeply-embedded public institutions. The central question which contemporary reforms failed to address was what should the functions of the state be against the background of the historically-given public institutions that already exist. Arguments about overload and ungovernability were issues for the late 1970s and it is fantasy to suggest they hold water today. The state is less efficacious than it was. Less does not mean better, rather it often means worse. Administrative reform of the type enacted since 1983 gives the state dwindling leverage over civil society with the result that government is less able to influence for the good what society does. The fundamental normative questions are: Can state institutions be expected to be civilising? Can they make social life better? We should compare the UK state of the 1990s state not with that of the 1970s but with that of the 1870s or the 1820s.

Although market testing can illuminate state failings in particular circumstances, it remains one method among many. It is not a universal panacea to be employed at all times. Institutional conservatism is one thing but the reckless institutional experimentation of the 1980s and 1990s another. The reforms of the 1980s do not address fundamental questions of cost benefit nor do they compare the end result with the desired effect. The aspiration of these reforms is one of accepting the functions of the state but hiving them off to a marketised sector in the ideological pursuit of a minimal state. A truly conservative (small c) view suggests the state should hitherto do what it has done well previously unless there is a powerful reason for not doing so. The institutional status quo should be taken as the bench line. This is historically given. It is not a theoretical abstraction and reform should be pursued when it is necessary not for reasons of simplistic ideological expedience.

The presenter commented that the discussion had raised more questions than answers. It was obvious the pursuit of reform has produced weariness and fatigue among many public servants. However the change that has been enacted is certainly here to stay: it is the duty of public officials to administer the reformed system and

make it work as best as possible. Morale may be temporally affected by the process of change but the public-service ethos of the state was undiminished. The state was neither minimal nor maximal because reform was enacted within its own established traditions. It was a product of a pragmatic non-theoretical approach and was therefore the result of a voyage of discovery.