

EMPOWERMENT

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Edited by Dr. Andrew Pirie

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Introduction
by Madsen Pirie

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Introduction to Empowerment
Madsen Pirie

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Madsen Pirie

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rigour and are presented as a stimulus to public debate.

**Adam Smith
London
1991**

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INTRODUCTION

The decade of the 1980s saw the emergence of one solution to the problem of state industries. After other attempts to make them behave more efficiently had failed, the policy of privatization began to move them systematically into the private sector. Freed from the in-built producer orientation of the public sector, and exposed to commercial and competitive pressures, the former state industries responded by turning losses into profits, and by learning how to woo and win customers. As a theme, privatization dominated the economy of the 1980s, both in Britain and around the world. Other nations have followed the British lead, including at the end of the decade, many of the formerly Socialist nations of Eastern and central Europe.

For the industries which remain in the public sector, their numbers dominated by the state services, the search is on to find ways to improve their performance and their responsiveness to the wishes of their captive consumers. Some suppose that ever-increasing funds provide the answer. They do not, any more than ever-increasing subsidies provided the answer for the big industries of the past. It may be that more money will be required, but no-one should suppose that by itself this provides a solution. The state industries showed a remarkable propensity to consume new cash in the same misguided way they had used up the old. They remained inefficient and unresponsive, only deeper in debt. The same would probably be true of the state services, unless the forces which act upon them are changed, and unless the mechanisms under which they operate are altered, the new money would almost certainly disappear after the old, leaving little to show for its expenditure.

There is a good case for supposing that part of the blame for their lacklustre performance lies in the absence of pressures forcing them to upgrade their service quality. The balance between the state services and their recipients is an unequal one: the citizen has to pay in taxation, but enjoys few rights to command an output in return. The market pressures which would underwrite that output in the private sector are absent. The customer of the public sector cannot, for the most part, withhold his or her funds. They do not usually enjoy the luxury of an alternative choice. They have to take what, if anything, they are given. The problem thus becomes one of constructing some equivalent pressures to constrain the performance of the state services.

The supposition behind this report is that consumer rights which give citizens real and measurable powers over the state services, might meet the requirement. These extension of such rights is called for brevity by the name "empowerment," although alternatives such as "redressment" are thought by some to represent the concept more accurately. Taken together, they seek to equip the customer with powers to make the public services deliver the level and quality which people think they ought to,

or to provide some form of compensation if they do not. That compensation, where it is proposed, is not sought as a means to give citizens their money back, but as a way of making the public services strive for a better service output.

Empowerment as a policy innovation has two great merits. It can improve the level of public services to the point which their recipients think appropriate. And it can provide some redress for those who have failed to receive what they regard as a decent service. This means, in other words, that **empowerment** can lead to better state health care, shorter waiting lists, improved state education, better rail services, more responsive local authority departments. The fact that it seeks to do so in part by offering compensation to those who are currently the victims of inadequate services means that those who implement it will be seen to offer both future improvement and present relief. It is a powerful combination.

Privatization became a major theme of the 1980s. Empowerment, if it can be successfully engineered, could readily become the theme of the 1990s.

Empowerment has been successful with the state industries such as British Airways, Jaguar, or British Gas. It has achieved similar success with the state utilities such as the British Telecom, British Gas and the water industries. No doubt this success will extend to an electricity industry as it has to the others. State agencies such as the road building industry and the services which have been largely ignored. There has been some promising work in education and health care.

British Airways has been a symbol of that success. From a state airline dispirited for its service quality and costing the taxpayers hundreds of millions in annual losses, it was transformed into a top class airline, regularly winning service awards and paying taxes into the Treasury on its profits. It is widely regarded as the world's best airline by its customers.

Privatization has been successful with the state industries such as British Airways, Jaguar, or British Gas. It has achieved similar success with the state utilities such as the British Telecom, British Gas and the water industries. No doubt this success will extend to an electricity industry as it has to the others. State agencies such as the road building industry and the services which have been largely ignored. There has been some promising work in education and health care.

It was not chosen as the technique appropriate to the health services, however. In both education and health the chosen strategy has been to introduce an internal market on an experimental basis in voluntary areas, with the intention of extending this over most of the service when the market has been established. The introduction of parental choice in schooling has been achieved with the ability to opt for local authority or independent schooling for parents from the Department of Education.

EMPOWERMENT

Dr Madsen Pirie

President of the Adam Smith Institute

PUBLIC SECTOR INDUSTRIES

One of the major problems addressed in the 1980s was the producer domination of state industries. At its bluntest, the argument was that in the absence of commercial and competitive pressures, the state industries tended to discount the wishes of consumers and to meet instead the needs of their producers. Private industries cannot behave like this without risk of bankruptcy. They do not have access to public sources of capital, and have to deal for the most part with consumers who have the option of taking their custom elsewhere.

The solution to the producer domination of state industries was to privatize them, to move them into the private sector and expose them to the commercial and competitive pressures which force the satisfaction of consumers to be a significant element in determining their output. This has been very successful. Despite initial public opposition in individual cases, the privatized industries have overwhelmingly convinced the public that privatization brings more attention to service quality and more attentiveness to consumer satisfaction. The fact that it also enhances profitability adds further vindication to the policy.

British Airways has been symbolic of that success. From a state airline disparaged for its service quality and costing the taxpayers hundreds of millions in annual losses, it was transformed into a top class airline, regularly winning service awards and paying taxes into the Treasury on its profits. It is routinely voted among the world's best airlines by its customers.

Privatization has been successful with the state industries such as British Aerospace, Jaguar, or British Steel. It has achieved similar success with the state utilities such as the British Telecom, British Gas and the water industries. No doubt this success will extend to the electricity industry as it has to the others. State services such as the road freight industry and the bus services outside London have been similarly improved. Where it has been used, privatization has succeeded.

It was not chosen as the technique appropriate to the human services, however. In both education and health the chosen strategy has been to introduce an internal market on an experimental scale in voluntary areas, with the attention of extending this over most of the service when its success has been established. The introduction of parental choice in schooling has been combined with the ability to opt for local self-management and direct funding for schools from the Department of Education.

The intention is to make the decisions of parents the deciding factor in the allocation of resources, so that power no longer flows downwards from the centre through layers of bureaucracy, but upwards from the individual choices made by parents.

A similar technique has been introduced into the National Health Service, where the decisions by general practitioners to become budget holders, or of hospitals to opt for self-management within the NHS, will enable resources to be allocated according to the choices made by patients, doctors and managers. Again, an internal market has been introduced into a system which remains tax funded for the most part, and free at the point of consumption.

The supposition in both areas is that when the internal markets are operating throughout them, their service offering will correspond more closely to what their consumers, parents or patients, want them to deliver. Proponents of the internal market freely concede that it will take a considerable time for the system to become consumer-responsive to an acceptable degree, and that it may never be possible to give consumers the kind of power they would wield if they were allocating their own resources themselves in a private market.

It is also recognized that privatization in Britain is nearing the end of its initial agenda. It has taken root in many countries around the world, notably in those whose economies were crippled by decades of socialism, but in Britain its season may be drawing to a close. With nearly all of the industries and utilities gone, the remaining candidates are few in number. Once the Railways, the Coal Mines and the Post Office have been reinvigorated and improved by privatization, there remains only a mopping up operation of relatively small activities.

Privatization will be viewed as one of the most successful policies of all time, achieving a major transformation in a few short years, and leaving a record of outstanding achievement. Inevitably, governments will find themselves looking for something to replace it, for some new policy proposal to roll forward over a fresh agenda, spreading improvement and renewal in its wake as privatization did before it.

There is scope for directing attention to those services which governments have preferred to keep within the public sector, and to asking if ways can be found to make these services in their turn direct their output to the satisfaction of the wants and needs of their consumers, that is, to the recipients of their service. The traditional methods of administering public services have not proved equal to the task of producing the kind of service quality delivered in the private sector. If ministers wish the public services to conform to the high standards which can be achieved in the private sector, they will have to consider alternative methods of organizing them, and the incorporation of new incentives to high quality output.

Just as privatization came to symbolize the 1980s and the improvement they brought to degraded state industries and utilities, so the enhancement of state services by new techniques could provide a significant theme of the 1990s. If governments continue to depend on public provision, such a theme will be needed.

EMPOWERMENT

Part of the answer is provided by internal markets themselves. If the funding of state bodies such as schools and hospitals depends upon their being chosen by consumers, then they can be expected to offer a service which customers find attractive; that is one of the objects of the exercise. As internal markets take hold, the state services can be expected to orient more of their output to the satisfaction of consumer needs, mimicking what private markets routinely do.

The other parts of the answer can be supplied by range of powers given to consumers to make the state services deliver the quality and level of service which their captive customers have a right to expect, or, failing that, to have access to redress and compensation if that service is not delivered. Again, in the private sector such rights would be thought unremarkable.

If a landlord fails to perform essential repairs within a reasonable time-frame, the private sector tenant is allowed to have the repairs performed by others and to withhold the cost from his or her rent payments. Most people now think it only just that public sector council house tenants should have no less right with respect to their local authorities. When such rights are more widely acknowledged and known about, the effect will be to make council authorities more alert to their responsibilities in such matters, and more attentive to their obligations.

In a similar way, a National Health Service patient who has been on a waiting list for treatment should at some point acquire the right to secure treatment elsewhere at the expense of the local health authority or the appropriate budget holder. If the NHS has taken the money, it should be obliged to provide the treatment. If it fails to do so within a reasonable time, the patient should be empowered to secure such treatment elsewhere.

The local authority resident pays a community charge, and is entitled to expect that the streets will be swept and the garbage collected. Again, if this work is not done there comes a point at which the charge payer should have the right to get the work done elsewhere, at the expense of the defaulting local authority.

In the field of education it seems remarkable that the state should be able to take children for seven hours a day for forty weeks of the year for eleven years of their lives and yet make no perceptible difference to the lives of so many of them. Parents whose children receive no discernible education and who gain no qualifications at all should at some point be allowed to give someone else a chance to do the job. At the very least they should acquire the right to some form of remedial education for

their children, and provided by some body outside the state service which failed them.

The Liverpool Street commuters who initiated legal action against British Rail for its failure to provide the advertised train service which they paid for embarked upon new territory. Their claim amounts to saying that there are two signatories to the social contract. If money is taken from the citizen in return for services, and if the state can act against the citizen for non-payment, then the citizen should be able to act against the state for non-delivery of the service.

Behind the idea of Empowerment lies not privatization, but the notion that the state services should deliver what they are supposed to, and that the citizen should be able to get those services elsewhere or receive other redress if they do not. The rich already have a choice; if the state service is inadequate they can buy a private alternative instead. The problem is that having paid for the state service through taxation, choice is limited to those who can afford to pay again for the private service. Only about ten percent of the population have been able to afford the luxury of that choice in health or in education. Empowerment provides the remaining ninety percent with some alternative to putting up with an inadequate public service.

Part of the appeal of empowerment is that it requires the spelling out of what it is that the state services are supposed to be doing. If the public is to be given redress when the state services fail to fulfil reasonable expectations, we need to have some notion of what counts as a reasonable service. For some of the state services this will be the first time that anyone has considered what they are actually supposed to deliver, and what the public is entitled to receive for its money.

Simple though this may seem at first glance it involves a total transformation in the entire concept of public service delivery. In particular, it elevates the notion of a contract between the public and those who are supposed to serve it. The reality of public service has been that of producer capture. In the absence of any firm notion of what the public is entitled to, or any means for them to secure it, the public services have too often directed their output to satisfy the needs of those who can impact upon them: the producers. Once they begin to spell out what they are supposed to be doing, there is a clearly conceived target level for them to aim at, and for remedial action to be called in when they fall short of it.

There might be many ways of specifying what constitutes a reasonable level of service. One way might be to attempt the kind of detailed specification which local governments use when inviting private businesses to perform work under contract. Such contracts can run to hundreds of pages of detail about what the local authority expects to be done. It is significant in this context that many local authorities moving toward contracts for their services have listed among the advantages gained that this process gave them the opportunity to stand back and set down what they thought the service should achieve. In some cases this was

the first time this had been done.

Setting out such specification is by no means easy. Even in cases where there is knowledge of what is needed, it is often difficult to put it in writing. People might know what constitutes a clean street, for example, but defining this tightly on paper is not to be taken as either simple or straightforward. It is significant that local authorities such as Southend which blazed this trail found a ready market for the sale of their contract documents. Other councils recognized the value of the detailed specifications, and correctly appreciated the difficulties and possible errors which such documents could save them.

Another way of arriving at the notion of a "reasonable" service might follow the route of English Common Law, relying on the opinion of twelve good persons and true as to what counts as an appropriate expectation of service. This route offers the advantage that this expectation can vary from region to region, and can change over time as standards rise and wealth increases. In place of detailed advance specification, this route might rapidly accumulate a body of precedent as to what most people have a right to expect of services in their area.

It is noteworthy that even where the route of detailed specification has been followed, use has often been made of penalty clauses based on frequency of complaint. After referring to the frequency of street-cleaning, for example, many contracts base performance upon complaints received, using the loose concept of general satisfaction with work done, rather than any tightly-defined measure of it. The typical contract might require the payment of penalties if complaints exceed an agreed frequency. It is then up to the contractor to keep work above the level which would generate that number of complaints.

In setting forward new rights by which the public can secure high quality services or gain redress, the need is to keep them simple, easy to understand and to use, and such that they enjoy immediate popular support as people perceive their value. There are political dividends to be gained by the group or party which pioneers this successfully.

Honing the detail of such public rights poses many challenges. Not least amongst them is the requirement to supply cost limits. The Treasury will not stand idly by and watch people acquire rights to demand unlimited expenditure. Treasury acquiescence can only be secured if the proposals can be ring-fenced within existing budgets.

On health, for example, this might be achieved by using some form of voucher. If the NHS has not delivered its treatment within a reasonable time-frame for the condition concerned, patients might acquire the right to a voucher to spend on treatment outside the NHS. The value of that voucher would be equivalent to what the state would have spent had it done the work. The cost of the voucher would be taken off the next year's budget for the appropriate section of the NHS. Since the obligation to do the work would also be removed from next year's programme, the act

would be cost neutral from the Treasury point of view.

Of course, the supposition is that the mere presence of such rights for the citizen would make their use less necessary. As the deadline approached, health managers would make strenuous efforts to fit in treatment before its deadline. They would devise computer programs to alert them as patients neared the cut-off date, and would scour the country to find empty beds and facilities to secure treatment. One could argue that this is what they should be doing anyway, and that the new empowerment rights would make them behave as private sector providers already have to behave. Precisely.

The aim of empowerment is not to subvert the public services but to improve them. It is to achieve the situation which the Conservative Party Chairman spoke of when he said that by the year 2010 the public services ought to be so good that there would no longer be an automatic presumption that private delivery would be the preferred choice. The case for empowerment is that it could provide a rapid means of bring about just such an improvement. It is a logical corollary of the decision to keep such services as health and education within the public sector. A government which makes that decision has to find the means to make them achieve an acceptable service output.

There will be those who say that all that is needed is more money. This assumes that any new money would go to relieving the shortcomings so apparent in state services. Economic sense tells us that unless the forces within the services are changed, the new money will have the same pull upon it as the existing funds. It will operate within a system which gives some power to the producers and little, if any, to consumers. Only if the pulls upon the service are altered will there be reason to expect new funds to be spent more efficiently.

Empowerment is perhaps the idea for the 1990s. It provides means for the public to demand and to obtain the kind of service quality which private markets already provide. It is the means to upgrade the state services for a generation which expects a better deal. At the heart of it lies the recognition that the state has its obligations no less than the citizen. After many decades of inferior public services, the time is long overdue for those obligations to be discharged.

THE RACE TO IMPROVE PUBLIC SERVICES

Graham Mather

General Director of the Institute of Economic Affairs

We are going through a period in which people are looking for significant improvement in public service. The Conservatives are clearly concerned that public services continue to under-perform. Chris Patten has said that "a proper target for 2010 or before is to raise standards in the public sector so high that no one will seriously believe that the private sector should be an automatic choice for those who have the resources to opt for it." And the Prime Minister has declared that state services "must be made to operate better for the people who use them and to operate with the same efficiency within the public sector as we would expect outside the public sector".

The task of improving public services ties in very closely with John Major's aim to achieve a classless society. This is because some of the most outdated and important class attitudes are those related to the provision of public services. These attitudes are relevant insofar as they perpetuate a dependent, deferential, uncomplaining culture in which citizens perceive poor service, oppressive or less than competent bureaucracy, lack of choice and scruffy and underperforming public services as somehow pre-ordained. Until the public institutions which tend to sustain this culture are reformed public services will not improve and Britain will not move away from being a servile society to become the sort of more open, classless, opportunity society the Prime Minister hopes for.

The problem is that in an unchanged structural framework there is no reason to believe that aspirations for better public services are capable of being met; that cash limited and centrally administered systems can actually do anything more than continue to defeat the expectations of their customers. Part of the problem is that they promise too much in a very generalized way and deliver too little. This can best be tackled by establishing a contract-based model of public service provision.

This model is, of course, compatible with a contract-based model of government; that is to say one in which we no longer see government as an authority from the top, but look at it rather as a contract people enter into for the provision of essential services.

My personal belief is that this will connect to competition and privatization, simply because we see a two-way squeeze on public services at the moment; they are cash-limited at one end by a Treasury which must tighten up eventually, but they are also subject to increased demands for specific performance in services by customers at the bottom. Those two pressures are putting public services in a vice, and I think the only way the situation can be eased is by looking to competition to provide effective performance.

It is interesting this tide is happening across the political divide; when I spoke to the Fabian Society New Year Conference, this was very much on their agenda. The IEA intends to hold a joint one-day conference with the Institute for Public Policy Research, the think tank close to Labour Party thought, on this very subject.

It is something which is taking a grip on all parts of the intellectual debate on politics, and represents, I believe, a new consensus of objectives in British politics. It is almost as if we have had a change of government without an election and at the start of the 1990s we are facing a new and, interestingly, a shared agenda. I think there is going to be a race between Right and Left to see which set of politicians can reach effective practical solutions to the problem of under-performing public services. It is by no means clear which politicians will get there first because they are all starting from broadly the same starting gate.

I want to first turn to some of the specifics and then explore the notion of empowerment. Empowerment must, I believe, involve the specifying of service standards in the form of clear and preferably written contracts. Failure to meet the terms of a public service contract should result in penalties for the service providers and, more importantly, in compensation for the consumers.

Let me refer to one or two examples where this has not happened. There was the Birmingham Heart Hospital case where one family went to the High Court. Their claim was that their child had a heart defect which could be solved within medical technology, but that the local health authority had not provided sufficient nurses to staff the wards to make that operation possible. It seems to me that those sort of shortcomings are not morally acceptable or economically acceptable in the present system.

This is a different argument for saying that an unfunded cash limited system can necessarily pay for every operation. The fact is that expectations are defeated, and that an apparent promise of free treatment is not being met, and this is causing heartbreak and concern to parents. It is resulting, however, in a legal discovery, a discovery when you go to court that you have no legal right or entitlement to a specific, or indeed any, standard of care. The judge in that case declared that it was a matter of administrative discretion within the judgement of the health authority how it staffed its wards. I do not believe people will put up with that. Similarly, in an even more recent case a 52 year-old cancer patient was refused a new treatment costing £3000 which might have given her 20% better chance of survival for a further two years.

In the past we have met these sort of requirements through legal techniques. If a riotous mob were to gather outside one of our conferences and attack delegates with fire and the sword, those delegates could severally and individually sue the Metropolitan police for any resultant damage that was caused. This is because the Police have an obligation under the Riot and Damages Act of

1889 to ensure that riots do not take place in the metropolis, and they have a statutory contractual duty to individuals which has been on the statute book for a century. More recently the Public Health Act of 1936 provided that if the local authority failed to take away your refuse, you would be entitled to a civil penalty of five shillings per day until they complied with their statutory obligations -- it being deemed undesirable that mounds of rotting refuse should remain outside the premises.

And in more recent times the Telecom regulator, Professor Carsberg, managed to induce British Telecom to agree to a penalty scheme by which if they fail to either connect you to a telephone or repair your existing service when it is broken, they have to pay you £5 per day for every day (after the second) for which that service is not restored or provided.

Unfortunately, British Telecom has not communicated the news of this scheme widely enough, and I am not sure either that the regulators are as active as they ought to be in examining the number of complaints, the number of payments, and producing well-publicized reports in the consumer magazines about the way things are going. But at least we have got the building blocks there and these sort of schemes are being adopted elsewhere. I see no reason why they should not be used more generally throughout the public service, provided, of course, that the problems of funding compensation schemes can be solved.

I do not think it is a good idea for the provider itself to be in the position of both judge and jury, such that I have to ask British Telecom to make the payment if its in default. I think it is rather better that the regulator or an independent ombudsman should make those payments. The provider of services should be obliged to lodge a deposit. Perhaps British Telecom should be made to lodge £200,000 with Professor Carsberg, for him to delegate an authority to meet claims out of those funds, and have them topped up when they are exhausted. If it is not done like this through a third party, there is a serious conflict of interest.

The form of empowerment I have just discussed means two things. First of all it means giving citizens adequate information about the public services they consume in the form of contracts. Secondly, it gives citizens rights to compensation and redress if the standards specified in public service contracts are not met.

The need for major institutional reform

Empowering citizens also requires major reforms in the public sector with regard to methods of finance and organisational structure. The objectives of empowerment -- to give people consumers more control over public services -- emphatically will not be secured by the traditional techniques of public service. Nor need they be. Neither basic protection against catastrophic loss of earning power nor the establishment of a framework for personal advance need depend upon the techniques of traditional public administration.

We will not secure these goals by building a handbook for enlightened administrators within the existing framework of government service provision. Equipped with the latest handbook, those administrators would undoubtedly do better in avoiding the more obvious government failures of the recent past, including nationalisation, state monopoly of unpriced but cash limited health and welfare, dependency and over-ambitious estimations of the capabilities of central and local government and their agencies.

The risk is of two simultaneous effects. Granting such a role to government without new constraints risks moral hazard, regulatory overload, unquantified costs and crowding out effects. Secondly, the hands of enlightened administrators end up guided by vote motives, yielding to the demands of organised interest groups. In addition, public agents do not benefit from the superior discovery procedure of the market: they do not face the sort of incentives that lead economic agents to exploit market opportunities, reduce costs and research new ways of producing or delivering goods and services.

Public agents are not subject to the objective criteria of the market; their self-interest is not dependent upon them being able to meet the demands of customers and operational efficiency. Instead they are subject to administrative or political discretion; able to make decisions with little regard to considerations of cost, efficiency or customer satisfaction. The absence of market information means that public agents can only act upon their own perceptions of what the recipients of their services might want or what they find most rewarding or convenient; if not, the only external criteria they can act upon are the crude measures of customer surveys or the dictates of politicians.

A three-fold agenda to improve accountability and the performance of public services.

The challenge then is to transform under-performing public services and align them with the methods of the market. If citizens are to have meaningful and enforceable rights to public services, both demand and supply sides must be changed significantly. Improved accountability and better public services can be achieved if a three-fold reform agenda is pursued.

Achieving an open society

The first is to approach questions of constitutional and institutional reform with an open mind, and with especial attention to the effective functioning of Parliament, open access to government information, and the codification of protection of individual rights.

Britain's constitutional and institutional structure has depended upon radical advance: on a radical concept of Parliamentary Sovereignty, a radical Bill of Rights, radical reforms to

suffrage. These democratic advances were not achieved by the assertion that former practices were immutable, or that 'something would turn up' to allow society to move forward without the need to think through the options and choices.

In the same way today it serves no advantage to assert that today's ways of running government, financing it, administering local services, providing information to citizens are by some marvellous chance the best of all possible worlds, relevant for yesterday, today and tomorrow without change or re-examination.

To entrench that sort of status quo society would be a profound disservice. The breath of fresh air which has transformed the shape of so much of business and commercial life, and removed the 'them and us' mentality which bedevilled industrial relations in the 70s, can do the same in the areas under Whitehall's sway, where stuffy paternalism tends still to set the agenda.

Government by contract

The second key opportunity is to change the nature of government so that it rests explicitly on a series of contracts, in the same way that contracts at base govern the rest of national life. Instead of administering public service, civil servants should begin explicitly to meet the requirements of customers. Services should be specified in clear, contractual terms; private providers given the opportunity to compete with Departments for their provision; and customers given clear contractual rights in terms of performance standards and rights of redress.

Citizens must have real decision-making power. And that power must be the result of a new model of government -- government by contract, with contracts giving individuals real enforceable rights. Past models of open government have tended to rely on committees everywhere. The Left in particular has invested much intellectual capital in techniques of supposed participation through pseudo-democratic structures, quangos and representative bodies. They have failed the test. We should not be afraid to hand back government power to individuals by contracting with them, in a new social contract which is built up of millions of enforceable micro*contracts for better standards of public service. This may properly be provided through private contractors where they can do it best.

Honest information

An open society must be an honest society. Information must be available to citizens in a manner which permits and encourages sensible decision-making and choice. The first obstacle to the open society is the opaque financing of public provision, which has come to conceal more than it reveals.

It is small wonder that health and welfare provision is bedevilled by insoluble debates on financial under-provision when so much of it is concealed under misleading labels in general

taxation. The case for an identified health tax is that it would help to break free from the cynical concept of rationed healthcare which has persisted under both parties since the War. State pensions can only be sustained by the 'pay as you go' system, which relies upon the preparedness of one generation to pay up for the promises voted to themselves by their parents, without forward funding or insurance worthy of the name.

It is small wonder that local government finance is about to undergo yet another major review, when so much of the system rests upon central taxpayers subsidising local spending decisions, kept in check only by the crudest of central cash controls. Residents of one local area must see their contributions head off on round trips across the country, to pay for the spending desires of other local communities which have no moral claim on their taxes.

The more serious consequence of these shortcomings is in persistent failure to meet any guaranteed service standards. So if the first limb of empowerment must be a shift to transparent and visible taxes or charges, the second must be enforceable service standards guaranteed by contract from state agencies to citizens.

Too much of Britain's public provision still rests on monopoly providers financed by the coercive taxation power of the state, and yielding to no enforceable contract with citizens and customers.

Vision

This, then, is the new vision of what an open society must mean. It must be a society which is open and accountable -- and to achieve these aims it must make the financing of services transparent, and it must set out clearly the terms on which they will be provided, with real time constraints, penalties for under-performance, and compensation for loss through poor service which will empower individuals to go elsewhere when public service fails in its duty.

Contract model

The administrative model of service delivery and control in the public sector should give way to what I call the contract model. This model gives maximum scope for the introduction of the market or else relies upon the maximum possible use of mechanisms which mimic the market, although the presumption should always be in favour of actual markets wherever possible. I call it the contract model to emphasise that the relationship between the service deliverer and the service recipient should be seen as an implicit contract. The contract model should become the model for reorganisation in those areas of the public and quasi-public sector which for historical and structural reasons cannot be opened up entirely to the free play of market forces. Those responsible for providing the services in these sectors should be

governed by a legally enforceable contract which specifies the standards to which those services should be provided. Failure to do so should generate penalties payable to those damaged to redress their loss.

This model of the contract state is important if one is serious about empowerment -- increasing the freedom that citizens have to control their own lives. Increasing prosperity and the flourishing of competition in the private sector has meant that citizens have experienced vastly increased control over their own affairs at home, at work and in the commercial marketplace. However, citizens have very little control over their affairs when they have to rely on the state sector. Power, in the form of administrative discretion, must be wrested from the producers and countervailing powers placed in the hands of consumers.

Conclusion -- putting government on tap, not on top.

The aim of empowerment is to achieve this transfer of power from the producer to the consumer. However, the extent to which this can be done is greatly limited so long as the state directly supplies public services. The strongest form of empowerment does not involve the state in the actual provision of services: the state sets the framework but the services are provided by competitive contractors.

I believe this to be the natural outcome of empowerment. Empowerment thus becomes attractive across political spectrum. It shakes up both supply and demand sides. It experimentation and choice. It is a popular edge to the increasing in changes to our institutional and constitutional structures. It ties quite closely with the notion of classlessness because empowerment clearly one part of an agenda in which you remove concentrations of and the need for servility on the part of the customers. It is a useful challenge to welfare bureaucracies. It is a coherent set of ideas for solving the problems of an underclass and of disempowered groups. For that reason it is going to be taken up by Right, Left, and Centre and play a key part in the political agenda of the 1990s.

For too long Government has treated citizens as mere recipients or clients of the public sector and a passive recipient of poor quality services. It has seen Government as authority, as power, as a high authority over individual lives. Successive models of the state have welshed on their side of the social contract. It is time to give the citizen the powers to be a consumer in the public sector, and make sure that government is on tap, not on top.

THE GUARANTEE MECHANISM

David Freeman

Managing Director, Guarantee Protection Trust

The publications of the Consumers' Association have been very good to the Guarantee Protection Trust over the years and have informed their readers frequently, of the excellent insurance service that the GPT provides. I want to take up a phrase used by Graham Mather -- the apparent promise of free treatment. He was speaking of medical treatment, whereas the concern of the Guarantee Protection Trust is the treatment of buildings to deal with woodworm, dry rot, wet rot, rising damp and so on. The principle is similar. The mechanism of the one might serve to secure promises given in the other.

The concept of the Guarantee Protection Trust took shape many years ago. I was then a contractor in competition with Rentokil and others. In my company we prided ourselves on doing a good job. One day someone came into my office and queried the guarantee we offered: it was a 20 year guarantee and he asked how he could know that we would be in business to honour the guarantee in 20 years time; or indeed in 10 years time. I said we had gone to a lot of trouble to start the business and we were 'not going to leave it easily.' He was not convinced. He gave his order to a competitor and had to pay about 25% more. I thought there must be a way of dealing with this problem of credibility when issuing long term guarantees.

The remedial industry in the United Kingdom is now worth about £160 million per year; in it there are some 200 reputable contractors. There are three national organizations, about 8 regional operations and something like 200 companies providing a local service. They all issue certificates of long term guarantee. All is well unless out of choice or financial failure they cease from trading. Then they are not in a position to honour their guarantees -- this is the risk of an unfulfilled promise.

Also in the remedial trade some 2000 disreputable operations come and go issuing promises whenever it suits them to do so without scruple.

Out of a spirit of self respect and self development, in the early 1980s a few of us in the trade decided that we would give consumers confidence in guarantees by offering insurance of them. It was a difficult job to get started because we met grave suspicion in the minds of the Office of Fair Trading. It took a year to overcome that suspicion.

The other obstacle at the time was to persuade the insurance market that this was an acceptable risk from their point of view; it has proved to be an acceptable risk. We spend about £35,000 per year on our system of insurances and for that money we get an annual indemnity of £1 million to meet the claims of the

consumers of the companies which subscribed to the Guarantee Protection Trust but have gone out of business. There have now been 25 of these since 1983 when we started. We have an exposure to something like 8,000 commitments, any one of which could result in a claim against the GPT and its insurers.

The spirit at the start was self respect and self development. The contractors who subscribed wanted to differentiate themselves from the ephemeral operations with which they were in competition. Price competition in the remedial trade is very vigorous. Often the services offered are of appearance, not reality. Quality control is especially difficult because the service given is essentially invisible. In other words, timber in a church eaten by deathwatch beetle looks very much the same after treatment as it did before -- the holes are still there. The important difference is that if the deathwatch beetle had been allowed to go its way unassailed, mechanical strength would be lost; the roof would fall in. If it is properly treated mechanical strength is sustained. If it has already gone too far, new timber must be introduced. This must also be properly preserved.

The conscientious, specialist contractors had the motive of developing their businesses in fair competition with their chief rivals; perhaps in many of them there was a Rotarian trying to climb out. They felt in self respect that because they were giving promises, they wanted to be as sure as possible that those promises could be kept. The concept of contingency insurance has made that possible. This is the work, the purpose of the GPT.

GPT is classified at the Department of Trade as the administrator of insurance for approved guarantee insurance purposes. For the future we have accumulated enough for underwriting purposes and we hope in the next few years to see our status changed from that of administrator to underwriter. If we achieve that status we can serve other trades as well as the remedial trade. The remedial trade is where we started but there are various others where we would like to help, mostly on the fringes of the construction industry. These include roofing, underpinning, the wall ties that hold the two skins of cavity walls together -- all of these things (most of them invisible) are sold with the benefit of an after-sales service which is promised in a certificate of guarantee. They could all benefit from the GPT concept. A self-guarantee is no guarantee.

You will see the relevance of the guarantee protection principle. It was pioneered in a small part of the private sector, but the principle could be extended to certain classes of public sector services. Where a promise is made, the use of insurance adds force to it. In the event of failure, the individual user would have means of redress. Inevitably, applications might be limited to a few specialized areas. But the general principle is a sound one: if you are looking for ways of giving confidence in the ability of the public services to deliver what they promise, it is useful to begin by observing a conscientious service in the private sector.

MAKING PUBLIC SERVICES CONSUMER FRIENDLY

John Willman

Editor of Consumer Policy Review and General Secretary of the Fabian Society 1985-89

It is gratifying and not a little surprising to find that the Adam Smith Institute, the Praetorian Guard of Thatcherism, is beginning to examine reforms to the public services which are already Labour Party policy. I quote from the much-vaunted Policy Review on the subject of making community services more responsive to consumer needs:

'This should be ... made enforceable by clear entitlements to services, specified choices and standards, means of complaint and redress, and information.' (Social Justice and Economic Efficiency, Labour Party, 1989, page 29)

Consumer consciousness was a concern the Fabian Society did much to place on Labour's agenda during the 1980s: although we achieved some success as the above quotation shows, much of Labour's consumer concern is little more than good intentions. Many of the ideas which I want to consider in this contribution would not gain a sympathetic hearing at present, though with change as we have seen in the past few years, anything is possible!

Apart from my own 'consumerist' background, I see empowerment of public service consumers as central to keeping them in the public sector - in other words in fending off competition from the private sector which would undermine their universality. Let us consider the Health Service suffering from the twin problems of a producer-led organization and an acute funding crisis (by any international comparison). The challenge for those of us on the left is to preserve a universal and comprehensive health service, free at the point of use, something which the market is incapable of providing on its own. (This does not mean that everyone has to enjoy the same level of service, of course: I am quite happy for those who wish to pay extra for a room of their own, claret with their breakfast and a PA tape machine to keep them up-to-date with share prices.) Some of the reforms which are being implemented in April 1991 may well deal with the problems of organization; the problems of funding are more intractable.

Because of these problems, however, we are now well down the road to a two-tier health service, with a flourishing private health service which has sprung up to address the shortcomings of the NHS. The private health industry offers a service which is much more consumer friendly; it is also able, through economies of scale and niche retailing, to offer operations for which there are considerable delays in the health service. This creates a two-tier system in which most people have to wait periods of two years or more for life-enhancing operations which other people can buy immediately. While it may be possible for more to afford

private health care, it is very unlikely that everyone would be able to. One has only to look at countries with similar arrangements which are much more fully developed - such as the United States of America - to see that this in the end results in a large proportion of the population being left without adequate health care.

The private health industry is essentially parasitic on the health service: it does not train doctors or nurses, for example. It is therefore able to externalize some of its costs, and keep its charges down. And because it is largely - although not entirely - insurance funded, the private health service is profligate and not cost-effective. As with all insurance-based services, there is no incentive for the consumer to challenge bills, and we now see a determined campaign by the health insurers to try and curb costs. It was for these reasons that the present government very wisely decided when reforming the health service not to extend the insurance system but to look for other solutions.

One way to restore a universal health care service is by legislation: like most democratic socialists, I do not think such prohibition is acceptable or desirable in a free society. What is needed is some way of reintegrating the private health system into the NHS, incorporating its strengths and encouraging the national health service to follow its example. In other words, creating a health service which is consumer driven but at the same time which offers everyone who needs it the sort of health treatment which is currently available only in the private sector.

One way to achieve this is to give the customers justiciable rights to health treatment. The taxpayer should have clearly defined rights to treatment within specified periods (which might depend on the condition). If you cannot get the treatment you require according to those criteria in the public health service, you should be able to resort to the private sector and have the bill picked up by the NHS. I would add service criteria also - to discourage the producer-oriented organization of health care in the NHS which is so dehumanizing.

This solution has a number of virtuous results:

- * the reduction of waiting lists and the enhancement of the level of service to be provided to all NHS consumers;
- * it sits with the current government's efforts to create an internal market, since it widens the scope of the public health market to incorporate the private sector - I certainly have no problems with the NHS contracting with private hospitals for (say) bulk supply of hip replacements;
- * it gives control of the health service to the ordinary consumer rather than leaving it to be administered by civil servants, consultants or hospital general managers;

* it will do away with the profligate and unproductive health insurance industry, since if private standards of treatment are available to all, there will be no point in paying insurance premiums (this will also help control costs).

However, it should be clearly recognized that this organizational solution also has budget implications. It will simply not be possible to 'ring-fence' the NHS budget as some have suggested. If you give people rights against the NHS, there are costs to be paid: more health treatment will be made available, certainly in the first year as some catching-up takes place. The fact is that we spend less on health care - not just than the United States where the reasons for the level of expenditure are well-rehearsed, but than other countries which are better at controlling costs. Giving rights to consumers implies costs - as any private sector business will tell you. However, taxpayers would be more prepared to fund those added costs if they knew they were getting something in return.

The health service is the most obvious example of how this conception of empowerment could be applied. It has equal purchase in public housing, where tenants should have the right to a certain level of service with the option of going to private contractors where this is not available from the council. It is very often done in progressive local authorities now - certainly in my own Labour borough of Lewisham. Indeed, the main problem in London is finding a private contractor of adequate standard (the original reason why many boroughs built up their direct labour forces in the first place).

In some local environmental services, some councils already provide the sort of service contract which Labour calls for in its Policy Review. There is, however, relatively limited scope for the consumer to switch to a private contractor, although it would be interesting to try some experiments with parks. Why, for example, should responsibility for maintaining parks not be switched to the householders in the immediate neighbourhood, as with some London commons. The councils might give the parks to the immediate residents and let them sort out how that park is cared for, and agree the cost between themselves.

There is also scope to extend this approach with the utilities, some of which already have such a system (with the exception of British Gas). And the Consumers' Association is keen to extend the approach to public transport, seeking a test case to challenge the British Rail conditions which deny all responsibility for providing any service whatsoever. The levels of any compensation payments must be sufficient not only to recompense the consumer, but also to penalise the producer so that non-fulfilment is not a cheap option.

However, it is also important to recognize the limitations of empowerment, particularly in the case of education (I speak with some feeling as the father of three children of school age, all in public education). Madsen Pirie refers to the importance of giving parents more control over what goes on in the schools: as a consumer I can say that the notion of parents controlling what

goes on in the school through parent governors is at best a pious hope and at worst a cruel hoax (just as any idea of consumer directors would be for PLCs). And the idea of allowing consumers (ie parents) to buy privately and charge the local education authority does not stand scrutiny:

- * it would be very hard to find agreed and clear criteria about when this right could be exercised - it would be very easy to do this with health services but educational criteria are more subjective;

- * education lasts for ten or more years and is of much longer duration - raising questions about how long such public underwriting could last;

- * it has much greater cost implications - if Lewisham council had to pick up the fees for ten years' education at Dulwich College for my three children, this would have severe consequences for local chargepayers.

But above all it seems to me it dodges the question: How do we make available in Britain a public education system which delivers what parents want and what the country needs? There is plenty to discuss there but some notion of allowing people to contract out and to have the bill picked up elsewhere will not fit the bill.

Finally, I am glad to see that the Adam Smith Institute is tackling the question of these core public services, which must remain in the public sector. The 1980s was the decade of privatization and there is now little left to privatize which is not in the pipeline. This leaves the hard core of public services which cannot be privatized, either because the private sector is not interested or because of considerations of equity or universality. There are interesting questions about bringing consumer consciousness to these services in the absence of strong competitive pressures. Labour is further down the road of considering these issues, partly because it sees the public services as its own property (as they very much were at foundation). But because of excess ideological baggage and the strength of producer interests in the Party, Labour is finding it hard to adopt radical solutions. I will be interested to see whether the new, softer, gentler, post-Thatcher Conservative Party will seize this initiative and will follow this debate with interest.

MAKING THE PUBLIC SECTOR ACCOUNTABLE

Christopher Monckton

Journalist, formerly of the No. 10 Policy Unit, and currently heading a consultancy dealing with bureaucracy.

Absolute and arbitrary exercise of power by the King or the State would have been described by Sellar and Yeatman as a Bad Thing. Magna Carta was one of the earliest attempts to give the individual citizen rights over the state, or, in modern jargon, to empower him.

The history of British constitutional development since Magna Carta is in essence the history of the progressive empowerment of the citizen. Democracy itself is a notable form of empowerment. All sides in politics now regard empowerment as a Good Thing.

Yet the power of the state has grown too, and that is a Bad Thing. To redress the imbalance caused by the rapid and monstrous expansion of the state, its powers and its expenditure in this century, further empowerment of the citizen would be a Good Thing.

The first steps have already been taken. Not long ago a series of television programmes exposed the disgusting state of the kitchens in NHS hospitals, which at the time accounted for half the cases of food poisoning in Britain. The NHS had got away with this dereliction of duty because it was able to plead Crown immunity. Now the law has been changed and the NHS can cower no longer behind the skirts of the crown.

Likewise, in certain circumstances council tenants who have been waiting too long for essential repairs can now simply call in the builders, get the work done and send the bill straight to the council.

However, the problem with these and other individual acts of empowerment is that each one requires separate primary legislation. If empowerment is to be extended as rapidly as it should be, measures of more general application need to be enacted in an Empowerment Bill.

The first and most essential measure in the bill would be a statement of principle similar to that in the Victorian Sale of Goods Acts, which require the suppliers of goods or services to ensure that what they sell is 'of merchantable quality and fit for its purpose'.

General declarations of principle such as this have the outstanding merit of being loophole-free: either the goods are fit or they are not, and it is up to the supplier to make sure that his product is on the right side of the dividing line. The Empowerment Bill would enact a similar general principle that the actions of every servant of the state should be reasonable, diligent, competent, timely and within the state's powers.

These days legislation giving rights to the individual consumer tends to be obsessively and pointlessly detailed, laying down precise formulae and ratios specifying, for instance, the amount of lead permitted in the paint used for children's toys. Such detailed regulations are full of potential loopholes.

The Empowerment Bill, therefore, would avoid such detail, thereby achieving two objectives: there would be no loopholes through which a misbehaving civil servant might wriggle, and the bill would at once apply to all departments, industries, local councils and quangos, without the need for separate legislation in respect of each one.

The second measure in the Empowerment Bill would make every servant of the state individually and personally liable for his actions or inactions.

At present, civil servants, workers in nationalized industries, and employees of local authorities and quangoes, can idly doze away their years in the comfortable knowledge that neither they nor their colleagues will ever have to pay anything or suffer any penalty for their indolence, incompetence, negligence, or even malice.

The Empowerment Bill, therefore, would empower any citizen dissatisfied with the actions of any servant of the state to bring a court action against that state servant personally.

Of course, the damage done by an individual civil servant might well lead to claims in the millions. The state authority concerned would, therefore, be responsible for meeting large claims for damages, but -- and this is the key element of the legislation -- and individual civil servant whose negligence contributed to the trouble would be obliged to make a financial contribution towards the remedy.

That contribution would be assessed by the courts bearing in mind two factors: the severity of the civil servant's negligence and his personal means.

Private companies often indemnify their employees against such personal liabilities. Under the Empowerment Bill the state would be forbidden to grant its employees such indemnity. In this way every state servant would know that any unreasonable or defective behaviour on his part could prove expensive to him personally.

The third measure in the bill would oblige every department or arm of the state to employ an ombudsman with teeth. He and his staff would be the first point of contact for any citizen aggrieved by the actions of a civil servant, and there would be no need for the citizen to resort, as he now must, to the cumbersome procedure of inviting his MP to submit his case to the single, and very hard-pressed, Parliamentary Commissioner for Administration.

The fourth measure in the bill would be a 'small claims' procedure by which an aggrieved citizen not satisfied by the

ombudsman's intervention could bring an action for negligence by civil servants quickly, simply and cheaply, provided that his financial claim against the state employees in question was small.

The existing small claims procedure provides an excellent model: it allows fast access to the courts, it costs almost nothing, it is so simple that a layman can represent himself, and judgement is swift.

For larger claims, of course, the full high court or county court procedure would have to be followed: but individual state servants could still be held personally liable for their share of the damages.

The proposed 'small claims' procedure would also be designed to allow a citizen to obtain from the court a declaration on any minor point of law which might otherwise entail a full-blown court action. At present declarations can only be obtained from the courts if both parties agree to a friendly action in which, in effect, both are seeking the same declaration.

The state, however, has such a drastic powers of discretion, particularly in tax matters, that the authorities are seldom willing to agree to such friendly actions. The bill would entitle any citizen to state his case plainly on any pure point of law (as opposed to fact). The state would be entitled to put a contrary case, if it wished to do so, and the court would then quickly and inexpensively decide the legal point in question.

To summarize: the Empowerment Bill would oblige all servants of the state to do their duty reasonably, diligently, competently, promptly and within their powers; it would make every state employee personally liable for his actions and would debar his employer from granting him indemnity against liability claims; it would establish an ombudsman with teeth in each department as the first point of contact for aggrieved citizens; and it would establish a 'small claims' procedure by which minor claims and points of law could be dealt with swiftly, simply and cheaply. By these means the vast and arrogant complacency of the civil service would be forever dispelled.

Until the Empowerment Bill is passed, what can the helpless citizen do when he finds himself up against the state?

There is already an emergency procedure by which the citizen can take immediate action in the courts to prevent an abuse of power by a civil servant of the state. It is known as the 'prerogative order' or 'injunction'.

Applications for prerogative orders take precedence over all other business in the courts. The last time my company applied for one the process took less than half a day from the moment when the client decided he needed help via the granting of the injunction until the moment when the order was served upon the astonished and instantly compliant civil servants in question.

To obtain an injunction it is necessary to establish that the case is both reasonable and urgent, that no other remedies but court action will succeed and that, on the balance of convenience between the two parties, the applicant should be granted the temporary relief he seeks, pending full trial of the case at a later date.

But injunctive relief is an uncertain business and the courts sometimes take the view that certain arms of the state should be exempted from it.

Which is one reason, among many, why an Empowerment Bill would be a Good Thing.

The first part of the report is devoted to a description of the
 general situation in the country at the beginning of the year.
 It then goes on to discuss the various factors which have
 influenced the economic development of the country during the
 year. The report concludes with a summary of the main
 findings and a few suggestions for the future.