Principles of Political Institutions

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Chapter 1

Introduction

Functioning of political institutions in democracy

Democracy is a form of political organization in which all people, through consensus representatives (representative democracy) exercise equal control over the matters which affect their interests. The term comes from the Greek "rule of the people", which was coined from (*dêmos*) "people" and (*Kratos*) "power", in the middle of the 5th-4th century BC to denote the political systems then existing in some Greek city-states, notably Athens following a popular uprising in 508 BC. Even though there is no specific, universally accepted definition of 'democracy', equality and freedom have been identified as important characteristics of democracy since ancient times. These principles are reflected in all citizens being equal before the law and having equal access to power. For example, in a representative democracy, every vote has equal weight, no restrictions can apply to anyone wanting to become a representative, and the freedom of its citizens is secured by legitimized rights and liberties which are generally protected by a constitution.

There are several varieties of democracy, some of which provide better representation and more freedoms for their citizens than others. However, if any democracy is not carefully legislated –

through the use of balances – to avoid an uneven distribution of political power, such as the separation of powers, then a branch of the system of rule could accumulate power, thus become undemocratic.

The "majority rule" is often described as a characteristic feature of democracy, but without governmental or constitutional protections of individual liberties, it is possible for a minority of individuals to be oppressed by the "tyranny of the majority". An essential process in "ideal" representative democracies is competitive elections that are fair both substantively and procedurally. Furthermore, freedom of political expression, freedom of speech, and freedom of the press are considered by some to be essential so that citizens are informed and able to vote in their personal interests.

Popular sovereignty is common but not a universal motivating subject for establishing a democracy. In some countries, democracy is based on the philosophical principle of equal rights. Many people use the term "democracy" as shorthand for liberal democracy, which may include additional elements such as political pluralism; equality before the law; the right to petition elected officials for redress of grievances; due process; civil liberties; human rights; and elements of civil society outside the government.

In the United States, separation of powers is often cited as a supporting attribute, but in other countries, such as the United

Kingdom, the dominant philosophy is parliamentary sovereignty (though in practice judicial independence is generally maintained). In other cases, "democracy" is used to mean direct democracy. Though the term "democracy" is typically used in the context of a political state, the principles are applicable to private organizations and other groups also.

Democracy has its origins in Ancient Greece. However other cultures have significantly contributed to the evolution of democracy such as Ancient Rome, Europe, and North and South America. The concept of representative democracy arose largely from ideas and institutions that developed during the European Middle Ages and the Age of Enlightenment and in the American and French Revolutions. Democracy has been called the "last form of government" and has spread considerably across the globe. The right to vote has been expanded in many Jurisdictions over time from relatively narrow groups (such as wealthy men of a particular ethnic group), with New Zealand the first nation to grant universal suffrage for all its citizens in 1893.

Background of Democracy and political institutions

Ancient origins

The term *democracy* first appeared in ancient Greek political and philosophical thought. The philosopher Plato contrasted democracy, the system of "rule by the governed", with the

alternative systems of monarchy (rule by one individual), oligarchy (rule by a small élite class) and timocracy (ruling class of property owners). Although Athenian democracy is today considered by many to have been a form of direct democracy, originally it had two distinguishing features: first the allotment (selection by lot) of ordinary citizens to government offices and courts, and secondarily the assembly of all the citizens.

All citizens were eligible to speak and vote in the Assembly, which set the laws of the city-state. However, the Athenian citizenship was only for males born from a father who was citizen and who had been doing their "military service" between 18 and 20 years old; this excluded women, slaves, foreigners and males under 20 years old. Of the 250,000 inhabitants only some 30,000 on average were citizens. Of those 30,000 perhaps 5,000 might regularly attend one or more meetings of the popular Assembly. Most of the officers and magistrates of Athenian government were allotted; only the generals and a few other officers were elected.

A possible example of primitive democracy may have been the early Sumerian city-states. A similar proto-democracy or oligarchy existed temporarily among the Medes (ancient Iranian people) in the 6th century BC, but which came to an end after the Achaemenid (Persian) Emperor Darius the Great declared that the best monarchy was better than the best oligarchy or best democracy. A serious claim for early democratic institutions comes from the independent "republics" of India, *sanghas* and

ganas, which existed as early as the 6th century BC and persisted in some areas until the 4th century AD. The evidence is scattered and no pure historical source exists for that period. In addition, Diodorus (a Greek historian at the time of Alexander the Great's excursion of India), without offering any detail, mentions that independent and democratic states existed in India. However, modern scholars note that the word *democracy* at the 3rd century BC and later had been degraded and could mean any autonomous state no matter how oligarchic it was. The lack of the concept of citizen equality across caste system boundaries lead many scholars to believe that the true nature of *ganas* and *sanghas* would not be comparable to that of truly democratic institutions.

Even though the Roman Republic contributed significantly to certain aspects of democracy, only a minority of Romans were citizens. As such, having votes in elections for choosing representatives and then the votes of the powerful were given more weight through a system of Gerrymandering. For that reason, almost all high officials, including members of the Senate, came from a few wealthy and noble families. However, many notable exceptions did occur.

Middle Ages

During the Middle Ages, there were various systems involving elections or assemblies, although often only involving a small amount of the population, the election of Gopala in Bengal, the

Polish-Lithuanian Commonwealth, the Althing in Iceland, the Løgting in the Faroe Islands, certain medieval Italian city-states such as Venice, the tuatha system in early medieval Ireland, the Veche in Novgorod and Pskov Republics of medieval Russia, Scandinavian Things, The States in Tirol and Switzerland and the autonomous merchant city of Sakai in the 16th century in Japan. However, participation was often restricted to a minority, and so may be better classified as oligarchy. Most regions in medieval Europe were ruled by clergy or feudal lords.

A little closer to modern democracy were the Cossack republics of Ukraine in the 16th–17th centuries: Cossack Hetmanate and Zaporizhian Sich. The highest post – the Hetman – was elected by the representatives from the country's districts. Because these states were very militarised, the right to participate in Hetman's elections was largely restricted to those who served in the Cossack Army and over time was curtailed effectively limiting these rights to higher army ranks.

The Parliament of England had its roots in the restrictions on the power of kings written into Magna Carta, explicitly protected certain rights of the King's subjects, whether free or fettered — and implicitly supported what became English writ of habeas corpus, safeguarding individual freedom against unlawful imprisonment with right to appeal. The first elected parliament was De Montfort's Parliament in England in 1265. However only a small minority actually had a voice; Parliament was elected by

only a few percent of the population, (less than 3% as late as 1780, and the power to call parliament was at the pleasure of the monarch (usually when he or she needed funds). The power of Parliament increased in stages over the succeeding centuries. After the Glorious Revolution of 1688, the English Bill of Rights of 1689 was enacted, which codified certain rights and increased the influence of Parliament. The franchise was slowly increased and Parliament gradually gained more power until the monarch became largely a figurehead. As the franchise was increased, it also was made more uniform, as many so-called rotten boroughs, with a handful of voters electing a Member of Parliament, were eliminated in the Reform Act of 1832.

Democracy was also seen to a certain extent in bands and tribes such as the Iroquois Confederacy. However, in the Iroquois Confederacy only the males of certain clans could be leaders and some clans were excluded. Only the oldest females from the same clans could choose and remove the leaders. This excluded most of the population. An interesting detail is that there should be consensus among the leaders, not majority support decided by voting, when making decisions.

Band societies, such as the Bushmen, which usually number 20-50 people in the band often do not have leaders and make decisions based on consensus among the majority. In Melanesia, farming village communities have traditionally been egalitarian and lacking in a rigid, authoritarian hierarchy. Although a "Big

man" or "Big woman" could gain influence, that influence was conditional on a continued demonstration of leadership skills, and on the willingness of the community. Every person was expected to share in communal duties, and entitled to participate in communal decisions. However, strong social pressure encouraged conformity and discouraged individualism.

18th and 19th centuries

Number of nations 1800–2003 scoring 8 or higher on Polity IV scale, another widely used measure of democracy. Although not described as a democracy by the founding fathers, the United States founders shared a determination to root the American experiment in the principle of natural freedom and equality. The United States Constitution, adopted in 1788, provided for an elected government and protected civil rights and liberties for some.

In the colonial period before 1776, and for some time after, only adult white male property owners could vote; enslaved Africans, free black people and women were not extended the franchise. On the American frontier, democracy became a way of life, with widespread social, economic and political equality. However, slavery was a social and economic institution, particularly in eleven states in the American South, that a variety of organizations were established advocating the movement of black people from the United States to locations where they would enjoy greater freedom and equality.

During the 1820s and 1830s the American Colonization Society (A.C.S.) was the primary vehicle for proposals to return black Americans to freedom in Africa, and in 1821 the A.C.S. established the colony of Liberia, assisting thousands of former African-American slaves and free black people to move there from the United States. By the 1840s almost all property restrictions were ended and nearly all white adult male citizens could vote; and turnout averaged 60–80% in frequent elections for local, state and national officials. The system gradually evolved, from Jeffersonian Democracy to Jackson Ian Democracy and beyond. In the 1860 United States Census the slave population in the United States had grown to four million, and in Reconstruction after the Civil War (late 1860s) the newly freed slaves became citizens with (in the case of men) a nominal right to vote. Full enfranchisement of citizens was not secured until after the African-American Civil Rights Movement (1955–1968) gained passage by the United States Congress of the Voting Rights Act of 1965.

The establishment of universal male suffrage in France in 1848 was an important milestone in the history of democracy. In 1789, Revolutionary France adopted the Declaration of the Rights of Man and of the Citizen and, although short-lived, the National Convention was elected by all males in 1792. Universal male suffrage was definitely established in France in March 1848 in the wake of the French Revolution of 1848. In 1848, several revolutions broke out in Europe as rulers were confronted with

popular demands for liberal constitutions and more democratic government. The Australian colonies became democratic during the mid-19th century, with South Australia being the first government in the world to introduce women's suffrage in 1861. (It was argued that as women would vote the same as their husbands, this essentially gave married men two votes, which was not unreasonable.)

New Zealand granted suffrage to (native) M ori men in 1867, white men in 1879, and women in 1893, thus becoming the first major nation to achieve universal suffrage. However, women were not eligible to stand for parliament until 1919.

Liberal democracies were few and often short-lived before the late 19th century, and various nations and territories have also claimed to be the first with universal suffrage.

20th and 21st centuries

Since World War II, democracy has gained widespread acceptance. This map displays the official self identification made by world governments with regard to democracy, as of March 2008. It shows the *de jure* status of democracy in the world.

20th century transitions to liberal democracy have come in successive "waves of democracy," variously resulting from wars, revolutions, decolonization, religious and economic circumstances. World War I and the dissolution of the Ottoman

and Austro-Hungarian empires resulted in the creation of new nation-states from Europe, most of them at least nominally democratic.

In the 1920s democracy flourished, but the Great Depression brought disenchantment, and most of the countries of Europe, Latin America, and Asia turned to strong-man rule or dictatorships. Fascism and dictatorships flourished in Nazi Germany, Italy, Spain and Portugal, as well as nondemocratic regimes in the Baltics, the Balkans, Brazil, Cuba, China, and Japan, among others.

World War II brought a definitive reversal of this trend in western Europe. The successful democratization of the American, British, and French sectors of occupied Germany (disputed), Austria, Italy, and the occupied Japan served as a model for the later theory of regime change.

However, most of Eastern Europe, including the Soviet sector of Germany was forced into the non-democratic Soviet bloc. The war was followed by decolonization, and again most of the new independent states had nominally democratic constitutions. India emerged as the world's largest democracy and continues to be so.

By 1960, the vast majority of country-states were nominally democracies, although the majority of the world's populations lived in nations that experienced sham elections, and other forms

of subterfuge (particularly in Communist nations and the former colonies.)

This graph shows Freedom House's evaluation of the number of nations in the different categories given above for the period for which there are surveys, 1972–2005

A subsequent wave of democratization brought substantial gains toward true liberal democracy for many nations. Spain, Portugal (1974), and several of the military dictatorships in South America returned to civilian rule in the late 1970s and early 1980s (Argentina in 1983, Bolivia, Uruguay in 1984, Brazil in 1985, and Chile in the early 1990s). This was followed by nations in East and South Asia by the mid-to-late 1980s.

Economic malaise in the 1980s, along with resentment of communist oppression, contributed to the collapse of the Soviet Union, the associated end of the Cold War, and the democratization and liberalization of the former Eastern bloc countries. The most successful of the new democracies were those geographically and culturally closest to western Europe, and they are now members or candidate members of the European Union. Some researchers consider that in contemporary Russia there is no real democracy and one of forms of dictatorship takes place.

The Economist Intelligence Unit's Democracy Index as published in December 2010. The palest blue countries get a score above 9

out of 10 (with Norway being the most democratic country at 9.80), while the black countries score below 3 (with North Korea being the least democratic at 1.08).

The liberal trend spread to some nations in Africa in the 1990s, most prominently in South Africa. Some recent examples of attempts of liberalization include the Indonesian Revolution of 1998, the Bulldozer Revolution in Yugoslavia, the Rose Revolution in Georgia, the Orange Revolution in Ukraine, the Cedar Revolution in Lebanon, and the Tulip Revolution in Kyrgyzstanand the Jasmine Revolution in Tunisia.

According to Freedom House, in 2007 there were 123 electoral democracies (up from 40 in 1972). According to World Forum on Democracy, electoral democracies now represent 120 of the 192 existing countries and constitute 58.2 percent of the world's population. At the same time liberal democracies i.e. countries Freedom House regards as free and respectful of basic human rights and the rule of law are 85 in number and represent 38 percent of the global population.

As such, it has been speculated that this trend may continue in the future to the point where liberal democratic nation-states become the universal standard form of human society. This prediction forms the core of Francis Fukayama's "End of History" controversial theory. These theories are criticized by those who fear an evolution of liberal democracies to post-democracy, and others who point out the high number of illiberal democracies.

Forms

Democracy has taken a number of forms, both in theory and practice. The following kinds are not exclusive of one another: many specify details of aspects that are independent of one another and can co-exist in a single system.

Representative

Representative democracy involves the selection of government officials by the people being represented. If the head of state is also democratically elected then it is called a democratic republic. The most common mechanisms involve election of the candidate with a majority or a plurality of the votes.

Representatives may be elected or become diplomatic representatives by a particular district (or constituency), or represent the entire electorate proportionally proportional systems, with some using a combination of the two. Some representative democracies also incorporate elements of direct democracy, such as referendums. A characteristic of representative democracy is that while the representatives are elected by the people to act in their interest, they retain the freedom to exercise their own judgment as how best to do so.

Parliamentary

Parliamentary democracy is a representative democracy where government is appointed by parliamentary representatives as

opposed to a 'presidential rule' wherein the President is both head of state and the head of government and is elected by the voters. Under a parliamentary democracy, government is exercised by delegation to an executive ministry and subject to ongoing review, checks and balances by the legislative parliament elected by the people.

Liberal

A Liberal democracy is a representative democracy in which the ability of the elected representatives to exercise decision-making power is subject to the rule of law, and usually moderated by a constitution that emphasizes the protection of the rights and freedoms of individuals, and which places constraints on the leaders and on the extent to which the will of the majority can be exercised against the rights of minorities.

Constitutional

Direct democracy is a political system where the citizens participate in the decision-making personally, contrary to relying on intermediaries or representatives. The supporters of direct democracy argue that democracy is more than merely a procedural issue. A direct democracy gives the voting population the power to:

- Change constitutional laws,
- Put forth initiatives, referendums and suggestions for laws,

Give binding orders to elective officials, such as revoking them before the end of their elected term, or initiating a lawsuit for breaking a campaign promise.

Of the three measures mentioned, most operate in developed democracies today. This is part of a gradual shift towards direct democracies. Examples of this include the extensive use of referendums in California with more than 20 million voters, and (i.e., voting). in Switzerland, where five million voters decide on national referendums and initiatives two to four times a year; direct democratic instruments are also well established at the cantonal and communal level. Vermont towns have been known for their yearly town meetings, held every March to decide on local issues. No direct democracy is in existence outside the framework of a different overarching form of government. Most direct democracies to date have been weak forms, relatively small communities, usually city-states. The world is yet to see a large, fundamental, working example of direct democracy as of yet, with most examples being small and weak forms.

Participatory

A Parpolity or Participatory Polity is a theoretical form of democracy that is ruled by a Nested Council structure. The guiding philosophy is that people should have decision making power in proportion to how much they are affected by the decision. Local councils of 25–50 people are completely autonomous on issues that affect only them, and these councils

send delegates to higher level councils who are again autonomous regarding issues that affect only the population affected by that council.

A council court of randomly chosen citizens serves as a check on the tyranny of the majority, and rules on which body gets to vote on which issue. Delegates can vote differently than their sending council might wish, but are mandated to communicate the wishes of their sending council. Delegates are recallable at any time. Referendums are possible at any time via votes of the majority of lower level councils, however, not everything is a referendum as this is most likely a waste of time. A parpolity is meant to work in tandem with a participatory economy.

Socialist

Democracy cannot consist solely of elections that are nearly always fictitious and managed by rich landowners and professional politicians. Socialist thought has several different views on democracy. Social democracy, democratic socialism, and the dictatorship of the proletariat (usually exercised through Soviet democracy) are some examples. Many democratic socialists and social democrats believe in a form of participatory democracy and workplace democracy combined with a representative democracy.

Within Marxist orthodoxy there is a hostility to what is commonly called "liberal democracy", which they simply refer to as

parliamentary democracy because of its often centralized nature. Because of their desire to eliminate the political elitism they see in capitalism, Marxists, Leninists and Trotskyists believe in direct democracy implemented though a system of communes (which are sometimes called soviets). This system ultimately manifests itself as council democracy and begins with workplace democracy.

Anarchist

Anarchists are split in this domain, depending on whether they believe that a majority-rule is tyrannic or not. The only form of democracy considered acceptable to many anarchists is direct democracy. Pierre-Joseph Proudhon argued that the only acceptable form of direct democracy is one in which it is recognized that majority decisions are not binding on the minority, even when unanimous. However, anarcho-communist Murray Bookchin criticized individualist anarchists for opposing democracy, and says "majority rule" is consistent with anarchism.

Some anarcho-communists oppose the majoritarian nature of direct democracy, feeling that it can impede individual liberty and opt in favour of a non-majoritarian form of consensus democracy, similar to Proudhon's position on direct democracy. Henry David Thoreau, who did not self-identify as an anarchist but argued for "a better government" and is cited as an inspiration by some anarchists, argued that people should not be

in the position of ruling others or being ruled when there is no consent.

Iroquois

Iroquois society had a form of participatory democracy and representative democracy. Elizabeth Tooker, a Temple University professor of anthropology and an authority on the culture and history of the Northern Iroquois, has reviewed the claim that the Iroquois inspired the American Confederation and concluded they are myth rather than fact. The relationship between the Iroquois League and the Constitution is based on a portion of a letter written by Benjamin Franklin and a speech by the Iroquois chief Canasatego in 1744. Tooker concluded that the documents only indicate that some groups of Iroquois and white settlers realized the advantages of uniting against a common enemy, and that ultimately there is little evidence to support the idea that 18th century colonists were knowledgeable regarding the Iroquois system of governance. What little evidence there is regarding this system indicates chiefs of different tribes were permitted representation in the Iroquois League council, and this ability to represent the tribe was hereditary. The council itself did not practice representative government, and there were no elections; deceased chiefs' successors were selected by the most senior woman within the hereditary lineage, in consultation with other women in the clan. Decision making occurred through lengthy discussion and decisions were unanimous, with topics discussed being introduced by a single tribe. Tooker concludes that "...there

is virtually no evidence that the framers [of the Constitution] borrowed from the Iroquois" and that the myth that this was the case is the result of exaggerations and misunderstandings of a claim made by Iroquois linguist and ethnographer J.N.B. Hewitt after his death in 1937.

Sortition

Sometimes called "democracy without elections", sortition is the process of choosing decision makers via a random process. The intention is that those chosen will be representative of the opinions and interests of the people at large, and be more fair and impartial than an elected official. The technique was in widespread use in Athenian Democracy and is still used in modern jury selection.

Consensus

Consensus democracy requires varying degrees of consensus rather than just a mere democratic majority. It typically attempts to protect minority rights from domination by majority rule.

Supranational

Qualified majority voting (QMV) is designed by the Treaty of Rome to be the principal method of reaching decisions in the European Council of Ministers. This system allocates votes to member states in part according to their population, but heavily weighted in favour of the smaller states. This might be seen as a form of

representative democracy, but representatives to the Council might be appointed rather than directly elected.

Some might consider the "individuals" being democratically represented to be states rather than people, as with many other international organizations. European Parliament members are democratically directly elected on the basis of universal suffrage, may be seen as an example of a supranational democratic institution.

Cosmopolitan

Cosmopolitan democracy, also known as Global democracy or World Federalism is a political system in which democracy is implemented on a global scale, either directly or through representatives. The supporters of cosmopolitan democracy argue that it is fundamentally different from any form of national or regional democracy, because in a Cosmopolitan Democracy, decisions are made by people influenced by them, while in Regional and National Federal Democracies, decisions often influence people outside the constituency, which by-definition can not vote. In a globalised world, argue the supporters of Cosmopolitan Democracy, any attempt to solve global problems would either be undemocratic or have to implement cosmopolitan democracy. The challenge of cosmopolitan democracy is to apply some of the values and norms of democracy, including the rule of law, the non-violent resolutions of conflicts, and the equality among citizens, also beyond the state. This requires to reform

international organizations, first of all the United Nations, and to create new institutions, such as a World Parliament, which could increase the degree of public control and accountability on international politics.

Cosmopolitan Democracy was promoted, among others, by physicist Albert Einstein, writer Kurt Vonnegut, columnist George Monbiot, and professors David Held and Daniele Archibugi.

Non-governmental

Aside from the public sphere, similar democratic principles and mechanisms of voting and representation have been used to govern other kinds of communities and organizations.

Many non-governmental organizations decide policy and leadership by voting.

Most trade unions choose their leadership through democratic elections.

Cooperatives are enterprises owned and democratically controlled by their customers or workers.

Theory

Aristotle contrasted rule by the many (democracy/polity), with rule by the few (oligarchy/aristocracy), and with rule by a single

person (tyranny or today autocracy/monarchy). He also thought that there was a good and a bad variant of each system (he considered democracy to be the degenerate counterpart to polity).

For Aristotle the underlying principle of democracy is freedom, since only in a democracy the citizens can have a share in freedom. In essence, he argues that this is what every democracy should make its aim. There are two main aspects of freedom: being ruled and ruling in turn, since everyone is equal according to number, not merit, and to be able to live as one pleases.

Now a fundamental principle of the democratic form of constitution is liberty—that is what is usually asserted, implying that only under this constitution do men participate in liberty, for they assert this as the aim of every democracy. But one factor of liberty is to govern and be governed in turn; for the popular principle of justice is to have equality according to number, not worth, and if this is the principle of justice prevailing, the multitude must of necessity be sovereign and the decision of the majority must be final and must constitute justice, for they say that each of the citizens ought to have an equal share; so that it results that in democracies the poor are more powerful than the rich, because there are more of them and whatever is decided by the majority is sovereign. This then is one mark of liberty which all democrats set down as a principle of the constitution. And one is for a man to live as he likes; for they say that this is the function of liberty, inasmuch as to live not as one likes is the life

of a man that is a slave. This is the second principle of democracy, and from it has come the claim not to be governed, preferably not by anybody, or failing that, to govern and be governed in turns; and this is the way in which the second principle contributes to equalitarian liberty.

Conceptions

Among political theorists, there are many contending conceptions of democracy.

Aggregative democracy uses democratic processes to solicit citizens' preferences and then aggregate them together to determine what social policies society should adopt. Therefore, proponents of this view hold that democratic participation should primarily focus on voting, where the policy with the most votes gets implemented. There are different variants of this:

Under *minimalism*, democracy is a system of government in which citizens give teams of political leaders the right to rule in periodic elections. According to this minimalist conception, citizens cannot and should not "rule" because, for example, on most issues, most of the time, they have no clear views or their views are not well-founded. Joseph Schumpeter articulated this view most famously in his book *Capitalism, Socialism, and Democracy*. Contemporary proponents of minimalism include William H. Riker, Adam Przeworski, Richard Posner.

Direct democracy, on the other hand, holds that citizens should participate directly, not through their representatives, in making laws and policies. Proponents of direct democracy offer varied reasons to support this view. Political activity can be valuable in itself, it socializes and educates citizens, and popular participation can check powerful elites. Most importantly, citizens do not really rule themselves unless they directly decide laws and policies.

Governments will tend to produce laws and policies that are close to the views of the median voter – with half to his left and the other half to his right. This is not actually a desirable outcome as it represents the action of self-interested and somewhat unaccountable political elites competing for votes. Downs suggests that ideological political parties are necessary to act as a mediating broker between individual and governments. Anthony Downs laid out this view in his 1957 book *An Economic Theory of Democracy*.

Robert A. Dahl argues that the fundamental democratic principle is that, when it comes to binding collective decisions, each person in a political community is entitled to have his/her interests be given equal consideration (not necessarily that all people are equally satisfied by the collective decision). He uses the term polyarchy to refer to societies in which there exists a certain set of institutions and procedures which are perceived as leading to such democracy. First and foremost among these

institutions is the regular occurrence of free and open elections which are used to select representatives who then manage all or most of the public policy of the society. However, these polyarchic procedures may not create a full democracy if, for example, poverty prevents political participation. Some see a problem with the wealthy having more influence and therefore argue for reforms like campaign finance reform. Some may see it as a problem that the majority of the voters decide policy, as opposed to majority rule of the entire population. This can be used as an argument for making political participation mandatory, like compulsory voting or for making it more patient (non-compulsory) by simply refusing power to the government until the full majority feels inclined to speak their minds.

Deliberative democracy is based on the notion that democracy is government by discussion. Deliberative democrats contend that laws and policies should be based upon reasons that all citizens can accept.

The political arena should be one in which leaders and citizens make arguments, listen, and change their minds.

Radical democracy is based on the idea that there are hierarchical and oppressive power relations that exist in society. Democracy's role is to make visible and challenge those relations by allowing for difference, dissent and antagonisms in decision making processes.

Republic

In contemporary usage, the term *democracy* refers to a government chosen by the people, whether it is direct or representative. The term *republic* has many different meanings, but today often refers to a representative democracy with an elected head of state, such as a president, serving for a limited term, in contrast to states with a hereditary monarch as a head of state, even if these states also are representative democracies with an elected or appointed head of government such as a prime minister.

The Founding Fathers of the United States rarely praised and often criticized democracy, which in their time tended to specifically mean direct democracy; James Madison argued, especially in *The Federalist* No. 10, that what distinguished a *democracy* from a *republic* was that the former became weaker as it got larger and suffered more violently from the effects of faction, whereas a republic could get stronger as it got larger and combats faction by its very structure.

What was critical to American values, John Adams insisted, was that the government be "bound by fixed laws, which the people have a voice in making, and a right to defend." As Benjamin Franklin was exiting after writing the U.S. constitution, a woman asked him "Well, Doctor, what have we got—a republic or a monarchy?". He replied "A republic—if you can keep it.

Constitutional monarchs and upper chambers

Initially after the American and French revolutions the question was open whether a democracy, in order to restrain unchecked majority rule, should have an elitist upper chamber, the members perhaps appointed meritorious experts or having lifetime tenures, or should have a constitutional monarch with limited but real powers. Some countries (as Britain, the Netherlands, Belgium, Scandinavian countries, Thailand, Japan and Bhutan) turned powerful monarchs into constitutional monarchs with limited or, often gradually, merely symbolic roles.

Often the monarchy was abolished along with the aristocratic system (as in France, China, Russia, Germany, Austria, Hungary, Italy, Greece and Egypt). Many nations had elite upper houses of legislatures which often had lifetime tenure, but eventually these lost power (as in Britain) or else became elective and remained powerful (as in the United States).

Development Of Democracy

Several philosophers and researchers outlined historical and social factors supporting the evolution of democracy. *Cultural factors* like *Protestantism* influenced the development of democracy, rule of law, human rights and political liberty (the faithful elected priests, religious freedom and tolerance has been practiced). Others mentioned the influence of *wealth*. In a related theory, Ronald Inglehart suggests that the increase in living

standards has convinced people that they can take their basic survival for granted, and led to increased emphasis on self-expression values, which is highly correlated to democracy.

Recently established theories stress the relevance of *education* and *human capital* and within them of *cognitive ability*. They increase tolerance, rationality, political literacy and participation. Two effects of education and cognitive ability are distinguished: a cognitive effect (competence to make rational choices, better information processing) and an ethical effect (support of democratic values, freedom, human rights etc.), which itself depends on intelligence.

Evidence that is consistent with conventional theories of why democracy emerges and is sustained has been hard to come by. Recent statistical analyses have challenged modernization theory by demonstrating that there is no reliable evidence for the claim that democracy is more likely to emerge when countries become wealthier, more educated, or less unequal. Neither is there convincing evidence that increased reliance on oil revenues prevents democratization, despite a vast theoretical literature called "The Resource Curse" that asserts that oil revenues sever the link between citizen taxation and government accountability, the key to representative democracy. The lack of evidence for these conventional theories of democratization have led researchers to search for the "deep" determinants of

contemporary political institutions, be they geographical or demographic.

Facts

In practice it may not pay the incumbents to conduct fair elections in countries that have no history of democracy. A study showed that incumbents who rig elections stay in office 2.5 times as long as those who permit fair elections. Above $2,700 per capita democracies have been found to be less prone to violence, but below that threshold, more violence. The same study shows that election misconduct is more likely in countries with low per capita incomes, small populations, rich in natural resources, and a lack of institutional checks and balances. Sub-Saharan countries, as well as Afghanistan, all tend to fall into that category.

Governments that have frequent elections averaged over the political cycle have significantly better economic policies than those who don't. This does not apply to governments with fraudulent elections, however.

Opposition to democracy

This map shows the data presented in the Polity data series report as of 2003. The light color represent countries with more democratic governments, while the dark color represent countries with less democratic characteristics. Democracy in modern times has almost always faced opposition from the existing government.

The implementation of a democratic government within a non-democratic state is typically brought about by democratic revolution. Monarchy had traditionally been opposed to democracy, and to this day remains opposed to its abolition, although often political compromise has been reached in the form of shared government.

Currently, opposition to democracy exists most notably in communist states, and absolute monarchies which appear to have various reasons for opposing the implementation of democracy or democratic reforms.

Chapter 2

Criticism of Political Institutions and Political Instability

Public Administration

Economists since Milton Friedman have strongly criticized the efficiency of democracy. They base this on their premise of the irrational voter. Their argument is that voters are highly uninformed about many political issues, especially relating to economics, and have a strong bias about the few issues on which they are fairly knowledgeable.

Plato's *The Republic* presents a critical view of democracy through the narration of Socrates: "Democracy, which is a charming form of government, full of variety and disorder, and dispensing a sort of equality to equals and unequaled alike." In his work, Plato lists 5 forms of government from best to worst. Assuming that *the Republic* was intended to be a serious critique of the political thought in Athens, Plato argues that only Kallipolis, an aristocracy led by the unwilling philosopher-kings (the wisest men) is a just form of government.

More recently, democracy is criticised for not offering enough political stability. As governments are frequently elected on and off there tends to be frequent changes in the policies of

democratic countries both domestically and internationally. Even if a political party maintains power, vociferous, headline grabbing protests and harsh criticism from the mass media are often enough to force sudden, unexpected political change. Frequent policy changes with regard to business and immigration are likely to deter investment and so hinder economic growth. For this reason, many people have put forward the idea that democracy is undesirable for a developing country in which economic growth and the reduction of poverty are top priority.

This opportunist alliance not only has the handicap of having to cater to too many ideologically opposing factions, but it is usually short lived since any perceived or actual imbalance in the treatment of coalition partners, or changes to leadership in the coalition partners themselves, can very easily result in the coalition partner withdrawing its support from the government.

Popular rule as a façade

The 20th Century Italian thinkers Vilfredo Pareto and Gaetano Mosca (independently) argued that democracy was illusory, and served only to mask the reality of elite rule. Indeed, they argued that elite oligarchy is the unbendable law of human nature, due largely to the apathy and division of the masses (as opposed to the drive, initiative and unity of the elites), and that democratic institutions would do no more than shift the exercise of power from oppression to manipulation.

Democracy is much broader than a special political form, a method of conducting government,

of making laws and carrying on governmental administration by means of popular suffrage and elected officers. It is that, of course. But it is something broader and deeper than that The political and governmental phase of democracy is a means, the best means so far found, for realizing ends that lie in the wide domain of human relationships and the development of human personality. It is, as we often say, though perhaps without appreciating all that is involved in the saying, a way of life, social and individual. The key-note of democracy as a way of life may be expressed, it seems to me, as the necessity for the participation of every mature human being in formation of the values that regulate the living of men together: which is necessary from the standpoint of both the general social welfare and the full development of human beings as individuals.

Universal suffrage, recurring elections, responsibility of those who are in political power to the voters, and the other factors of democratic government are means that have been found expedient for realizing democracy as the truly human way of living. They are not a final end and a final value. They are to be judged on the basis of their contribution to end. It is a form of idolatry to erect means into the end which they serve. Democratic political forms are simply the best means that human wit has devised up to a special time in history. But they rest back upon

the idea that no man or limited set of men is wise enough or good enough to rule others without their consent; the positive meaning of this statement is that all those who are affected by social institutions must have a share in producing and managing them. The two facts that each one is influenced in what he does and enjoys and in what he becomes by the institutions under which he lives, and that therefore he shall have, in a democracy, a voice in shaping them, are the passive and active sides of the same fact.

The development of political democracy came about through substitution of the method of mutual consultation and voluntary agreement for the method of subordination of the many to the few enforced from above. Social arrangements which involve fixed subordination are maintained by coercion. The coercion need not be physical. There have existed, for short periods, benevolent despotisms. But coercion of some sort there has been; perhaps economic, certainly psychological and moral. The very fact of exclusion from participation is a subtle form of suppression. It gives individuals no opportunity to reflect and decide upon what is good for them. Others who are supposed to be wiser and who in any case have more power decide the question for them and also decide the methods and means by which subjects may arrive at the enjoyment of what is good for them. This form of coercion and suppression is more subtle and more effective than is overt intimidation and restraint. When it is habitual and embodied in social institutions, it seems the normal and natural state of

affairs. The masses usually become unaware that they have a claim to a development of their own powers. Their experience is so restricted that they are not conscious of restriction. It is part of the democratic conception that they as individuals are not the only sufferers, but that the whole social body is deprived of the potential resources that should be at its service. The individuals of the submerged mass may not be very wise. But there is one thing they are wiser about than anybody else can be, and that is where the shoe pinches, the troubles they suffer from.

The foundation of democracy is faith in the capacities of human nature; faith in human intelligence and in the power of pooled and cooperative experience. It is not belief that these things are complete but that if given a show they will grow and be able to generate progressively the knowledge and wisdom needed to guide collective action. Every autocratic and authoritarian scheme of social action rests on a belief that the needed intelligence is confined to a superior few, who because of inherent natural gifts are endowed with the ability and the right to control the conduct of others; laying down principles and rules and directing the ways in which they are carried out. It would be foolish to deny that much can be said for this point of view. It is that which controlled human relations in social groups for much the greater part of human history.

The democratic faith has emerged very, very recently in the history of mankind. Even where democracies now exist, men's

minds and feelings are still permeated with ideas about leadership imposed from above, ideas that developed in the long early history of mankind. After democratic political institutions were nominally established, beliefs and ways of looking at life and of acting that originated when men and women were externally controlled and subjected to arbitrary power persisted in the family, the church, business and the school, and experience shows that as long as they persist there, political democracy is not secure.

Belief in equality is an element of the democratic credo. It is not, however, belief in equality of natural endowments. Those who proclaimed the idea of equality did not suppose they were enunciating a psychological doctrine, but a legal and political one. All individuals are entitled to equality of treatment by law and in its administration. Each one is affected equally in quality if not in quantity by the institutions under which he lives and has an equal right to express his judgment, although the weight of his judgment may not be equal in amount when it enters into the pooled result to that of others. In short, each one is equally an individual and entitled to equal opportunity of development of his own capacities, be they large or small in range. Moreover, each has needs of his own, as significant to him as those of others are to them. The very fact of natural and psychological inequality is all the more reason for establishment by law of equality of opportunity, since otherwise the former becomes a means of oppression of the less gifted.

While what we call intelligence be distributed in unequal amounts, it is the democratic faith that it is sufficiently general so that each individual has something to contribute, whose value can be assessed only as enters into the final pooled intelligence constituted by the contributions of all. Every authoritarian scheme, on the contrary, assumes that its value may be assessed by some prior principle, if not of family and birth or race and color or possession of material wealth, then by the position and rank a person occupies in the existing social scheme. The democratic faith in equality is the faith that each individual shall have the chance and opportunity to contribute whatever he is capable of contributing and that the value of his contribution be decided by its place and function in the organized total of similar contributions, not on the basis of prior status of any kind whatever.

It has been emphasized in what precedes the importance of the effective release of intelligence in connection with personal experience in the democratic way of living. It has been done so purposely

because democracy is so often and so naturally associated in our minds with freedom of action,

forgetting the importance of freed intelligence which is necessary to direct and to warrant freedom of action. Unless freedom of individual action has intelligence and informed conviction back of it, its manifestation is almost sure to result in confusion and

disorder. The democratic idea of freedom is not the right of each individual to do as he pleases/ even if it be qualified by adding "provided he does not interfere with the same freedom on the part of others." While the idea is not always, not often enough, expressed in words, the basic freedom is that of freedom of mind and of whatever degree of freedom of action and experience is necessary to produce freedom of intelligence. The modes of freedom guaranteed in the Bill of Rights are all of this nature: Freedom of belief and conscience, of expression of opinion, of assembly for discussion and conference, of the press as an organ of communication. They are guaranteed because without them individuals are not free to develop and society is deprived of what they might contribute. It is a disputed question of theory and practice just how far a democratic political government should go in control of the conditions of action within special groups. At the present time, for example, there are those who think the federal and state governments leave too much freedom of independent action to industrial and financial groups, and there are others who think the government is going altogether too far at the present time. It does not need to discuss this phase of the problem, much less to try to settle it. But it must be pointed out that if the methods of regulation and administration in vogue in the conduct of secondary social groups are nondemocratic, whether directly or indirectly or both, there is bound to be unfavorable reaction back into the habits of feeling, thought and action of citizenship in the broadest sense of that word.

The way in which any organized social interest is controlled necessarily plays an important part in forming the dispositions and tastes, the attitudes, interests, purposes and desires, of those engaged in carrying on the activities of the group. For illustration, It does not need to do more than point to the moral, emotional and intellectual effect upon both employers and laborers of the existing industrial system. Just what the effects specifically are is a matter about which we know very little. But It is supposed that everyone who reflects upon the subject admits that it is impossible that the ways in which activities are carried on for the greater part of the waking hours of the day; and the way in which the share of individuals are involved in the management of affairs in such a matter as gaining a livelihood and attaining material and social security, can not but be a highly important factor in shaping personal dispositions; in short/ forming character and intelligence.

In the broad and final sense all institutions are educational in the sense that they operate to form the attitudes, dispositions, abilities and disabilities that constitute a concrete personality. The principle applies with special force to the school. For it is the main business of the family and the school to influence directly the formation and growth of attitudes and dispositions, emotional, intellectual and moral. Whether this educative process is carried on in a predominantly democratic or non-democratic way becomes, therefore, a question of transcendent importance not only for education itself but for its final effect upon all the

interests and activities of a society that is committed to the democratic way of life.

There are certain corollaries which clarify the meaning of the issue. Absence of participation tends to produce lack of interest and concern on the part of those shut out. The result is a corresponding lack of effective responsibility. Automatically and unconsciously, if not consciously, the feeling develops, "This is none of our affair; it is the business of those at the top;

- let that particular set of Georges do what needs to be done." The countries in which autocratic
- government prevails are just those in which there is least public spirit and the greatest
- indifference to matters of general as distinct from personal concern.
- Where there is little power, there is correspondingly little sense of positive responsibility. It is
- enough to do what one is told to do sufficiently well to escape flagrant unfavorable notice. About
- larger matters, a spirit of passivity is engendered. In some cases, indifference passes into evasion
- of duties when not directly under the eye of a supervisor; in other cases, a carping, rebellious
- spirit is engendered.... Habitual exclusion has the effect of reducing a sense of responsibility

- for what is done and its consequences. What the argument for democracy implies is that the best
- way to produce initiative and constructive power is to exercise it. Power, as well as interest,
- comes by use and practice. It is also true that incapacity to assume the responsibilities
- involved in having a voice in shaping policies is bred and increased by conditions in which that
- responsibility is denied. It is supposed there has never been an autocrat, big or little, who did not
- justify his conduct on the ground of the unfitness of his subjects to take part in government.
- It can be concluded by saying that the present subject is one of peculiar importance at the present time.
- The fundamental beliefs and practices of democracy are now challenged as they never have been
- before. In some nations they are more than challenged. They are ruthlessly and systematically
- destroyed. Everywhere there are waves of criticism and doubt as to whether democracy can meet
- pressing problems of order and security. The causes for the destruction of political democracy in
- countries where it was nominally established are complex. But of one thing It is thought we may be
- sure. Wherever it has fallen it was too exclusively political in nature. It had not become part of

- the bone and blood of the people in daily conduct of its life. Democratic forms were limited to

Parliament, elections and combats between parties. What is happening proves conclusively, unless democratic habits of thought and action are part of the fiber of a people, political democracy is insecure. It can not stand in isolation. It must be buttressed by the presence of democratic methods in all social relationships. The relations that exist in educational institutions are second only in importance in this respect to those which exist in industry and business, perhaps not even to them.

Public administration is both an academic discipline and a field of practice. It houses the implementation of government policy and an academic discipline that studies this implementation and that prepares civil servants for this work. As a "field of inquiry with a diverse scope" its "fundamental goal... is to advance management and policies so that government can function." Some of the various definitions which have been offered for the term are: "the management of public programs"; the "translation of politics into the reality that citizens see every day"; and "the study of government decision making, the analysis of the policies themselves, the various inputs that have produced them, and the inputs necessary to produce alternative policies."

Public administration is "centrally concerned with the organization of government policies and programmes as well as the behavior of officials (usually non-elected) formally

responsible for their conduct" Many unelected public servants can be considered to be public administrators, including police officers, municipal budget analysts, HR benefits administrators, city managers, Census analysts, and cabinet secretaries. Template:Kettl, D.F. and Fesler, J.W.. 'The politics of the administrative process.' Washington, D.C.: CQ Press. Public administrators are public servants working in public departments and agencies, at all levels of government.

In the US, civil servants and academics such as Woodrow Wilson promoted American civil service reform in the 1880s, moving public administration into academia. However, "until the mid-20th century and the dissemination of the German sociologist Max Weber's theory of bureaucracy" there was not "much interest in a theory of public administration." The field is multidisciplinary in character; one of the various proposals for public administration's sub-fields sets out five pillars, including human resources, organizational theory, policy analysis and statistics, budgeting, and ethics.

Definitions

Even in the digital age, public servants tend to work with both paper documents and computer. One scholar claims that "public administration has no generally accepted definition", because the "scope of the subject is so great and so debatable that it is easier to explain than define". Public administration is a field of study (i.e., a discipline) and an occupation. There is much

disagreement about whether the study of public administration can properly be called a discipline, largely because of the debate over whether public administration is a subfield of political science of a subfield of administrative science". Scholar Donald Kettl is among those who view public administration "as a subfield within political science".

The North American Industry Classification System definition of the Public Administration sector states that public administration "... comprises establishments primarily engaged in activities of a governmental nature, that is, the enactment and judicial interpretation of laws and their pursuant regulations, and the administration of programs based on them". This includes "Legislative activities, taxation, national defence, public order and safety, immigration services, foreign affairs and international assistance, and the administration of government programs are activities that are purely governmental in nature".

Antiquity to the 19th century

Dating back to Antiquity, Pharaohs, kings and emperors have required pages, treasurers, and tax collectors to administer the practical business of government. Prior to the 19th century, staffing of most public administrations was rife with nepotism, favoritism, and political patronage, which was often referred to as a "spoils system". Public administrators have been the "eyes and ears" of rulers until relatively recently. In medieval times, the abilities to read and write, add and subtract were as dominated

by the educated elite as public employment. Consequently, the need for expert civil servants whose ability to read and write formed the basis for developing expertise in such necessary activities as legal record-keeping, paying and feeding armies and levying taxes. As the European Imperialist age progressed and the militarily powers extended their hold over other continents and people, the need for a sophisticated public administration grew.

The eighteenth-century noble, King Frederick William I of Prussia, created professorates in Cameralism in an effort to train a new class of public administrators. The universities of Frankfurt an der Oder and University of Hallewere Prussian institutions emphasizing economic and social disciplines, with the goal of societal reform. Johann Heinrich Gottlob Justi was the most well-known professor of Cameralism. Thus, from a Western European perspective, Classic, Medieval, and Enlightenment-era scholars formed the foundation of the discipline that has come to be called public administration.

Lorenz von Stein, an 1855 German professor from Vienna, is considered the founder of the science of public administration in many parts of the world. In the time of Von Stein, public administration was considered a form of administrative law, but Von Stein believed this concept too restrictive. Von Stein taught that public administration relies on many prestablished disciplines such as sociology, political science, administrative

law and public finance. He called public administration an integrating science, and stated that public administrators should be concerned with both theory and practice. He argued that public administration is a science because knowledge is generated and evaluated according to the scientific method.

Modern American public administration is an extension of democratic governance, justified by classic and liberal philosophers of the western world ranging from Aristotle to John Locke to Thomas Jefferson

In the United States of America, Woodrow Wilson is considered the father of public administration. He first formally recognized public administration in an 1887 article entitled "The Study of Administration." The future president wrote that "it is the object of administrative study to discover, first, what government can properly and successfully do, and, secondly, how it can do these proper things with the utmost possible efficiency and at the least possible cost either of money or of energy." Wilson was more influential to the science of public administration than Von Stein, primarily due to an article Wilson wrote in 1887 in which he advocated four concepts:

- Separation of politics and administration
- Comparative analysis of political and private organizations

Improving efficiency with business-like practices and attitudes toward daily operations Improving the effectiveness of public service through management and by training civil servants, merit-based assessment The separation of politics and administration has been the subject of lasting debate. The different perspectives regarding this dichotomy contribute to differentiating characteristics of the suggested generations of public administration.

US in the 1940s

The separation of politics and administration advocated by Wilson continues to play a significant role in public administration today. However, the dominance of this dichotomy was challenged by second generation scholars, beginning in the 1940s. Luther Gulick's fact-value dichotomy was a key contender for Wilson's proposed politics-administration dichotomy. In place of Wilson's first generation split, Gulick advocated a "seamless web of discretion and interaction".

Luther Gulick and Lyndall Urwick are two second-generation scholars. Gulick, Urwick, and the new generation of administrators built on the work of contemporary behavioral, administrative, and organizational scholars including Henri Fayol, Fredrick Winslow Taylor, Paul Appleby, Frank Goodnow, and Willam Willoughby. The new generation of organizational theories no longer relied upon logical assumptions and

generalizations about human nature like classical and enlightened theorists.

Gulick developed a comprehensive, generic theory of organization that emphasized the scientific method, efficiency, professionalism, structural reform, and executive control. Gulick summarized the duties of administrators with an acronym; POSDCORB, which stands for planning, organizing, staffing, directing, coordinating, reporting, and budgeting. Fayol developed a systematic, 14-point, treatment of private management. Second-generation theorists drew upon private management practices for administrative sciences. A single, generic management theory bleeding the borders between the private and the public sector was thought to be possible. With the general theory, the administrative theory could be focused on governmental organizations.

Post-World War II to the 1970s

The mid-1940s theorists challenged Wilson and Gulick. The politics-administration dichotomy remained the center of criticism. In the 1960s and 1970s, government itself came under fire as ineffective, inefficient, and largely a wasted effort. The costly American intervention in Vietnam along with domestic scandals including the bugging of Democratic party headquarters (the 1974 Watergate scandal) are two examples of self-destructive government behavior that alienated citizens. There was a call by citizens for efficient administration to replace ineffective,

wasteful bureaucracy. Public administration would have to distance itself from politics to answer this call and remain effective. Elected officials supported these reforms. The Hoover Commission, chaired by University of Chicago professor Louis Brownlow, to examine reorganization of government. Brownlow subsequently founded the Public Administration Service (PAS) at the university, an organization which has provided consulting services to all levels of government until the 1970s.

1980s–1990s

In the late 1980s, yet another generation of public administration theorists began to displace the last. The new theory, which came to be called New Public Management, was proposed by David Osborne and Ted Gaebler in their book *Reinventing Government*. The new model advocated the use of private sector-style models, organizational ideas and values to improve the efficiency and service-orientation of the public sector. During the Clinton Administration (1993–2001), Vice President Al Gore adopted and reformed federal agencies using NPM approaches. In the 1990s, new public management became prevalent throughout the bureaucracies of the US, the UK and, to a lesser extent, in Canada.

Some modern authors define NPM as a combination of splitting large bureaucracies into smaller, more fragmented agencies, encouraging competition between different public agencies, and encouraging competition between public agencies and private

firms and using economic incentives lines (e.g., performance pay for senior executives or user-pay models). NPM treats individuals as "customers" or "clients" (in the private sector sense), rather than as citizens.

Some critics argue that the New Public Management concept of treating people as "customers" rather than "citizens" is an inappropriate borrowing from the private sector model, because businesses see customers are a means to an end (profit), rather than as the proprietors of government (the owners), opposed to merely the customers of a business (the patrons). In New Public Management, people are viewed as economic units not democratic participants. Nevertheless, the model is still widely accepted at all levels of government and in many OECD nations.

Late 1990s–2000s

In the late 1990s, Janet and Robert Denhardt proposed a new public service model in response to the dominance of NPM. A successor to NPM is digital era governance, focusing on themes of reintegrating government responsibilities, needs-based holism (executing duties in cursive ways), and digitalization (exploiting the transformational capabilities of modern IT and digital storage).One example of this is openforum.com.au, an Australian non-for-profit eDemocracy project which invites politicians, senior public servants, academics, business people and other key stakeholders to engage in high-level policy debate.

Another new public service model is what has been called New Public Governance, an approach which includes a centralization of power; an increased number, role and influence of partisan-political staff; personal-politicization of appointments to the senior public service; and, the assumption that the public service is promiscuously partisan for the government of the day

Core branches

In academia, the fields of public administration, consists of a number of sub-fields. Scholars have proposed a number of different sets of sub-fields. One of the proposed models uses five "pillars":

- Human resource management is an in-house structure that ensures that public service staffing is done in an unbiased, ethical and values-based manner. The basic functions of the HR system are employee benefits, employee health care, compensation, etc.
- Organizational Theory in Public Administration is the study of the structure of governmental entities and the many particulars inculcated in them.
- Ethics in public administration serves as a normative approach to decision making.
- Policy analysis serves as an empirical approach to decision making.

- Public budgeting is the activity within a government that seeks to allocate scarce resources among unlimited demands.

Decision-making models

Given the array of duties public administrators find themselves performing, the professional administrator might refer to a theoretical framework from which he or she might work. Indeed, many public and private administrative scholars have devised and modified decision-making models.

Niskanen's budget-maximizing

In 1971, Professor William Niskanen proposed a rational choice variation which he called the "budget-maximizing model". He claimed that rational bureaucrats will universally seek to increase the budgets of their units (to enhance their stature), thereby contributing to state growth and increased public expenditure. Niskanen served on President Reagan's Council of Economic Advisors; his model underpinned what has been touted as curtailed public spending and increased privatization. However, budgeted expenditures and the growing deficit during the Reagan administration is evidence of a different reality. A range of pluralist authors have critiqued Niskanen's universalist approach. These scholars have argued that officials tend also to be motivated by considerations of the public interest.

Dunleavy's bureau-shaping

The bureau-shaping model, a modification of Niskanen, holds that rational bureaucrats only maximize the part of their budget that they spend on their own agency's operations or give to contractors and interest groups. Groups that are able to organize a "flowback" of benefits to senior officials would, according to this theory, receive increased budgetary attention. For instance, rational officials will get no benefit from paying out larger welfare checks to millions of low-income citizens because this does not serve a bureaucrats' goals. Accordingly, one might instead expect a jurisdiction to seek budget increases for defense and security purposes in place programming. If we refer back to Reagan once again, Dunleavy's bureau shaping model accounts for the alleged decrease in the "size" of government while spending did not, in fact, decrease. Domestic entitlement programming was financially de-emphasized for military research and personnel.

As an academic field

In the academic field of public administration draws heavily on political science and administrative law. Some MPA programs include economics courses to give students a background in microeconomic issues (markets, rationing mechanisms, etc) and macroeconomic issues (e.g., national debt). Scholars such as John A. Rohr write of a long history behind the constitutional legitimacy of government bureaucracy. In Europe (notably in Britain and Germany), the divergence of the field from other

disciplines can be traced to the 1720s continental university curriculum. Formally, official academic distinctions were made in the 1910s and 1890s, respectively.

The goals of the field of public administration are related to the democratic values of improving equality, justice, security, efficiency, effectiveness of public services usually in a non-profit, non-taxable venue; business administration, on the other hand, is primarily concerned with taxable profit. For a field built on concepts (accountability, governance, decentralization, clientele), these concepts are often ill-defined and typologies often ignore certain aspects of these concepts.

One minor tradition that the more specific term "public management" refers to ordinary, routine or typical management concerns, in the context of achieving public good. Others argue that "public management" refers to a newer, market-driven perspective on the operation of government. This latter view is often called "new public management" by its advocates. New Public Management represents a reform attempt, aimed at reemphasizing the professional nature of the field. This will replace the academic, moral or disciplinary emphasis. Some theorists advocate a bright line differentiation of the professional field from related academic disciplines like political science and sociology; it remains interdisciplinary in nature.

One public administration scholar, Donald Kettl, argues that "...public administration sits in a disciplinary backwater",

because "...[f]or the last generation, scholars have sought to save or replace it with fields of study like implementation, public management, and formal bureaucratic theory". Kettl states that "public administration, as a subfield within political science...is struggling to define its role within the discipline". He notes two problems with public administration: it "has seemed methodologically to lag behind" and "the field's theoretical work too often seems not to define it"-indeed, "some of the most interesting recent ideas in public administration have come from outside the field".

Public administration theory is the domain in which discussions of the meaning and purpose of government, the role of bureaucracy in supporting democratic governments, budgets, governance, and public affairs takes place. In recent years, public administration theory has periodically connoted a heavy orientation toward critical theory and postmodern philosophical notions of government, governance, and power. However, many public administration scholars support a classic definition of the term emphasizing constitutionality, public service, bureaucratic forms of organization, and hierarchical government.

Comparative Public Administration

Comparative public administration is defined as the study of administrative systems in a comparative fashion or the study of public administration in other countries. Another definition for "comparative public administration" is the "quest for patterns

and regularities in administrative action and behavior". There have been several issues which have hampered the development of comparative public administration, including: the major differences between Western countries and developing countries; the lack of curriculum on this subfield in public administration programs; and the lack of success in developing theoretical models which can be scientifically tested.

Comparative public administration studies can compare different types of states at the same time, such as religious states vs. secular states or authoritarian states vs. democratic states. Even though public administration systems vary a great deal, there are some common elements which they all share which can be compared, such as the recruitment of bureaucrats and common programs which all governments have (e.g., a taxation regime) and common roles (e.g., rule-making).

Notable scholars

Notable scholars of public administration have come from a range of fields. In the period before public administration existed as its own independent discipline, scholars contributing to the field came from economics, sociology, management, political science, administrative law, and, other related fields.

More recently, scholars from public administration and public policy have contributed important studies and theories.

International public administration

There are several organizations that are active. The oldest is the International Association of Schools and Institutes of Administration (IASIA). Based in Brussels, Belgium, IASIA is an association of organizations and individuals whose activities and interests focus on public administration and management. The activities of its members include education and training of administrators and managers. It is the only worldwide scholarly association in the field of public management. Also the International Committee of the US-based National Association of School of Public Affairs and Administration (NASPAA) has developed a number of relationships around the world. They include sub regional and National forums like CLAD, INPAE and NISPAcee, APSA, ASPA.

The Center for Latin American Administration for Development (CLAD), based in Caracas, Venezuela, this regional network of schools of public administration set up by the governments in Latin America is the oldest in the region. The Institute is a founding member and played a central role in organizing the Inter-American Network of Public Administration Education (INPAE). Created in 2000, this regional network of schools is unique in that it is the only organization to be composed of institutions from North and Latin America and the Caribbean working in public administration and policy analysis. It has more than 49 members from top research schools in various countries throughout the hemisphere.

NISPAcee is a network of experts, scholars and practitioners who work in the field of public administration in Central and Eastern Europe, including the Russian Federation and the Caucasus and Central Asia. The US public administration and political science associations like NASPA, American Political Science Association (APSA) and American Society of Public Administration (ASPA). These organizations have helped to create the fundamental establishment of modern public administration.

Bureaucracy and Democracy

As American public administration theory and practice began developing, the Progressives were faced with their first challenge. They had to find a way to make the modern administrative state strong enough without risking the democracy in which it operates. The two principles they applied were hierarchy and authority. The application of these two principles would promote efficiency and accountability. It ultimately would remove administration from the political corruption and safely settle the conflict of reconciling bureaucracy and democracy and structure the work within clear boundaries. By the 1960s, and despite its several problems, the prevailing approach used by traditional public administration proved to be still working. However, political scientists rejected its premises and were searching for their own solution for the dilemma-- how could the unquestionable power of bureaucracy be reconciled with accountability? In other terms, how could bureaucracy and

democracy be in good terms without compromises? To answer this first question they reached out for formal theories and theoretical perspectives that applied economics principles-- such as transaction costs and principal agent theories.

This newly introduced approach to the study of bureaucracy and its relation to bureaucratic and political institutions had a significant impact on both fields' theoretical development and on the course of the relationship between the two disciplines. It not only provided answers to the theoretical problems that had long plagued the field of public administration, but it also provided both clear analysis and strong predictions that could be empirically tested. This approach and its related methodologies drove public administrationists out of political science into public policy and public administration schools. On the other hand, most public administrationists, having had little training in applied calculus and formal models, chose to remain in the traditional public administration home.

The fundamental precepts of American political science--the self-evident worth of democracy, a pluralistic polity, political participation, and equality under law are examples of these precepts—"continued to hold sway among even the most independently minded public administrationists". The influence of "democratic progress" on public administration is another trend worth considering in this study. Democracy, as a theory of government and a way of life, has the effect of "subjugating and

instrumentalizing public institutions". Cook further argued that this enhancement of the representative character of government action was meant to reshape the administrative power embedded in bureaucracy as an agent of democracy. He actually recommended a first step that needs to be taken to prevent the tragedy of "denigrating public administration as to utterly impair its capacity" to assist the American people in their struggle to realizing their aspirations to self-government. "This step must be a broad-based, concerted effort to fashion a constitutional theory of public administration for the American regime".

The best of scholarly attempts to reconcile bureaucracy with American liberal democracy has been impressively creative. Several scholars have attempted to reevaluate another popular view of the role of public administration. The former is regarded as a tool in a democracy. As early as Minnowbrook II, Cleary (1989) observed that one of the critical themes that dominated the conference was that of the difficult and yet necessary relationship between bureaucracy and democracy. It was argued that "public administrators have a keen responsibility to take the requirements of democracy into account in the performance of their duties—whether these duties are programmatic, managerial, contractual, or in other functional areas". Conferees clearly agreed that the need to maximize the value of the administrator's role in protecting and even advancing popular democracy requires a "slowed-down" bureaucracy, one that is concerned more with dialogue and consensus.

More recently, Cook (1996) argued that the political system has to resolve its bureaucracy problem, acknowledge that public administration has powerful constitutive effects, and ultimately work to make those effects beneficial. Furthermore, he made the distinction between the American's narrow and naïve instrumental view of public administration and the constitutive qualities of public administration.

Theory and Practice

There is a dual function of the academic research in both public administration and political science. It can be pursued for its own sake, as part of the "objective" attempt to understand the political or administrative system (how, what, and why), and at the same time it contributes to an improvement in the administrative or political techniques (the what, the how to, and when). While scholars may often seek knowledge for its own sake, the professional instructor wants to improve performance. The two are obviously linked. The administrator will gain something from an academic approach to the subject, and the academician will benefit from a practice-oriented perspective. In all social sciences, especially in the more applied fields, the quest for theoretical development is more than an academic exercise. It has profound implications for the improvement of the human condition in general. In the case of public administration and political science, its implications are more specific. Theory building contributes to the improvement of government effectiveness and efficiency on one hand, and facilitates the

conduct of American democracy as it shapes the relationship between government and the public.

Undoubtedly, every academic discipline, especially in the applied social sciences, has struggled with its practical realities and its theoretical aspirations. political science and public administration are no exceptions. The former was torn between the pressing urge to become scientific and the irresistible desire to still be connected to the realistic aspects of politics. The latter's challenge was to balance the theory building development with the practical problem solving process. This process was always guided by a certain theory, one that might have been considered less vigorous, at one point in time, by some of the public administration community and by the majority of the political science community as well.

Without a doubt, the practical side of the public administration has always had an uneasy place within political science. There were always concerns about the development of a theoretically oriented administrative science. These concerns were mostly focused on the establishment of adequate training programs in public administration. Public administrationists worried that political scientists had little appreciation for the need to train individuals in the practice as well as the study of government. Meanwhile, political scientists worried that a focus on training would lead to neglect or at least less attention devoted to the

task of building the intellectual foundation of the new field of public administration.

Public Administration as Discipline vs. Application

Discussion turns now to the relationship between public administration as an academic discipline and public administration as an applied subject. Without a doubt, it is the practitioner that makes public administration different from political science. In the 1960s, public administration was often labeled the applied interdisciplinary field that bridged the social sciences. From its origins, American public administration had attempted to be practitioner-oriented and to be involved with the real world rather than to seek knowledge for the sake of knowledge.

However, soon after the pragmatists helped found the American Political Science Administration, public administrationists tried to split off in a separate movement to train public managers. Although their efforts failed, as described earlier, it led to the ongoing intellectual conflict that preoccupied Public Administrationists for most of the last century. The discipline's practitioners always sought to develop training programs for the public service, while theorists aimed at gaining a legitimate place in academia. By the middle of the Twentieth Century, public administration's struggle to fit within the other social sciences,

and still cater to its practitioners, reached its nadir. It sought to gain an accepted place in academic theory and retain its role in the practical arena. Well into the 1960s, graduate schools of public affairs found themselves in an awkward position of trying to teach activists in an environment designed to produce scholars. Scholars generally considered schools of public affairs not to be very scholarly, while practicing administrators were disappointed in them for not contributing enough to the practical political and administrative world.

In 1988, among the several themes that dominated Minnowbrook II, one key theme dealt with the relation between theory and practice. Substantial attention was given to the subject of what academic public administration has to offer practicing public administrators. Later on, and at the same time that the field was still dealing with what has been know as its intellectual crisis, public administration found itself under attack from the practitioner community as well. As managers realized the inadequacy of many of the old theories, they embraced the Reinventing Government movement of the 1990s that was rejected by many of the field's scholars. The result was a growing gap between the academic world and the practical one.

However, toward the end of the Twentieth Century, the growing complexity of public policy problems increasingly confounded theory in the field. Public administration found itself "trying to span growing gaps: between its intellectual heritage and the

emerging realities of the twenty first century administration; and between its own intellectual pursuits and those of the other social sciences" Academics continue to emphasize methodology, especially quantitative techniques, whereas practitioners emphasize substantive knowledge about how government actually functions, and expertise in specific policy areas. When public administrationists started developing methodologies of their own, such as the one associated with the newly established program of evaluation, they intended to focus on the applied aspect of their discipline. The emphasis of these methodologies was on the need, efficiency, and effectiveness of the various public programs. In other instances, they borrowed techniques from other disciplines with a clearly "applied research cast".

For political science the dilemma of theory and practice was less intense. For the greater part of the Twentieth Century, the goal of political science was to have a strong analytical framework that generates replicable propositions. The search for "prescriptions" in the course of the field's academic research based on "predictions" was the main concern of the discipline. Scientific theory –building came first, as theory without the ability to predict and understand something real is not worth having. In fact, it was the political scientists' belief that any political action in the American political system that is lacking a theoretical structure is risky. Furthermore, they believed that administration without a guiding theory is dangerous and that the theory had to

connect to action to be meaningful. They considered the former their immediate priority.

Political science, by tradition, was always considered one field that may be less concerned with addressing problems of action, practice, or grassroots. Equally important, at its root the field may have been, for the most part of its intellectual history, hostile to concerns related to "education for knowledgeable action". In fact, the relatively smooth departure of public administration from political science attested to this distinct feature of the latter. The calmness that the political scientists of the seventies showed at that time is indicative of their eagerness to distance themselves "from a field that has always taken a pride in having a practical turn of mind". Interestingly, Henry (1987) added yet another contributing factor for the acceptance on the part of political scientists for the departure of public administration. The inclination among political scientists to distance themselves from any kind of academic enterprise that deals with domestic concerns was also evident through the increasingly short shrift within major political science departments given to urban politics and criminal justice related courses.

As early as the mid 1930s, political scientists had begun to question public administration's action orientation. Political scientists, rather than advocating public service and training programs as they did in 1914, began calling for "intellectualized

understanding" as Caldwell (1965) called it of the executive branch rather than "knowledgeable action" on the part of public administrators. This was a common and widespread theme throughout the literature of the late part of the second quarter of the Twentieth Century.

Despite this general feeling among political scientists toward both the practical and theoretical aspects of public administration, there were some concerns within the Association about the "a practical" focus of the discipline. A comparison of a 1976 survey of chairpersons of political science departments and directors of interdisciplinary programs with a 1975 survey of members of APSA who were holding positions in federal, state, or local governments, resulted in many recommendations. These recommendations focused on how political science training can better prepare people for working in government, or doing work outside of government that is relevant to government decision making. Articles such as Nagel and Neal's "The Practitioner's Perspective" appeared in PS in 1975.

The article summarized the findings of a questionnaire directed to APSA members holding government positions. It was "designed to determine how political science has been and can be used in federal, state, and local government agencies and in administrative, legislative, and judicial positions". The respondents generally implied that political science has the "potentiality of making a substantially greater contribution to

both research communication and training for government placement". Nagel and Neal (1975) commended any efforts that should help build closer relations among academics and practitioners and thereby provide the increased application of political science to important policy problems.

In addition more recent APSA's presidents have called for a more engaged political science. In his presidential address at the 2002 APSA annual meeting, Robert (2004) also called for further intellectual and practical engagement on the part of political scientists.

Putnam (2003) advocated a new kind of political science, one with both scientific rigor and public relevance, as both are "at the core of our professional obligations". To foster such kind, "we need to make special effort, both in the research we publish and in the courses we teach, to combine careful attention to facts and careful examination to values, while recognizing the difference between the two.

Meanwhile, public administration is still trying to solve the dilemma of bridging the gap between theory and practice. Kettl (2002) argued that in a century, the discipline had gone from playing a central role in academic research to being a relatively marginal player.

Practitioners sought solutions outside the field and favored new approaches to implementation, leadership, and public

management, whereas academicians were still seeking theoretical foundations for their research. He further observed that political science's push toward behavioralism and formal theory had, for quite a while, left public administration on the sidelines.

Chapter 3

Political Public Administration Theory

Organizational Theory/Behaviour of institutions

Humans have been interested in the field known today as *public administration* since a time pre-dating Plato's *The Republic*, in which Plato discusses administrative issues of governance. However, it was not until just over 100 years ago that public administration became a formal field of study in North America. This movement was lead by thinkers known as *the Progressives* - namely men like Theodore Roosevelt, Woodrow Wilson, and Frederick Taylor. The Progressives view of public administration was that there was *one best way* to govern the people. Their works focussed on setting up a system of administration that was rooted in this *one best way of thinking*.

Over the past 100 years, scholars have built on the thinking of the Progressives, elaborating on their core concepts, descriptions of government and normative theories. Traditionally, scholars focussed on areas of public administration, such as: classical organizational theory; Wilson's political vs. administrative dichotomy; administrative law; federalism; and, managing employees. After the Second World War the field expanded to include a variety of other topics, such as: policy analysis;

economics for public managers; motivational theory; leadership theory; ethics; decision-making theory; conflict management theory; the effectiveness of government vs. its efficiency; budgeting for public managers; accountability to and representation of the people; and, intergovernmental relations and human resource management.

The fact that today's scholars of public administration come from such a broad range of disciplines (including: psychology, economics, political science, organizational theory, and administrative law) has proven the Progressives 'one best way of thinking' to be obsolete. This is not to say that the questions and problems of public administration examined by the Progressives are no longer relevant – in fact they are as relevant today as they were over 100 years ago.

The two main purposes of this paper are to examine key concepts of public administration theory and to demonstrate an understanding of these key concepts by assessing their impact on, or utilization by, a non-profit organization in the Yukon called the *Yukon Family Services Association* (YFSA). While we primarily analysis how does key concepts of public administration affect, or are applied by, YFSA, recommendations on how YFSA operations could be improved are given, when appropriate.

The methodology for researching the key concepts of public administration theory discussed in this paper consist of a

literature review of past and current articles, texts and essays written by those in the field of public administration and related fields. The literature review includes a review of class notes and papers written by the author during her enrolment as a student in the University of Alaska Southeast's Master in Public Administration Program, from the years 1999 to 2003.

Most of the literature reviewed did not address the application of key public administration concepts to non-profit societies in specific. Instead, most authors either included non-profit societies under the general rubric of government, or did not specifically address non-profits. This gap in the literature leaves the question of the distinct nature of non-profits versus government unanswered - thus, the appropriate application of public administration concepts to non-profits is somewhat unclear.

Information required for the assessment of YFSA was obtained through the application of a variety of field research techniques, including: interviews with key members of the organization, a survey of the staff a literature review focussed on agency documents and files (such as the policy and procedures manual, Board meeting minutes, financial reports and organizational files) and participant observation. Others outside of the organization were also interviewed in order to get an understanding of intergovernmental relations from the perspective of other governments. While the field of organizational theory, as it

relates to structure, focuses on organizational design and set-up, organizational theory related to behaviour is concerned with the behaviour of humans within organizations. This part of organizational theory deals with topics such as: ways of thinking; ways of acting; fostering creativity; managing stress; motivating oneself and others; managing conflict; organizational change; leadership; managing behaviour in the public interest; and, decision-making within the organization. To review all of these aspects of organizational theory, as they relate to behaviour, in this paper would be impossible. The focus on organizational theory as it relates to behaviour in this paper will be on decision-making within organizations. This section examines, first, the history of thought in connection with decision-making within organizations and, second, current thinking on effective decision-making. The focus is on two key areas of analysis related to decision-making: 1) best practices related to decision-making within organizations; and, 2) who should be involved in the decision-making processes. This section also examines the decision-making process within YFSA and draws upon a survey of staff as to whether the decision-making process is accepted. Recommendations on decision-making are given in conclusion.

History of Thinking Regarding Decision-Making in Organizations

Decision-making is the process by which courses of action are chosen from among alternatives in pursuit of organizational goals. As mentioned above, the Scientific Management movement,

lead by Frederick Taylor, treated workers as parts of a larger machine and not as dynamic thinking individuals who were able to contribute in the decision-making processes of an organization. Early scholars of organizational behavior, such as Mary-Parker Follett (1863-1933), dispelled notions that the scientific management approach is best. Follett's work is based on the premise that if workers are allowed to share in decision-making, then they would be more likely to buy in to the decisions made and thus perform their jobs in a manner that is more helpful to the organization. Follett calls for "power shared with workers" as opposed to "power reined over workers". Ahead of her time, Follett was concerned not only with making an organization more efficient but also with treating employees with a greater level of respect.

In the 1940s, scholars began to create theories of decision-making in public administration (for example, Herbert Simon, Dwight Waldo, and Philip Selznick). According to Shafritz and Hyde, "the most significant landmark in the public administration world of the 1940s was Herbert Simon's (1947) book, *Administrative Behaviour*, which argued that a true scientific method be used in the study of administrative phenomena". Simon used the perspective of logical positivism to deal with policy making and believed that decision-making is at the heart of administrative behaviour. His work helped to shift the focus of the study of organizational behaviour to the examination of decision-making.

By the 1960s and 1970s, scholars such as Graham Allison, Herbert Simon and Charles Lindblom had significantly advanced the thinking related to decision making within organizations. Defined models of decision-making came to be known, such as the rational model, the organizational model and the government politics model. These models are discussed briefly below.

The Rational Decision Making Model – Allison proposes that this model is the classical and dominant orientation to decision-making. This model assumes that groups or individuals are rational in their decision-making processes, which means that they try to maximize the value received from the decision-making process.

This model is based partly on the "economic man" theory; that being the notion that when people make decisions, they look at all possible alternatives and make the best choice that would maximize the value they receive. Eventually, the theory behind this decision-making model was altered because scholars like Simon, Allison and Lindbolm argued that humans have cognitive limits and are not capable of weighing all factors necessary to make a decision and choose the absolute best course of action. Scholars concluded that humans would make "value- maximizing decisions to the extent possible". Modern rational decision-making models also factor in humans' tendency to bring self-interest into the equation.

The Organizational Process Model – In his article, *The Science of Muddling Through* (1959), Lindblom contrasts the method of "successive limited comparisons" (muddling through) with the rational method of decision-making. His article states his belief that the rational model of decision-making is rarely used. According to Lindblom, the more likely approach is decisions made based on a series of incremental choices, "building out from the current situation, step-by-step and by small degrees". An incremental approach is the key to this model. It allows many players and a wide variety of information to be included in the decision-making process over a period of time.

The Governmental Politics Model - This model acknowledges that decisions in government are more likely made through a collaborative process rather than by one rational person and takes into account the bargaining for self-interest that goes on between individuals or parties when decisions are made. The government politics model is able to accommodate more than one decision-maker and takes into account that decision-makers consider multilevel and complex issues. In contrast to the rational model of decision– making, this model recognizes that all players in the decision-making process are influenced by their own perceptions and bias.

While there are other models of decision-making commonly used and referred to in the writings of public administration, the three

described above are the classic models on which most literature is based.

Current Thinking On Effective Decision-Making

Current literature on decision-making focuses on who should be involved with decision-making and how input into the decision-making processes should be obtained. The most common methods are: 1) authoritative decisions involving an individual alone or on behalf of a group; 2) consensus decisions involving agreement by all parties in a group that the best possible decision has been made; 3) decisions by majority rule (voting or polling); 4) decisions by minority rule, where a small group of powerful individuals control the larger group; 5) concurrence, where all parties agree in full; and 6) conflict, where controlled conflict is used to reach a decision. On the opposite end of the spectrum from consensus decision-making is autocratic decision-making, where one individual has the final say. This type of decision-masking is less common today than in the past but still happens.

The majority of literature on decision-making contrasts consensus decision-making with other forms. The focus on consensus decision-making is likely prominent due to a belief that this decision-making technique is superior for many reasons. For example, “one of the accepted beliefs among strategic management researchers is that strategic decision consensus among decision- makers facilitates decision implementation speed and implementation success”. Another

often cited reason for the success of consensus decisions is the fact that everyone relevant to the decision has a voice.

Critics of the consensus model say that involving everyone in decision- making can lead to sacrificing efficiency in the process. As for consensus decision-making, "unfortunately this is one of the most time-consuming techniques for group decision-making...time must be allowed by the group for all members to state their opposition -- and to state it fully enough to get the feeling others really do understand them". Organizations required to make quick decisions (such as the military) may not be able to utilize this model.

Another negative consideration in consensus decision-making is the influence of "group think", where the desire for unanimity offsets a group's motivation to explore alternative courses of action.

In contrast to "group think" is the concept of using conflict in decision-making to ensure all avenues are explored. In a study conducted by Charles Schwenk in 1990, research was done to determine whether non-profits were open to using conflict in their decision-making processes. According to Schwenk, "the results for not-for-profit managers suggests that, while they find conflict unpleasant, they feel that it leads to increased attention to diagnosis and evaluation and, ultimately, higher- quality decisions". Schwenk's study confirmed the results of an earlier study by Tjosvold and Field who found that conflict decision-

making is better than consensus decision-making because the latter model creates more uncertainty about the problem, forcing the group to conduct more thorough discussions and analysis. The study found conflict in decision-making to be superior as is stated below:

The controversy approach seems to be a more reliable way to facilitate exploration of the problem than just encouraging individuals to express their own positions. The results [of the study] indicate that group members who had conflicting opinions and encouraged controversy were more curious about the problem and explored the problem in depth.

Despite the arguments against consensus decision-making, it is currently recommended as the best approach by most authors.

Decision-Making at YFSA

According to Andrew Schwartz (1994), many groups start out with a power structure that makes it clear that an individual in an authority position within the organization has ultimate decision-making power. However, "the group can generate ideas and hold free discussions, but at any time the chairman may say that, having heard the discussion, he or she has decided upon a given plan". This is, essentially the model for decision-making at YFSA, as is set up by the Carver governance model.

YFSA and the author jointly decided to look at decision-making within the organization to discover whether staff understand the decision-making procedure, are in agreement with it, and, if not, discover how staff would change the decision-making process. Additional issues pointed out by YFSA for examination follow: 1) people in the organization seem to get frustrated when the ED makes a decision contrary to their views, even though she, and not staff, is ultimately held accountable to the Board for such decisions; and, 2) the Carver model removes the Board from day to day decision-making, YFSA wondered whether staff believe the Board should be more involved in decision-making. The author's hypothesis that individuals believe they should be more involved in the decision-making processes of the organization because they work for a non-profit is also tested by the survey. The author believes this to be true because of the grassroots nature of non-profit organizations and the reported disappointment of some staff if decisions do not "go their way".

The method used for examining the above noted questions is a survey distributed to all staff (24 people). The return rate is fairly high (67%) and so the survey is a fair measure of the staff's knowledge, feelings and perceptions of the decision-making process in YFSA.

Staff And The Decision-Making Process

The staff understands the decision-making process at YFSA. Out of the 16 people who returned surveys, 94% understood that the

ED has the ultimate decision-making power in the organization. Moreover, when asked who should have ultimate decision-making power, 73% believed that the ED should. Only 5 respondents stated that the collective staff should have ultimate decision-making power. One individual felt that the Board and the Clinical Director should have ultimate decision-making power.

As stated above, the agreed upon decision-making process at YFSA is that everyone may voice their opinion when a major decision is being made, however, the ED has the final say. When asked, the majority of the staff (63%) said that they believed that the decision-making process is a good one. On the other hand, 38% said that they believed the decision-making process is not good, mainly because staff input may be ignored in favour of the ED's wishes.

It is interesting that staff clearly know that the ED has the ultimate decision-making power but seem to resent her ability to do so. The main source of contention seems to be when staff input into the decision-making process and the ED decides against the staff majority opinion.

It is clear that the staff feel that the ED takes their input into consideration when decisions are being made – 94% of the respondents said that they felt their input is taken into consideration when key decisions are being made and when decisions specific to the work they do are being made. The results of the survey support the thought that staff get frustrated when

their opinions are not taken into consideration. This was expressed in answers to open-ended survey questions.

When asked how staff would change the decision-making process, they replied as follows (key themes are cited below):

If staff is concerned about one issue and has arguments that are valid and important, management should adopt staff's opinion...

I'm not sure there can be any improvement. We work hard to build the team up – being ED is no doubt a challenging task as difficult decisions have to be made. Perhaps if we had a clearer sense of how our input will be used would be of value [sic] then I can decide how much time and energy to invest in providing input.

I think change in decision-making at YFSA would require a clearer understanding of goals between management and the rest of staff. The ED has final say but that is made (...) by her assessment of the situation and not necessarily based on feedback from staff.

I think we are working towards changing the decision making process by developing committees, however, since the executive director has final say...I feel there is too much power that can be misused. Have staff's opinion more respected and valued. If a consensus is sought and there is a majority then go with that.

The comments are evidence that staff not only want to input into decisions through consultation, but also desire reaching consensus on a chosen path. The following chart depicts how staff believe key decisions should be made in the organization:

The graph shows that the majority of staff want key decisions made by consensus of relevant staff. There is recognition that not all staff can be included in all decision-making but that relevant staff should be included in key decision- making. For example, if a clinical decision needs to be made clinical personel would come to a consensus decision. The Board does not seem to figure into the staff's decision-making model. The most common decision-making technique included in "Other" (purple) is consensus except for when there is a deadlock, in which case, the ED would make the final decision.

Involvement of the Board

On the question of whether the staff is unhappy with the Carver model's governance regime of having the Board be completely removed from day-to-day decisions, 44% said that they were less than content. These individuals want to see the Board more involved in the following types of decision-making: fundraising; national framework issues; policy direction; crisis decision-making; program delivery; committees composed of Board members in many areas of the agencies business; disagreement or conflict between staff and ED; setting agency direction; establishing greater diversity in the agency; and, seeking

community input. The survey suggests that most staff (66%) is more than content with the Board's current involvement in decision-making. The survey supports the author's hypothesis that because individuals work for a non-profit, they believe that they should have more input into decision-making than if they worked for government or private industry. Of the respondents, 87% said that they believe they should have greater input into decision-making than government and private industry workers for the following reasons:

- working in a smaller agency means greater input into decision-making
- the members and Board have input
- non-profit organizations promote initiatives on a personal, as opposed to a financial outcome, which allows more for input from the bottom-up
- non-profit employees are closer to the client and can better represent their needs
- decision-makers are not as far removed from staff
- front-line workers are aware of the needs of clients and, as a result, have valuable input
- front–line workers have a deeper understanding of the needs/concerns of clients than the ED or Board
- pay is lower for employees of non-profits than for government agencies, therefore, non-profit workers deserve opportunities to be involved in decision-making

- Based on the survey, it seems reasonable to conclude that employees of YFSA feel they have a right to be involved in the decision-making processes of YFSA because YFSA is a non-profit.

While the ED has ultimate decision-making authority and responsibility, it is clear that she solicits the input of others. Schwartz says that whether this system is effective depends upon whether the ED is a sufficiently good listener to have culled the right information on which to make a decision and whether the group will go along with implementing decisions made by the ED, if they are not in agreement.

While, on the whole, it seems that the staff believe that the decision-making process of YFSA is a good one, there is evidence of dissatisfaction related to the fact that key decisions may be made without the consensus of relevant staff. This fact seems to frustrate staff, who believe they have expertise that should be taken into account. Staff is especially frustrated when the majority of staff wants to embark on a given decision and the ED takes another path.

The root of this problem lies in the Carver model of governance, which makes the ED ultimately responsible to the Board for all actions of the organization. The ED may be forced to make decisions based on her beliefs of what is best in order to fulfill her duties to the Board – in some cases her opinions are going to be contrary to the staff's.

One way to overcome this problem is to work to achieve consensus notwithstanding the Carver model. This increases the risk for the ED who may have to go against her better judgment in certain circumstances. It is recommended that consensus decisions do not have to be made in all instances. The consensus model may be used for decisions firmly rooted in the expertise of the staff – for example, decisions related to counselling (the ED is not a professional in this area and may benefit from staff knowledge). It is recommended that the ED may retain ultimate decision-making power when there is a deadlock of opinion and in areas where she clearly has the expertise.

Human Resource Management

Today's human resource manager is responsible for a plethora of duties, such as: recruitment; administration; compensation; training and learning; management of employee/employer relations; mediation; negotiation of labour relations; legal implementation of human resource related legislation; and, developing people. The foremost duty of the human resource staff is employee relations within an organization. The human resource manager is responsible to ensure not only internal harmony between staff and management but external compliance to federal and territorial legislation that is becoming more complicated. Employees are protected by legislation in the areas of age, equality and employment opportunity, safety, wrongful discharge and disabilities.

In order for organizations to be successful, there is a suggestion that these functions must be carried out in a fulsome manner. This section looks at a brief history of the evolution of human resource functions in Canada and what the "ideal" human resource unit has come to be, both in government and in non-profits. This section then describes the human resource functions at YFSA and the challenges facing YFSA due to its size. It concludes that YFSA is not able to deliver ideal HR functions and provides a recommendation as to how YFSA may benefit from outsourcing human resource functions, in an inexpensive way.

Historic Building of Ideal Human Resource Functions

The textbook *Canadian Human Resource Management a Strategic Approach* by Schwind, Das and Wagner states that the history of public sector human resource departments in Canada begins in the 1930s when the Depression led citizens to lose faith in the ability of businesses to meet the demands of Canadian citizens. The government, succumbing to the pressure from citizens, began to give workers minimum wages and allowed them to join labour unions.

In 1940, the government started unemployment insurance to help combat financial hardship and facilitate transitions from one job to another. As the authors state," In general, the government's emphasis was improving employee security and working

conditions". The legislation drafted in the 1930s and 1940s shaped the present role of personnel departments because it created legal obligations for government. "Society now had to consider societal objectives and the need for legal compliance, which elevated the importance of personnel departments".

Schwind, Das and Wagner tell us that after World War II personnel departments gained importance. The increase in interest related to behavioral findings lead to concerns for improved human relations that came in the 1960s and 1970s with the passing of human rights legislation in Canada. This legislation governs human resource managers today and profoundly affects the way in which human resource departments conduct their business. As legislation in the area of human resource management became more complicated in the 1980s and 1990s, certain key responsibilities emerged for human resource managers.

Today there is a notion of an ideal human resource unit. In her University of Alaska Southeast class, Janet Jacobs describes the idea Human Resource department as follows:

- Classification and Staffing Support – Unit responsible for writing job descriptions, recruiting and staffing.
- Pay and Benefits – Manages the pay system (including raises on the pay scale and bonus pay), benefits and leave calculation. This unit may also be responsible for ensuring that performance evaluations are complete

because evaluations are often connected with raises and bonuses.

- Labor/Employee Relations – Manages staff/employer relations and relations with unions. Schwind, Das and Wagner suggest that being proactive and involving the union up-front in change management and in other areas will benefit HR groups in the long run.
- Human Resource Planning - Sylvia and Meyer state that, "Forecasting human resource needs involves projecting demand for organization services, appropriate reallocation of resources, and the development of new resources, as necessary". In order to forecast human resource needs, one has to analyze the organization's history, turnover rate, demographics, budget and inventory. This function also requires strategic planning for the future (such as succession planning), as well as short term planning.
- Training and Development - Training and development is a key function of HR directorates. As Sylvia and Meyer state, "Perhaps no other human resource activity so directly influences career advancement in organizations".
- Officer Manager/Administration – Without an administration staff, the ideal HR unit could not function. Office managers are generally responsible for making the daily operations run smoothly by record

keeping, budgeting, ordering supplies, keeping track of equipment and performing other key office duties.

- Employment Equity - Employment equity programs are developed by employers to right past wrongs or future discrimination and to avoid exclusion of a group that may benefit the labor pool.
- Policy, Legislation and Strategic HR- This unit ensures compliance to relevant policy and legislation in Canada, develops human resource policy and procedure, and performs strategic human resource functions now becoming popular with human resource managers. In her article Internal Human Resource Consulting: Why Doesn't Your Staff Get It?, author Marnie Greens states that, "For over a decade HR leaders have been striving to become business partners. They want to have a strategic impact on their organizations; however, many are struggling to make this transaction". This unit would be responsible for making the transition.

The Non-Profit Human Resource Unit – Less Than Ideal

The above notion of an ideal human resource unit works well in government where ample financial and human resources exist. It is likely not possible for the average non-profit to fund and staff such an ideal unit. This is ironic considering that smaller organizations rely heavily on the efforts of their staff and keeping

them happy is essential. Basic employee human resource management for large and small companies is the same. However, "for smaller employers, the lack of one or more of those elements often will make the difference between success, mediocrity and failure".

In their book, *The Complete Guide to Nonprofit Management*, Smith, Bucklin and associates suggest that non-profit human resource managers need only to focus on a smaller ideal set of functions. Smith et al believe that non-profits succeed because of the commitment, enthusiasm, intelligence and drive of their employees, who are often working without the benefits and wages afforded at the government or private industry level. "Therefore, it is crucial to find and choose the best employees possible. To act otherwise is to invite failure". Once employees are hired, they must be treated well. Smith et al suggest that human resource activities can be placed into the 5 broad categories listed below and accompanied by one key point Smith et al believe essential:

- *Hiring and placement*- This act begins with clear concise job descriptions. "If there is no written job descriptions the hiring process is crippled from the beginning".
- *Fair and equitable compensation* – While salaries may not be as high as in government or private industry, the type of benefits offered may provide an extra

incentive for employees to joining an organization. For example, flexible hours in lieu of higher pay may be attractive to potential employees.

- *Communication between staff management and volunteers* – Communication is at the heart of the manager employee relationship. Smith et al recommend performance evaluations as a tool to review past performances and discuss future activity. These evaluations are most valuable when open lines of communication already exist in an organization.
- *Compliance with local state and federal employment laws* – Understanding employment relation law is crucial. It is important that an attorney knowledgeable in this type of law go over the organizations personnel policies and procedures, hiring practices, firing practices, rules of conduct, workplace safety, performance reviews, salary increases and promotions, and other actions or documents with legal implications.
- *Maintaining and enhancing an organization's image* – This is perhaps an area that is not usually considered a human resource function in government, yet it is important for non-profits. For example, "to find loyal volunteers an organization needs to successfully promote the altruistic or educational endeavors of its mission".

The message Smith and associates convey is that an organization that hires wisely, maintains good staff relations and equips itself well not only enhances its own image in the world at large but also achieves internal success.

The Economic Way of Thinking

In his text, *The Economic Way of Thinking*, Paul Heyne presents readers with the unique perspective of economists and how they think when creating, and working to prove or disprove, theory. He notes that the economic way of thinking was developed by social theorists to, "explain how order and cooperation emerge from the apparently uncoordinated interactions of individuals pursuing their own interests in substantial ignorance of the interests of those with whom they are cooperating".

Heyne explains the economic way of thinking as a bias perspective that does not equally weigh all facts and values. According to Heyne, the fundamental assumption of the economic way of thinking is that, "all social phenomena emerge from the actions and interactions of individuals who are choosing in response to expected benefits and costs to themselves". Economists presume that, in making these choices, individuals will always act in a rational manner to choose paths based on the net advantages they expect. In this way, economic theory attempts to explain the world by assuming that all events are the result of individual's choices. While the emphasis for economists is on actions brought about by the choices of individuals, the

economic way of thinking also focuses on "the importance for effective social cooperation of agreement on rules of the game". The "rules of the game" represent the basic rules that govern social interaction in a commercial society.

It is important for public sector officials to understand the economic way of thinking, as it is the basis for economic theory and decision-making frameworks. One significant factor that public sector employees must keep in mind is that the economic way of thinking is biased and fails to take into account realities in the public sector that affect policy decisions. Economic analysis is largely normative and ignores, for example, that in practice government politics, personal agendas, egos, partisanship, patronage and bureaucratic politics all influence policy decisions.

Economic Tools For Decision-Making

There are many economic tools available to organizations to help them in deciding whether a policy or program is worth implementing. The following examples are examined in the text below: cost-benefit analysis; incident analysis; cost effectiveness analysis; and, cash flow analysis. These types of analysis are important because they provide policy makers with discipline in the decision-making process.

Garvey believes that "the cost-benefit analysis, with its many variations and elaborations, is probably the premier contribution

of economists to contemporary public administration". The cost-benefit analysis is an evaluation of whether the benefits of a particular program or policy exceed the cost, and, when choosing between program and policy alternatives, which program or which policy gives the most benefit for the least cost (i.e. is most efficient). The key to cost-benefit analysis is to measure the benefits and cost of a program on the same scale to discover whether the benefits outweigh the costs –in which case the program is probably a worth while one. When conducting a cost-benefit analysis, economists begin by seeking Pareto or near-Pareto improvements. These are changes that leave some individuals made better off without making others worse off. The cost-benefit analysis allows organizations to take into consideration the distribution of the impact of programs across the population effected. Originally, cost–benefit analysis was developed for private industry where costs and benefits are more easily measured than in the public sector. There are two critical differences that government must take into when conducting a cost-benefit analysis:

1) the government is concerned with a broader range of consequences than the private sector, which is mainly concerned with monetary profit and not improvements in quality of life for citizens; and 2) private industry uses market prices to determine costs and benefits, where government's use of market prices may be limited because market prices may not apply to societal cost

and benefits. For example, market prices do not apply to something like clean air or a human life.

Public sector analysts use a modified cost-benefit analysis model, called social cost-benefit analysis, which is concerned with developing systematic ways of analysing costs and benefits when market prices are not easily assigned to social costs and benefits. YFSA would likely fair better if it used social cost benefit analysis over the more traditional cost-benefit analysis because it would be interested in looking at putting a value on such outcomes as "better mental health" and "healthier families". These are social costs to which it is hard to assign a dollar amount.

Incident analysis goes hand-in-hand with cost-benefit analysis as this type of analysis helps organizations understand who the true beneficiaries of a program or policy would be and who would be truly harmed by the same. Incident analysis is the term that describes the analytical thinking used to determine who really benefits from, is hurt by, or bears the burden of a particular program or policy. Incident analysis also helps officials to understand whether the effect of a program or policy is likely to spread beyond the targeted segment of the population (a phenomenon is known as 'shifting'; where the actual incidence is different from the intended one). The results of shifting may be a benefit or a cost to be weighed in a cost-benefit analysis.

A cost effectiveness analysis is an alternative to a cost-benefit analysis, which often has to put values on elements of a policy or

program that are difficult to value; for example, human life. The political process often tries to avoid making judgements on such elements as life and health. A cost effectiveness analysis is useful in this situation as it allows analysts to look at programs with similar benefits with a view to deciding which program provides the benefits at the least cost. Because a cost effectiveness analysis avoids putting value on difficult inputs and outcomes, it is said to be easier to conduct than a cost-benefit analysis. However, a cost effectiveness analysis presumes that more than one or two programs exist within a given area to compare and contrast, and that these programs are in fact similar enough to make a fair comparison. Cost effectiveness analysis is criticised because much of the judgements associated with this method are intuitive, rather than scientific.

The purpose of a cash flow analysis is, "to tell a business decision maker whether the stream of net revenues that customers are expected to generate when they purchase units of a good or service will, over a period of years, cover the outlays that a producer must make in order to produce the items in question". Essentially, this type of analysis allows an organization to decide whether investing in a program will eventually be beneficial in monetary terms. For example, YFSA is going to start a new imaginary program to assist youth by opening a Youth Centre and charging youth a small fee to use its services. YFSA would take into account the cost of purchasing and running a Youth Centre and then decide whether, over a

period of years, the Youth Centre would pay for itself. If yes, then YFSA would open the Centre. If no, then the idea would be abandoned.

Economic and Policy Analysis at YFSA

No formal economic or policy analysis is done by YFSA. While the organization realizes that the type of analysis described above would be beneficial as a tool for choosing which program or policy should be implemented, enhanced or continued, YFSA simply does not have the capacity to complete this type of analysis, nor does it have the funding to hire the capacity.

Informal cost-benefit analysis is done by YFSA. The process is much the same as the cost-benefit analysis described in the above text, only quantitative values are not formally assigned to costs and benefits. Instead, the organization roughly weighs whether a program or activity is worth conducting, ignoring such details as, costing the program out per person, or formally assigning financial costs to non-monetary costs and benefits.

YFSA informally assigns a weight to non-monetary benefits and cost, although these may not be on the same scale, as Garvey suggests is necessary. For example, YFSA may implement a program simply because they suspect an individual in need will benefit from the program, even though the agency will not profit from the program. In this example, YFSA has made a determination that the benefit to the individual outweighs the

cost to YFSA for running the program. Likewise, YFSA may offer a specific program because there is a service gap in the community, even if YFSA is made slightly worse off from having to pay for the program. Again, YFSA has decided that the non-monetary benefit outweighs the loss of revenue it may experience.

There are other factors that YFSA takes into consideration when deciding whether to offer a program or implement a policy, as follows:

- if attendance in a program is consistently high, then YFSA concludes the program is worth running
- if the community supports a particular program or policy or asks that YFSA run the program or policy, then YFSA would offer it
- if other agencies are willing to write letters of support for a program or policy (in order that YFSA may get grant funding) then YFSA concludes that the program or policy is valued and continues to offer it

While no formal economic or policy analysis is done within the organization, YFSA does informally do this type of analysis when deciding how to allocate scarce resources. In some circumstances, intuitive decisions regarding how to allocate scarce resources are also made. For example, the ED describes her decision this fiscal year to allocate funding to increase salaries as being based on her intuition. She had a sense that increased salaries would be beneficial to staff morale. This

decision will affect all other funding allocation decisions, as less funds are now available for programming and policy implementation. It should be noted that the "ED's intuition" cannot quite be described as a "gut-feeling", as her intuition is honed by her experience and her vantage point within YFSA.

Research and Program Evaluation

Program evaluation includes "the measurement of program performance-resource expenditures, program activities, and program outcomes- and the testing of causal assumptions linking these three elements. (Wholey in Wholey et al, 1994). In the book *Handbook of Practical Program Evaluation*, authors Joseph S. Wholey, Harry P. Hatry and Ketheryn E. Newcomer suggest that the two primary reasons for program evaluation are: 1) to achieve greater accountability in the use of public or donated funds; and, 2) to help agency officials improve their programming. The authors believe that the latter reason should be the primary one.

Evaluation research is a form of social research that "refers to a research purpose rather than a specific method. This purpose is to evaluate the impact of social interventions...a social intervention is an action taken within a social context for the purpose of producing some intended result". A social intervention could be one of many things. The most relevant example for this paper is a program run by an agency to produce an intended result. Evaluation research has grown popular in recent years. According to social researcher Earl Babbie, this

growth in popularity reflects both social scientists' increased desire to make a difference in the world and the influence of an increase in governments' requirement that program evaluation must accompany program implementation when the government is funding an agency.

Program evaluation and evaluation research go hand-in-hand. This section discusses what program evaluation is, why it has become increasingly popular and what it takes to conduct program evaluation. It also examines social and evaluation research techniques that aid in conducting program evaluation. Finally, it analyses how YFSA conducts program evaluation and the main challenge it faces in this area, namely, lack of resources to conduct major program evaluations.

Program evaluation is an attempt to provide a process or framework that organizations may use to answer the following questions: What programs or services are producing adequate results?; Which are not?; Who are the services helping or hurting?; Which program variations are working and why?; Are improvements to programs producing intended results? If not, why? Program evaluation should not only assess program results, but also look for ways to improve the program. Program evaluation should provide agencies with a rigorous framework that introduces a more scientific way of evaluating programs than agency officials simply drawing conclusions based on gut feelings and personal experience or informal feedback from others.

While the reasons why organizations perform program evaluation have blossomed in recent years, the primary reason for conducting a program evaluation is to respond to the questions, "Did the program make a difference? Did it achieve its goals?". Policy and program designers want to know if they have made a difference and, thus, whether their program is useful to society. Questions of effectiveness and impact are causal questions that seek to understand the extent to which an intervention brings about an outcome. Many tools exist to help evaluators answer questions of effectiveness and impact, a few of which are discussed below.

One such tool, *process evaluation*, is the use of empirical data to assess the delivery of programs. Essentially, process evaluation "verifies what the program *is*, and whether or not it is delivered as intended to the target recipients and in the intended "dosage". Scheirer argues that process evaluation is necessary to understand and cope with program variations (derived from differences among deliverers) in order that program evaluators may know what exactly they are evaluating. Process evaluation is done as a first step in conjunction with impact evaluations (discussed below, e.g. outcome monitoring). Process evaluation is rooted in the use of empirical data and can encompass the collection and analysis of "complex and very sophisticated data" and data analysis techniques that are used to establish what it is program evaluators are going to evaluate. Outcome monitoring is also a common tool used in program evaluation. Outcome

monitoring is "the regular (periodic, frequent) reporting of program results in ways that stakeholders can use to understand and use those results". Affholter states that outcome monitoring should be done to keep those who are responsible for an intervention appraised of performance. Other reasons outcome monitoring should be done follow:

- provides early detection and correction of performance problems as well as opportunities for performance improvement
- mobilizes widespread commitment to continuous improvement in intervention delivery
- encourages efficient use of other organizational support resources
- provides gains in confidence in the organization's ability to perform

Social scientists Richard Marcantonio and Thomas Cook argue that to demonstrate a clear causal relationship between an intervention and an outcome that measures the intervention's success is not enough to answer the question of whether a program has made a difference. Program evaluators must also attempt to show that the relationship is causal by ruling out other forces that may have brought about the desired result. To do this, social scientists can make use of quasi-experiments that are close to true experiments in form and function. "Functionally, they are designed to probe causal hypotheses about the effects of

a presumed causal agent. In form, they entail an intervention, one or more comparison groups, outcome measures, assessments of the relationship between the intervention and outcome, and construction of the case that any demonstrated impact is due not to other factors but to the intervention". Quasi-experiments help program evaluators rule out whether other factors are causing the outcome seeming to be caused by the intervention being studied.

Other Social and Evaluation Research Techniques

The tools mentioned above are mainly used in the evaluation of programs, but the topics appropriate to evaluation research are limitless. As Babbie notes, "evaluation research is not itself a method, but rather one application of social research methods. As such, it can involve any of several research designs". Another factor contributing to the large variety of research methods that may be used is the matching scope of topics examined by evaluation research. Consequently, there are many research techniques, besides those mentioned above, that are designed to aid evaluators in their job of examining whether a social intervention has lead to its desired result.

Besides quasi-experiments, classical experiments are used in evaluation research. Classical experiments are designed according to the program being evaluated. In the simplest design,

participants are assigned to a control group and an experimental group, the latter being subject to the social intervention. The length of the experiment would then be determined, as well as the measurements. Observations are then made and analysed. Finally, conclusions are drawn. While classical experiments can be used, social researchers prefer to use quasi-experiments in evaluation research because they can be run in "real life situations" and move away from randomly assigning subjects to a control and experimental group (in evaluation research it is often impossible to make such assignments).

Qualitative evaluations are also used in evaluation research. These are typically less structured and use techniques such as interviews, surveys, focus groups, questionnaires and other data received from users of the programs. Babbie tells us that the most effective evaluation combines qualitative and quantitative components. This is because, "while making statistical comparisons is useful, so is gaining an in-depth understanding of the processes producing the observed results – or preventing the expected results from appearing". In addition, a key principle in social research is that validity, with respect to conclusions, is increased when more than one measure is used to verify results.

It is important to note that social researchers acknowledge that the conclusions drawn from the above noted research tools will not always offer conclusive results that can be used in a beneficial way by officials running social interventions. In brief,

this is because evaluation research "entails special logistics and ethical problems because it's embedded in the day-to-day events of real life". For example, the recommendations of research and program evaluation may conflict with deeply held social convictions, political agendas, or vested interests in the bureaucracy, and thus may never be implemented.

Research and Program Evaluation at YFSA

According to the social scientist quoted above, program evaluation should be done as scientifically as possible and with some degree of rigor - the more science and rigor built into the evaluation design, the more valid the results. YFSA does evaluate all programming, except counselling services. However, the evaluations are informal and only qualitative in nature.

The standard evaluation of programming done by YFSA is a process by which participants in a given program fill out a questionnaire or standard evaluation at the end of the program. The evaluation essentially measures whether the participant liked the program and whether the participant felt the program was beneficial. This is a qualitative measure. YFSA does not use quantitative measures to support the findings of the participant evaluations. Babbie's thinking suggests that if YFSA did do so, then the two types of data could be compared, increasing the validity of any conclusions.

There are instances where YFSA does do more rigorous program evaluations. Most recently, YFSA hired an external program evaluator to review the Youth Outreach Program. However, the contract evaluator only used qualitative measures of program evaluation. For example, the contractor interviewed people connected with the program and sent a questionnaire to other relevant individuals.

YFSA has a focus on program evaluation that takes into consideration mainly what others think of a given program. They ask relevant individuals questions like: Does the program work?; Does the program meet the needs of the community?; and, How could the program be changed to better meet the needs of the client group? Another indication of a program's success for YFSA is positive testimonials about the program (in the form of letters of support for funding) from other agencies in the Yukon. While a focus on what others think of a given program is *one* valid measure of whether a program is having its intended result, it does not fulfil the requirement of rigor social scientists would say needs to occur.

That is not to suggest that YFSA should be spending scarce resources to produce expensive program evaluations for all of its programs. At times it is not appropriate to invest the resources in the meticulous methods outlined above. Low cost evaluations are the best choice for YFSA, as is discussed below.

Chapter 4

Political Institutions and their Administrative Laws

Administrative law in common law countries

Generally speaking, most countries that follow the principles of common law have developed procedures for judicial review that limit the reviewability of decisions made by administrative law bodies. Often these procedures are coupled with legislation or other common law doctrines that establish standards for proper rulemaking. Administrative law may also apply to review of decisions of so-called semi-public bodies, such as non-profit corporations, disciplinary boards, and other decision-making bodies that affect the legal rights of members of a particular group or entity.

While administrative decision-making bodies are often controlled by larger governmental units, their decisions could be reviewed by a court of general jurisdiction under some principle of judicial review based upon due process (United States) or fundamental justice (Canada). Judicial review of administrative decisions, it must be noted, is different from an administrative appeal. When sitting in review of a decision, the Court will only look at the method in which the decision was arrived at, whereas in an administrative appeal the correctness of the decision itself will be

examined, usually by a higher body in the agency. This difference is vital in appreciating administrative law in common law countries.

The scope of judicial review may be limited to certain questions of fairness, or whether the administrative action is *ultra vires*. In terms of ultra vires actions in the broad sense, a reviewing court may set aside an administrative decision if it is unreasonable (under Canadian law, following the rejection of the "Patently Unreasonable" standard by the Supreme Court in Dunsmuir v. New Brunswick), *Wednesbury* unreasonable (under British law), or arbitrary and capricious (under U.S. Administrative Procedure Act and New York State law).

Administrative law, as laid down by the Supreme Court of India, has also recognized two more grounds of judicial review which were recognized but not applied by English Courts viz. legitimate expectation and proportionality.

The powers to review administrative decisions are usually established by statute, but were originally developed from the royal prerogative writs of English law, such as the writ of mandamus and the writ of certiorari. In certain Common Law jurisdictions, such as India or Pakistan, the power to pass such writs is a Constitutionally guaranteed power. This power is seen as fundamental to the power of judicial review and an aspect of the independent judiciary.

Ombudsmen

In the United Kingdom a post of Ombudsman is attached to the Westminster Parliament with additional posts at the Scottish Parliament, the Welsh Assembly and other government institutions.

The Ombudsman's role is to investigate complaints of maladministration.

Tribunals in the United Kingdom

The tribunal system of the United Kingdom is part of the national system of administrative justice with tribunals classed as non-departmental public bodies (NDPBs). Though it has grown up on an *ad hoc* basis since the beginning of the twentieth century, from 2007 reforms were put in place to build a unified system with recognised judicial authority, routes of appeal and regulatory supervision.

Early twentieth century (1911–1945)

The UK tribunal system can be seen as beginning with the coming into force of the National Insurance Act 1911 which provided for adjudication of disputes by administrative agencies. During the twentieth century, UK government ministers acquired more and more power and were vested with decisions that affected the day to day life of citizens.

Post World War II (1945–1957)

In 1954, the government was embarrassed by the Crichel Down affair which focused public fears about maladministration and the abuse of executive authority. The magnitude and complexity of ministerial decisions had caused many such decisions gradually to be delegated to a growing number of tribunals and in 1955, the government used the debate created by Crichel Down to order a committee under Sir Oliver Franks to report on administrative tribunals and inquiries, though not ministerial decisions of the kind that Crichel Down had exposed.

The Franks Report was published in July 1957 and its principle effect was to move tribunals from an executive and administrative model towards a judicial footing. Franks idenitified three principles for the operation of tribunals:

- Openness;
- Fairness; and
- Impartiality.

Take openness. If these procedures were wholly secret, the basis of confidence and acceptability would be lacking. Next take fairness. If the objector were not allowed to state his case, there would be nothing to stop oppression. Thirdly, there is impartiality. How can a citizen be satisfied unless he feels that those who decide his case come to their decisions with open minds?

Council on Tribunals (1958–2007)

The report resulted in the Tribunals and Inquiries Act 1958 which established the Council on Tribunals, which started work in 1959.

The Council's principal responsibilities were to:

- Keep under review the constitution and working of the [stipulated] tribunals... and, from time to time, to report on their constitution and working;
- Consider and report on matters referred to the Council under the Act with respect to tribunals other than the ordinary courts of law, whether or not [stipulated]; and
- Consider and report on matters referred to the Council, or matters the Council may consider to be of special importance, with respect to administrative procedures which involve or may involve the holding of a statutory inquiry by or on behalf of a Minister.

Scotland

The Scottish ministers appointed two or three Council members and three or four non-members to a Scottish Committee of which the Parliamentary Ombudsman and the Scottish Public Services Ombudsman were *ex officio* members.

The Scottish Council supervised certain tribunals operating in Scotland and had the right to be consulted by the Council before

any report about a Scottish tribunal or, in some cases, the right to report themselves to the Scottish ministers.

Northern Ireland

The Council had no authority to deal with any matter over which the Parliament of Northern Ireland had power to make laws.

Reform (1988–2007)

Tribunals had long been criticised. Lord Scarman had seen them as a danger to the prestige of the judiciary and the authority of the ordinary law. In 1988 there were calls for an Administrative Review Council to provide independent scrutiny on the Australian model but such ideas were rejected.

Though the system was little altered by the Tribunals and Inquiries Act 1992, at the start of the twenty first century there were further calls for reform that led to the creation of the Tribunals Service in 2006, as an executive agency to manage and administer tribunals, and to the Tribunals, Courts and Enforcement Act 2007.

Reformed tribunal structure

The Tribunals, Courts and Enforcement Act 2007 created a new unified structure for tribunals and recognises legally qualified members of tribunals as members of the judiciary of the United Kingdom who are guaranteed continued judicial independence.

The Act created two new tribunals to which pre-existing jurisdictions were transferred: namely a First-tier Tribunal and an Upper Tribunal. The tribunals are divided into several "chambers", grouped around broad subject headings. All legally-qualified members take the title of judge. There is a right of appeal on a question of law from the First-tier to the Upper Tribunal and some limited jurisdiction for judicial review. The Upper Tribunal is a senior court of record. There is a right of appeal to the Court of Appeal of England and Wales, Court of Appeal in Northern Ireland or Court of Session (Scotland).

The Act created the office of Senior President of Tribunals, appointed by the Queen on the recommendation of the Lord Chancellor. Lord Justice Carnwath was appointed as the first holder of the post on 12 November 2007.

Chambers are created flexibly by the Lord Chancellor in consultation with the Senior President of Tribunals and each has its own Chamber President. There is a Tribunals Procedure Committee to which the first transitional appointments were made on 19 May 2008.

Tribunal judgments carry a right to a warrant of execution or entry on the Register of Judgments, Orders and Fines and no longer require to be registered in the County Court or High Court.

However many tribunals still lie outside the new system.

Administrative Justice and Tribunals Council

On 1 November 2007, the Council on Tribunals was abolished and replaced by the Administrative Justice and Tribunals Council. At the same time, 107 existing tribunals were transferred to the supervision of the Council.

Judicial review in English law

Judicial review is a procedure in English administrative law by which the courts in England and Wales supervise the exercise of public power on the application of an individual. A person who feels that an exercise of such power by a government authority, such as a minister, the local council or a statutory tribunal, is unlawful, perhaps because it has violated his or her rights, may apply to the Administrative Court (a division of the High Court) for judicial review of the decision and have it set aside (quashed) and possibly obtain damages. A court may also make mandatory orders or injunctions to compel the authority to do its duty or to stop it from acting illegally.

Unlike the United States and some other jurisdictions, the English doctrine of parliamentary supremacy means that the law does not know judicial review of primary legislation (laws passed by the Parliament of the United Kingdom), except in a few cases where primary legislation is contrary to the law of the European Union or the European Convention on Human Rights. A person

wronged by an Act of Parliament therefore cannot apply for judicial review except in these cases.

Constitutional position

The English constitutional theory, as expounded by A.V. Dicey, does not recognise a separate system of administrative courts that would review the decisions of public bodies (as in France, Germany and many other European countries). Instead, it is considered that the government should be subject to the jurisdiction of ordinary Common Law courts.

At the same time, the doctrine of Parliamentary sovereignty does not allow for the judicial review of primary legislation (Acts of Parliament). This limits judicial review in English law to the decisions of public bodies and secondary (delegated) legislation, against which ordinary common law remedies as well as special "prerogative orders" are available in certain circumstances.

The constitutional theory of judicial review has long been dominated by the doctrine of *ultra vires*, under which a decision of a public authority can only be set aside if it exceeds the powers granted to it by Parliament. The role of the courts was seen as enforcing the "will of Parliament" in accordance with the doctrine of Parliamentary sovereignty. However, the doctrine has been widely interpreted to include errors of law and of fact and the courts have also declared the decisions taken under the Royal Prerogative to be amenable to judicial review. Therefore it seems

that today the constitutional position of judicial review is dictated by the need to prevent the abuse of power by the executive as well as to protect individual rights.

Procedural requirements

Under the Civil Procedure Rules a claim (application) for judicial review will only be admissible if permission (leave) for judicial review is obtained from the High Court, which has supervisory jurisdiction over public authorities and tribunals. Permission may be refused if one of the following conditions is not satisfied:

- The application must be made promptly and in any event within three months from the date when the grievance arose. Note that legislation can impose shorter time limits while a court may hold that an application made in less than three months may still be not prompt enough.
- The applicant must have sufficient interest in a matter to which the application relates. This requirement is known as the requirement of locus standi, or standing.
- The application must be concerned with a public law matter, i.e. the action must be based on some rule of public law, not purely tort or contract.
- However, the Court will not necessarily refuse permission if one of the above conditions is in doubt. It may, in its discretion, examine all the circumstances of

the case and see if the substantive grounds for judicial review are serious enough. Delay or lack of sufficient interest can also lead to the court refusing to grant a remedy after it had considered the case on the merits.

Amenability to judicial review

The decision complained of must have been taken by a public body, i.e. a body established by statute or otherwise exercising a public function. In *R v Panel for Takeovers and Mergers Ex p Datafin* [1987] 1 QB 815, the Court of Appeal held that a privately established panel was amenable to judicial review because it in fact operated as an integral part of a governmental framework for regulating Mergers and Takeover, while those affected had no choice but to submit to its jurisdiction.

Ouster clauses

Sometimes the legislator may want to exclude the powers of the court to review administrative decision, making them 'final', 'binding' and not appealable. R (Cowl) v Pymouth City Council. However, the courts have consistently held that none but the clearest words can exclude judicial review. When the Government wanted to introduce a new Asylum and Immigration Act containing such clear words, members of the judiciary protested to the extent of saying that they will not accept even such an exclusion. The Government withdrew the proposal.

Exclusivity rule

The House of Lords held in *O'Reilly v Mackman* [1983] 2 AC 237 that where public law rights were at stake, the claimants could only proceed by way of judicial review. They could not originate their action under the general civil law procedure, because that would be avoiding the procedural safeguards afforded to public authorities by the judicial review procedure, such as the requirement of sufficient interest, timely submission and permission for judicial review. However, a defendant may still raise public law issues as a defence in civil proceedings. So for example, a tenant of the public authority could allege illegality of its decision to raise the rents when the authority sued him for failing to pay under the tenancy contracts. He was not required to commence a separate judicial review process. If an issue is a mix of private law rights, such as the right to get paid under a contract, and public law issues of the competence of the public authority to take the impugned decision, the courts are also inclined to allow the claimant to proceed using ordinary civil procedure, at least where it can be demonstrated that the public interest of protecting authorities against frivolous or late claims has not been breached.

Grounds for review

In *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, Lord Diplock summarised the grounds for

reversing an administrative decision by way of judicial review as follows:

- Illegality
- Irrationality (Unreasonableness)
- Procedural impropriety

The first two grounds are known as substantive grounds of judicial review because they relate to the substance of the disputed decision. Procedural impropriety is a procedural ground because it is aimed at the decision-making procedure rather than the content of the decision itself. The three grounds are mere indications: the same set of facts may give rise to two or all three grounds for judicial review.

Illegality

In Lord Diplock's words, this ground means that the decision maker "must understand correctly the law that regulates his decision-making power and must give effect to it."

A decision may be illegal for many different reasons. There are no hard and fast rules for their classification, but the most common examples of cases where the courts hold administrative decisions to be unlawful are the following:

If the law empowers a particular authority, e.g. a minister, to take certain decisions, the Minister cannot subdelegate this power to another authority, e.g. an executive officer or a

committee. This differs from a routine job not involving much discretion being done by civil servants in the Minister's name, which is not considered delegation.

The court will quash a decision where the authority has misunderstood a legal term or incorrectly evaluated a fact that is essential for deciding whether or not it has certain powers. So, in *R v Secretary of State for the Home Department, ex parte Khawaja* [1984] AC 74, the House of Lords held that the question whether the applicants were "illegal immigrants" was a question of fact that had to be positively proved by the Home Secretary before he could use the power to expel them. The power depended on them being "illegal immigrants" and any error in relation to that fact took the Home Secretary outside his jurisdiction to expel them. However, where a term to be evaluated by the authority so broad and vague that reasonable people may reasonably disagree about its meaning, it is generally for the authority to evaluate its meaning. For example, in *R. Hillingdon Borough Council ex Parte Pulhofer* [1986] AC 484, the local authority had to provide homeless persons with accommodation. The applicants were a married couple, who lived with her two children in one room and applied to the local authority for aid. The local authority refused aid because it considered that the Pulhofers were not homeless and the House of Lords upheld this decision because whether the applicants had accommodation was a question of fact for the authority to determine. A good example of this is the case of *R v Secretary of State for Foreign Affairs Ex p The World Development*

Movement. Section 1 of the Overseas Development and Co-operation Act 1980 empowered the Secretary of State for Foreign Affairs to assign funds for development aid of economically-sound projects. The Secretary assigned the funds for a project to construct a power station on the Pergau River in Malaysia was considered as uneconomic and not sound. The House of Lords held that this was not the purpose envisaged by the enabling statute and the Minister therefore exceeded his powers. A similar principle exists in many continental legal systems and is known by the French name of *détournement du pouvoir*.

This ground is closely connected to illegality as a result of powers being used for the wrong purpose. For example *Wheeler v Leicester City Council*, where the City Council banned a rugby club from using its ground because three of the club's members went on a tour in South Africa at the time of apartheid. In *R v Somerset County Council Ex parte Fewings* the local authority decided to ban stag hunting on the grounds of it being immoral. In *Padfield v Ministry of Agriculture, Fisheries and Food*, the Minister refused to mount an inquiry into a certain matter because he was afraid of bad publicity. In *R v ILEA Ex parte Westminster City Council* [1948] 1 KB 223, the London Education Authority used its powers to inform the public for the purpose of convincing the public of its political point of view. In all these cases, the authorities have based their decisions on considerations, which were not relevant to their decision making

power and have acted unreasonably (this may also be qualified as having used their powers for an improper purpose).

Note that the improper purpose or the irrelevant consideration must be such as to materially influence the decision. Where the improper purpose is not of such material influence, the authority may be held to be acting within its lawful discretion. So *R v Broadcasting Complaints Commission Ex parte Owen* [1985] QB 1153, where the Broadcasting authority refused to consider a complaint that a political party has been given too little broadcasting time mainly for good reasons, but also with some irrelevant considerations, which however were not of material influence on the decision.

Fettering discretion

An authority will be acting unreasonably where it refuses to hear applications or makes certain decisions without taking individual circumstances into account by reference to a certain policy. BOC v Minister of technology 1971. When an authority is given discretion, it cannot bind itself as to the way in which this discretion will be exercised either by internal policies or obligations to others. Even though an authority may establish internal guidelines, it should be prepared to make exceptions on the basis of every individual case. This has changed in modern times, with the new coalition government providing an overrulement.

Irrationality

Under Lord Diplock's classification, a decision is irrational if it is "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it." This standard is also known as Wednesbury unreasonableness, after the decision in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*, where it was first imposed.

Unlike illegality and procedural impropriety, the courts under this head look at the merits of the decision, rather than at the procedure by which it was arrived at or the legal basis on which it was founded. The question to ask is whether the decision "makes sense". In many circumstances listed under "illegality", the decision may also be considered irrational.

Proportionality

Proportionality is a requirement that a decision is proportionate to the aim that it seeks to achieve. E.g. an order to forbid a protest march on the grounds of public safety should not be made if there is an alternative way of protecting public safety, e.g. by assigning an alternative route for the march. Proportionality exists as a ground for setting aside administrative decisions in most continental legal systems and is recognised in England in cases where issues of EC law and ECHR rights are involved. However, it is not as yet a separate ground of judicial

review, although Lord Diplock has alluded to the possibility of it being recognised as such in the future. At present, lack of proportionality may be used as an argument for a decision being irrational.

A decision suffers from procedural impropriety if in the process of its making the procedures prescribed by statute have not been followed or if the 'rules of natural justice' have not been adhered to.

Statutory procedures

An Act of Parliament may subject the making of a certain decision to a procedure, such as the holding of a public hearing or inquiry, or a consultation with an external adviser. Some decisions may be subject to approval by a higher body. Courts distinguish between "mandatory" requirements and "directory" requirements. A breach of mandatory procedural requirements will lead to a decision being set aside for procedural impropriety.

Breach of natural justice

The rules of natural justice require that the decision maker approaches the decision making process with 'fairness'. What is fair in relation to a particular case may differ. As pointed out by Lord Steyn in *Lloyd v McMahon* [1987] AC 625 "the rules of natural justice are not engraved on tablets of stone." Below are some examples of what the rules of natural justice require:

The rule against bias

The first basic rule of natural justice is that nobody may be a judge in his own case. Any person that makes a judicial decision - and this includes e.g. a decision of a public authority on a request for a license - must not have any personal interest in the outcome of the decision. If such interest is present, the decision maker must be disqualified even if no actual bias can be shown, i.e. it is not demonstrated that the interest has influenced the decision. The test as to whether the decision should be set aside is whether there is a "real possibility [of bias]", as established in *Gough v Chief Constable of the Derbyshire Constabulary* [2001] , which dropped the 'fair minded observer' part of the test.

The right to a fair hearing

Whether or not a person was given a fair hearing of his case will depend on the circumstances and the type of the decision to be made. The minimum requirement is that the person gets the chance to present his case. If the applicant has certain legitimate expectations, for example to have his license renewed, the rules of natural justice may also require that they are given an oral hearing and that their request may not be rejected without giving reasons. Where the decision is judicial in nature, for example a dismissal of an official in punishment for improper conduct, the rules of natural justice require a hearing and the person questioned must know the case against them and be able to examine and object to the evidence.

Duty to give reasons

Unlike many other legal systems, English administrative law does not recognise a general duty to give reasons for a decision of a public authority. A duty to give reasons may be imposed by statute. Where it is not, Common Law may imply such a duty and the courts do so particularly with regard to judicial and quasi-judicial decisions.

Remedies

The following remedies are available in proceedings for judicial review:

- Quashing order;
- Prohibiting order;
- Mandatory order;
- Declaration;
- Injunction;
- Damages

In any case more than one remedy can be applied for; however, the granting of all remedies is entirely at the court's discretion.

Quashing Order

A quashing order nullifies a decision which has been made by a public body. The effect is to make the decision completely invalid. Such an order is usually made where an authority has acted

outside the scope of its powers ('ultra vires'). The most common order made in successful judicial review proceedings is a quashing order. If the court makes a quashing order it can send the case back to the original decision maker directing it to remake the decision in light of the court's findings. Or, very rarely, if there is no purpose in sending the case back, it may take the decision itself.

Prohibiting Order

A prohibiting order is similar to a quashing order in that it prevents a tribunal or authority from acting beyond the scope of its powers. The key difference is that a prohibiting order acts prospectively by telling an authority not to do something in contemplation. Examples of where prohibiting orders may be appropriate include stopping the implementation of a decision in breach of natural justice, or to prevent a local authority licensing indecent films, or to prevent the deportation of someone whose immigration status has been wrongly decided.

Mandatory Order

A mandatory order compels public authorities to fulfill their duties. Whereas quashing and prohibition orders deal with wrongful acts, a mandatory order addresses wrongful failure to act. A mandatory order is similar to a mandatory injunction (below) as they are orders from the court requiring an act to be performed. Failure to comply is punishable as a contempt of

court. Examples of where a mandatory order might be appropriate include: compelling an authority to assess a disabled person's needs, to approve building plans, or to improve conditions of imprisonment. A mandatory order may be made in conjunction with a quashing order, for example, where a local authority's decision is quashed because the decision was made outside its powers, the court may simultaneously order the court to remake the decision within the scope of its powers.

Declaration

A declaration is a judgment by the Administrative Court which clarifies the respective rights and obligations of the parties to the proceedings, without actually making any order. Unlike the remedies of quashing, prohibiting and mandatory order the court is not telling the parties to do anything in a declaratory judgment. For example, if the court declared that a proposed rule by a local authority was unlawful, a declaration would resolve the legal position of the parties in the proceedings. Subsequently, if the authority were to proceed ignoring the declaration, the applicant who obtained the declaration would not have to comply with the unlawful rule and the quashing, prohibiting and mandatory orders would be available.

Injunction

An injunction is an order made by the court to stop a public body from acting in an unlawful way. Less commonly, an injunction

can be mandatory, that is, it compels a public body to do something. Where there is an imminent risk of damage or loss, and other remedies would not be sufficient, the court may grant an interim injunction to protect the position of the parties before going to a full hearing. If an interim in injunction is granted pending final hearing, it is possible that the side which benefits from the injunction will be asked to give an undertaking that if the other side is successful at the final hearing, the party which had the benefit of the interim protection can compensate the other party for its losses. This does not happen where the claimant is legally aided.

Damages

Damages are available as a remedy in judicial review in limited circumstances. Compensation is not available merely because a public authority has acted unlawfully. For damages to be available there must be either: (a) A recognised 'private' law cause of action such as negligence or breach of statutory duty or; (b) A claim under European law or the Human Rights Act 1998.

Discretion

The discretionary nature of the remedies outlined above means that even if a court finds a public body has acted wrongly, it does not have to grant any remedy. Examples of where discretion will be exercised against an applicant may include where the applicant's own conduct has been unmeritorious or

unreasonable, for example where the applicant has unreasonably delayed in applying for judicial review, where the applicant has not acted in good faith, where a remedy would impede the an authority's ability to deliver fair administration, or where the judge considers that an alternative remedy could have been pursued.

Freedom of information legislation in the United Kingdom is controlled by two Acts of the United Kingdom and Scottish Parliaments respectively, which both came into force on 1 January 2005.

Freedom of Information Act 2000 (the "2000 Act") Freedom of Information (Scotland) Act 2002 ("the 2002 Act" or "the Scottish Act") Certain information can only be obtained under the Environmental Information Regulations 2004.

As a large number of public bodies in Scotland (for example, educational bodies) are controlled by the Scottish Parliament, the 2000 Act would not apply to them, and thus a second Act of the Scottish Parliament was required. It should, however, be noted that the scope of the two Acts is effectively identical - the types of public bodies covered in England, Wales and Northern Ireland are also covered in Scotland - and the requirements are almost identical, though the Scottish Act has slightly stronger phrasing in favour of disclosing information. The 2000 Act does not extend to public bodies in the overseas territories or crown

dependencies. Some of these have contemplated implementing their own legislation, though none is currently in force.

United States administrative law encompasses a number of statutes and cases which define the extent of the powers and responsibilities held by administrative agencies of the United States Government. The executive, legislative, and judicial branches of the U.S. federal government cannot always directly perform their constitutional responsibilities. Specialized powers are therefore delegated to an agency, board, or commission. These administrative governmental bodies oversee and monitor activities in complex areas, such as commercial aviation, medical device manufacturing, and securities markets.

Justice Breyer defines administrative law in four parts. Namely, the legal rules and principles that: (1) define the authority and structure of administrative agencies; (2) specify the procedural formalities employed by agencies; (3) determine the validity of agency decisions; and (4) define the role of reviewing courts and other governmental entities in relation to administrative agencies.

U.S. federal agencies have the power to adjudicate, legislate, and enforce laws within their specific areas of delegated power. Agencies "legislate" through rulemaking - the power to promulgate (or issue) regulations administrative law is codified as the Code of Federal Regulations.

Scope of administrative authority

The authority of administrative agencies stems from their organic statute, and must be consistent with constitutional constraints and legislative intent.

Generally speaking, therefore, agencies do not have the power to enact a regulation where:

- The regulation is an unconstitutional delegation of power (under current caselaw, courts almost never invalidate a regulation on this ground);
- The organic statute explicitly denies authority (but note that failure to grant authority in later legislative efforts is not dispositive);
- The regulation is not based on factual findings;
- The regulation is not pursuant to serving the "public convenience, interest, or necessity"; or
- The regulation is outside the agency's statutory purpose as articulated in its organic statute.

Agency acts are divided into two broad categories: rulemaking and adjudication. The scope of these two categories is defined in three ways:

Factors tending to make an act adjudicative in nature:

- Involving a small number of people
- Individuals involved are specially affected by the act

- Decision based on the facts of an individual case, rather than policy concerns

Cases in which an act was ruled to be adjudicative:

- Londoner *v. City and County of Denver*, involving a tax levied on residents of a particular street without affording them the opportunity to have their objections heard in person.

Cases in which an act was ruled to be rulemaking:

- *Bi-Metallic Investment Co. v. State Board of Equalization*, involving a tax levied on the entire city of Denver.

Administrative Procedure Act

According to section 551 of the Administrative Procedure Act, Rulemaking is "an agency process for formulating, amending, or repealing a rule."

A rule in turn is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy" Adjudication is "an agency process for the formulation of an order" An order in turn is "the whole or part of a final disposition.

Right to a hearing

There are two ways that an individual can attain the right to a hearing in an adjudicative proceeding. First, the Due Process clause of the 5th Amendment or 14th Amendment can require that a hearing be held if the interest that is being adjudicated is sufficiently important or if, without a hearing, there is a strong chance that the petitioner will be erroneously denied that interest. A hearing can also be required if a statute somehow mandates the agency to hold formal hearings when adjudicating certain issues.

Scope and extent of rulemaking power

Federal administrative agencies have the power to promulgate rules that have the effect of substantive law. The power to do so stems from the agency's organic statute, and extends to all regulations necessary to carry out the purposes of the Act, rather than being limited to powers expressly granted by the statute. The power extends to substantive rules as well as procedural rules. By contrast, many states, such as Kentucky, have been less willing to allow their agencies to promulgate rules with the effect of substantive law.

Agencies may not promulgate retroactive rules unless expressly granted such power by the organic statute. *Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988). The choice of whether to promulgate rules or proceed with ad hoc adjudicative decisions

rests in the informed discretion of agencies. *SEC v. Chenery Corp.*, 332 U.S. 194 (1947) (Dissenting opinion arguing that the decision permitted agencies to rule arbitrarily, without law). Agencies may also announce new policies in the course of such adjudications.

Agencies are permitted to rely on rules in reaching their decisions rather than adjudicate, where the promulgation of the rules is within the agency's statutory authority, and the rules themselves are not arbitrary or capricious. *Heckler v. Campbell*, 461 U.S. 458 (1983).

Type of rulemaking

There are three types of rulemaking:

- Formal rulemaking, which is rulemaking for which the organic statute requires that rules be "made on the record after agency opportunity for hearing," and for which the APA prescribes particular procedures; the phrase is required for formal rulemaking; simply requiring that rules be made "after a hearing" does not trigger the requirements of formal rulemaking;
- Informal rulemaking, which is rulemaking for which no procedural requirements are prescribed in the organic statute, and for which the APA requires notice and comment;

Hybrid rulemaking, which is rulemaking for which particular procedural requirements beyond notice and comment, but not rising to the level of formal rulemaking.

State-level administrative law

States may have their own administrative law; for example, a state constitution may allow the legislature to delegate rulemaking authority to an executive or independent agency, and state governments may provide an administrative appeal process for people who are dissatisfied with decisions made by certain state agencies.

California has an extensive body of administrative law including a hearing agency that requires its administrative law judges to be lawyers. California statutory law governing the hearing agency states that non-lawyers may appear before it. However, California case law holds that former attorneys who no longer practice law may not appear before it. Most California agencies adjudicate license cases utilizing the California Attorney General's legal staff. However, others (including the Department of Corporations and Insurance) utilize their own legal staff.

Constitutional law

The French Declaration of the Rights of Man and of the Citizen, whose principles still have constitutional value Constitutional law is a body of law dealing with the distribution and exercise of government power. Not all nation states have codified

constitutions, though all such states have a *jus commune*, or law of the land, that may consist of a variety of imperative and consensual rules. These may include customary law, conventions, statutory law, judge-made law or international rules and norms, etc.

Functions of constitutions

Constitutional laws may often be considered second order rulemaking or rules about making rules to exercise power. It governs the relationships between the judiciary, the legislature and the executive with the bodies under its authority. One of the key tasks of constitutions within this context is to indicate hierarchies and relationships of power. For example, in a unitary state, the constitution will vest ultimate authority in one central administration and legislature, and judiciary, though there is often a delegation of power or authority to local or municipal authorities. When a constitution establishes a federal state, it will identify the several levels of government coexisting with exclusive or shared areas of jurisdiction over lawmaking, application and enforcement.

Human rights

Human rights or civil liberties form a crucial part of a country's constitution and govern the rights of the individual against the state. Most jurisdictions, like the United States and France, have a codified constitution, with a bill of rights. A recent example is

the Charter of Fundamental Rights of the European Union which was intended to be included in the Treaty establishing a Constitution for Europe, that failed to be ratified. Perhaps the most important example is the Universal Declaration of Human Rights under the UN Charter. These are intended to ensure basic political, social and economic standards that a nation state, or intergovernmental body is obliged to provide to its citizens but many do include its governments. Some countries like the United Kingdom have no entrenched document setting out fundamental rights; in those jurisdictions the constitution is composed of statute, case law and convention. A case named *Entick v. Carrington* il a constitutional principle deriving from the common law. John Entick's house was searched and ransacked by Sherriff Carrington. Carrington argued that a warrant from a Government minister, the Earl of Halifax was valid authority, even though there was no statutory provision or court order for it. The court, led by Lord Camden stated that,

"The great end, for which men entered into society, was to secure their property. That right is preserved sacred and incommunicable in all instances, where it has not been taken away or abridged by some public law for the good of the whole. By the laws of England, every invasion of private property, be it ever so minute, is a trespass... If no excuse can be found or produced, the silence of the books is an authority against the defendant, and the plaintiff must have judgment." Inspired by John Locke, the fundamental constitutional principle is that the

individual can do anything but that which is forbidden by law, while the state may do nothing but that which is authorised by law. The commonwealth and the civil law jurisdictions do not share the same constitutional law underpinnings.

Legislative procedure

Another main function of constitutions may be to describe the procedure by which parliaments may legislate. For instance, special majorities may be required to alter the constitution. In bicameral legislatures, there may be a process laid out for second or third readings of bills before a new law can enter into force. Alternatively, there may further be requirements for maximum terms that a government can keep power before holding an election.

Administrative law in civil law countries

Unlike most Common-law jurisdictions, the majority of civil law jurisdictions have specialized courts or sections to deal with administrative cases which, as a rule, will apply procedural rules specifically designed for such cases and different from that applied in private-law proceedings, such as contract or tort claims.

France

In France, most claims against the national or local governments are handled by administrative courts, which use the *Conseil*

d'État (State Council) as a court of last resort. The main administrative courts are the "Tribunaux Administratifs" and appeal courts are the "Cours Administratives d'Appel".

Germany

In Germany, the highest administrative court for most matters is the federal administrative court Bundesverwaltungsgericht. There are federal courts with special jurisdiction in the fields of social security law (Bundessozialgericht) and tax law.

The Netherlands

In The Netherlands, administrative law provisions are usually contained in separate laws. There is however a single General Administrative Law Act that applies both to the making of administrative decisions and the judicial review of these decisions in courts. On the basis of the Awb, citizens can oppose a decision made by a public body ('bestuursorgaan') within the administration and apply for judicial review in courts if unsuccessful.

Unlike France or Germany, there are no special administrative courts of first instance in the Netherlands, but regular courts have an administrative "chamber" which specializes in administrative appeals. The courts of appeal in administrative cases however are specialized depending on the case, but most administrative appeals end up in the judicial section of the Council of State.

In addition to the system described above there is another part of administrative law which is called "administratief beroep" (administrative appeal). This procedure is available only if the law on which the primary decision is based specifically provides for it and involves an appeal to a higher ranking administrative body. If administrative appeal is available, no appeal to the judicial system may be made.

Sweden

In Sweden, there is a system of administrative courts that considers only administrative law cases, and is completely separate from the system of general courts. This system has three tiers, with 12 county administrative courts (*förvaltningsrätt*) as the first tier, four administrative courts of appeal (*kammarrätt*) as the second tier, and the Supreme Administrative Court of Sweden (*Regeringsrätten*) as the third tier.

Migration cases are handled in a two-tier system, effectively within the system general administrative courts. Three of the administrative courts serve as migration courts (*migrationsdomstol*) with the Administrative Court of Appeal in Stockholm serving as the Migration Court of Appeal.

Brazil

In Brazil, unlike most Civil-law jurisdictions, there is no specialized court or section to deal with administrative cases. In

1998, a constitutional reform, led by the government of the President Fernando Henrique Cardoso, introduced regulatory agencies as a part of the executive branch. Since 1988, Brazilian administrative law has been strongly influenced by the judicial interpretations of the constitutional principles of public administration (art. 37 of Federal Constitution): legality, impersonality, publicity of administrative acts, morality and efficiency...

Chile

The President of the Republic exercises the administrative function, in collaboration with several Ministries or other authorities with *ministerial rank*. Each Ministry has one or more under-secretary that performs through public services the actual satisfaction of public needs. There is not a single specialized court to deal with actions against the Administrative entities, but instead there are several specialized courts and procedures of review.

People's Republic of China

Administrative law in the People's Republic of China was virtually non-existent before the economic reform era initiated by Deng Xiaoping. Since the 1980s, the People's Republic of China has constructed a new legal framework for administrative law, establishing control mechanisms for overseeing the bureaucracy and disciplinary committees for the Communist Party of China.

However, many have argued that the usefulness of these laws is vastly inadequate in terms of controlling government actions, largely because of institutional and systemic obstacles like a weak judiciary, poorly trained judges and lawyers, and corruption.

In 1990, the Administrative Supervision Regulations and the Administrative Reconsideration Regulations were passed. Both regulations have since been amended and upgraded into laws. The 1993 State Civil Servant Provisional Regulations changed the way government officials were selected and promoted, requiring that they pass exams and yearly appraisals, and introduced a rotation system. In 1994, the State Compensation Law was passed, followed by the Administrative Penalties Law in 1996.

Ukraine

As a homogeneous legal substance isolated in a system of jurisprudence, the administrative law of Ukraine is characterized as: 1) a branch of law; 2) a science; 3) a discipline.

Chapter 5

Role of Financial Institutions Administration in Democracy

Principles of financial Costs

he purpose of this chapter is to introduce the master budget or financial plan. This topic includes an important set of concepts and techniques that represent the major planning device for an organization, as well as the foundation for a traditional standard cost performance evaluation and control system. Budgeting involves planning for the various revenue producing and cost generating activities of an organization. The importance of budgeting is emphasized by an old saying, "Failing to plan, is like planning to fail." Budgeting is essentially financial planning, or planning for financial performance. Consider the conceptual view of financial performance presented in Exhibit 9-1. As illustrated in the exhibit, financial performance depends on revenue and cost. Revenue is provided from sales of merchandise by retailers, sales of products, harvested, mined, constructed, formed, processed or assembled by farms, mining companies, construction companies and manufacturers and from sales of various services by firms involved in activities such as banking, insurance, accounting, law, medical care, food distribution, repair and entertainment. In addition to producing revenue, all of these companies generate three types of costs including discretionary, engineered and committed costs. Various costs fall

into one of these three categories based on the cause and effect relationships involved. Although there are a variety of ways to define costs, categorizing costs in terms of the cause and effect relationships is a prerequisite for understanding the different types of budgets that are introduced in this chapter.

Many activities are viewed as beneficial to an organization, even thought the benefits obtained, or value added by performing the activities cannot be defined precisely, either before or after the activity is completed. The costs of the inputs, or resources required to perform such activities are referred to as discretionary costs. These costs are discretionary in the sense that management must choose the desired level of the activity based on intuition or experience because there is no well defined cause and effect relationship between cost and benefits. Discretionary costs are usually generated by service or support activities. Examples include employee training, advertising, sales promotion, legal advice, preventive maintenance, and research and development. The value added by each of these activities is intangible and difficult, if not impossible to measure, where value added refers to the benefits obtained by either internal or external customers. In terms of cost behavior, discretionary costs may be fixed, variable or mixed.

Engineered costs result from activities with reasonably well defined cause and effect relationships between inputs and outputs and costs and benefits. Direct material costs provide a

good example. Engineers can specify precisely how many parts (inputs) are required to generate a specific output such as a microcomputer, a coffee maker, an automobile, or a television set. Direct labor also falls into the engineered cost category as well as indirect resources that vary with product specifications and production volume. Although the cause and effect relationships are not as precise for indirect resources, these relationships can be established using statistical techniques such as regression and correlation analysis. A key difference between discretionary costs and engineered costs is that the value added by the activities associated with engineered costs is relatively easy to measure. Engineered costs are variable in terms of cost behavior.

Committed Costs

Committed costs refers to the costs associated with establishing and maintaining the readiness to conduct business. The benefits obtained from these expenditures are represented by the company's infrastructure.

For example, the costs associated with the purchase of a franchise, a patent, drilling rights and plant and equipment create long term obligations that fall into the committed cost category.

These costs are mainly fixed in terms of cost behavior and expire to become expenses in the form of amortization and depreciation.

Four Types of Budgets

Four types of budgets are used for planning and controlling the various types of costs discussed above. These four techniques are summarized below:

Appropriation Budgets

The oldest type of budget is referred to as an appropriation budget. Appropriation budgets place a maximum limit on certain discretionary expenditures and may be either incremental, priority incremental, or zero based. Incremental budgets are essentially last year's budget amount plus an increment, i.e., small increase. Priority incremental budgets also involve an increase, but require managers to prioritize, or rank discretionary activities in terms of their importance to the organization. The idea is for the manager to indicate which activities would be changed if the budget were increased or decreased. Zero based budgeting was popular for a while around the time of Jimmy Carter's Presidency, but was dropped by most users because it was too expensive and time consuming. The technique is expensive to use because zero based budgets theoretically require justification for the entire budget amount. When it was popular, a more typical approach was to justify the last twenty percent of the budget, i.e., use eighty percent based budgeting. From a control perspective, appropriation budgets are effective in limiting the amount of an expenditure, but create a behavioral bias to spend to the limit. Establishing a maximum

amount for an expenditure encourages spending to the limit because spending below the limit implies that something less than the maximum appropriation was needed. Spending below the limit might result in a budget cut in future periods. Since nearly every manager views a budget reduction in their discretionary costs as undesirable, there are frequently crash efforts at the end of a budget period to spend up to the limit. Flexible Budgets

Recall that flexible budgets are based on a cost function such as Y = a + bX, where Y represents the budgeted cost, or dependent variable. The constant "a" represents a static amount for fixed costs and the constant "b" represents the rate of change in Y expected for a unit change in the independent variable X. The expression " bX" is the flexible part of the budget cost function. The flexible budget technique is used for planning and monitoring all types of costs. The static amount "a" includes both discretionary and committed costs, while the flexible part "bX" includes various types of engineered costs. The flexible characteristic of the technique enables the flexible budget to play a key role in both financial planning and performance evaluation. Capital Budgets.

Capital budgets represent the major planning device for new investments. Discounted cash flow techniques such as net present value and the internal rate of return are used to evaluate potential investments. Capital budgets are part of a somewhat

more encapsulating concept referred to as investment management. Investment management involves the planning and decision process for the acquisition and utilization of all of the organization's resources, including human resources as well as technology, equipment and facilities. The concept of investment management includes the discounted cash flow methods, but is more comprehensive in that the organization's portfolio of interrelated investments is considered as well as the projected effects of not investing.

Master Budgets

The fourth type of budget is referred to as the master budget or financial plan. The master budget is the primary financial planning mechanism for an organization and also provides the foundation for a traditional financial control system. More specifically, it is a comprehensive integrated financial plan developed for a specific period of time, e.g., for a month, quarter, or year. This is a much broader concept than the first three types of budgeting. The master budget includes many appropriation budgets (typically in the administrative and service areas) as well as flexible budgets, a capital budget and much more. A diagram illustrating the various parts of a master budget is presented hereunder:

The master budget has two major parts including the operating budget and the financial budget. The operating budget begins with the sales budget and ends with the budgeted income

statement. The financial budget includes the capital budget as well as a cash budget, and a budgeted balance sheet. The main focus of this chapter is on the various parts of the operating budget and the cash budget. The budgeted balance sheet is covered briefly, but not emphasized.

The Purposes And Benefits Of The Master Budget

There are a variety of purposes and benefits obtained from budgeting. Consider the following:

Integrates and Coordinates

The master budget is the major planning device for an organization. Thus, it is used to integrate and coordinate the activities of the various functional areas within the organization. For example, a comprehensive plan helps ensure that all the needed inputs (equipment, materials, labor, supplies, etc.) will be at the right place at the right time when needed, just-in-time if possible. It also helps insure that manufacturing is planning to produce the same mix of products that marketing is planning to sell. The idea is that the products should be pulled through the system on the basis of the sales budget, rather than produced speculatively and pushed on the sales force. The integrative nature of the budget provides a way to implement the lean enterprise concepts of just-in-time and the theory of constraints where the emphasis is placed on the performance of the total

system (organization) rather than the various subsystems or functional areas.

Communicates and Motivates

Another purpose and benefit of the master budget is to provide a communication device through which the company's employees in each functional area can see how their efforts contribute to the overall goals of the organization. This communication tends to be good for morale and enhance jobs satisfaction. People need to know how their efforts add value to the organization and its' products and services. The behavioral aspects of budgeting are extremely important.

Promotes Continuous Improvement

The planning process encourages management to consider alternatives that might improve customer value and reduce costs. The PDCA cycle supports specific improvements in the company's processes. The financial plan and subsequent financial performance measurements reflect the financial expectations and consequences of those efforts.

Guides Performance

The master budget also provides a guide for accomplishing the objectives included in the plan. The budget becomes the basis for the acquisition and utilization of the various resources needed to implement the plan. Perfection of the guidance aspect of

budgeting can significantly reduce the amount of uncertainty and variability in the company's operations. In a JIT environment, the budget can also serve as a guide to vendors. For example, suppliers to General Motors Saturn plant in Tennessee have access to Saturn's production schedule through an on-line database. This information allows Saturn's vendors to deliver the required parts in the order needed to precise locations just-in-time without a purchase order or delivery schedule.

Facilitates Evaluation and Controlss

The master budget provides a method for evaluating and subsequently controlling performance. Performance evaluation and control is a very powerful and very controversial aspect of budgeting.

Limitations And Problems

There are several limitations and problems associated with the master budget that need to be considered by management. These problems involve uncertainty, behavioral bias and costs.

Uncertainty

Budgeting includes a considerable amount of forecasting and this activity involves a considerable amount of uncertainty. Uncertainty affects both sides of the financial performance dichotomy, but uncertainty on the revenue side presents a more serious limitation for planning. The sales budget is frequently

based on a forecast supported by a variety of assumptions about the economy, the actions of the federal reserve board and congress in implementing monetary and fiscal policy, and the actions of competitors, suppliers, and customers. The uncertainty associated with sales forecasting creates a greater problem than uncertainty on the cost side because the other parts of the budget are derived from the sales forecast. This forces management to constantly monitor and analyze changes in the economic environment. From the planning perspective, the inability to accurately forecast the future reduces the usefulness of the original budget estimates for materials requirements planning (MRP) and planning for other resource needs. Uncertainty on the cost side tends to be less of a problem because management has more influence over the quantities of resources consumed than over the quantities of their own products purchased by customers. From a performance evaluation and control perspective, uncertainty on both sides of the financial performance dichotomy is not as much of a problem because flexible budgets are used to fine tune the original budget to reflect expectations at the current level of activity.

Behavioral Bias

A second problem involves a variety of behavioral conflicts that are created when the budget is used as a control device. To be effective, the budget must be used by the managers it is designed to help. Thus, it must be acceptable to all levels of management. The behavioral literature on budgeting supports the view that the

budget should reflect what is most likely to occur under efficient operating conditions. If a budget is to be used as an effective planning and monitoring device, it should encourage a high level of performance and efficiency, but at the same time, it should be fair and obtainable. If the budget is viewed by managers as unfair, (too optimistic) it may intimidate rather than motivate. One way to gain acceptance is referred to as participative (rather than imposed) budgeting. The idea is to include all levels of management in the budget preparation process. Of course this process must be coordinated by a budget director to ensure that a fair budget is obtained that will help achieve the goals of the total organization.

Another way to reduce the behavioral bias against budgeting is to recognize the concepts of variation and interdependence when using the budget to evaluate performance. The concept of interdependence refers to the fact that the various segments of a company are part of a system. Inevitably, these segments, or subsystems influence each other.

Failure to adequately recognize the interdependencies within an organization tends to cause behavioral conflicts and motivate participants to optimize the performance of the various segments (subsystems) rather than to optimize the performance of the overall system.

Finally, the behavioral conflicts associated with budgeting are reduced by using flexible budgets when evaluating performance.

Costs

A third problem or limitation is that budgeting requires a considerable amount of time and effort. Many companies maintain a twelve month budget on a continuous basis by adding a future month as the current month expires. While this does not create a major expenditure for large or medium sized organizations, smaller companies may find it difficult to justify the costs involved.

Many small, potentially profitable firms, do not plan effectively and eventually fail as a result. Cash flow problems are common, e.g., not having enough cash available (or accessible through a line of credit with a bank) to pay for merchandise or raw materials or to meet the payroll. Many of these problems can be avoided by preparing a cash budget on a regular basis.

The Assumptions Of The Master Budget

Typically, the following simplifying assumptions are made when preparing a master budget: 1.) sales prices are constant during the budget period, 2.) variable costs per unit of output are constant during the budget period, 3.) fixed costs are constant in total and 4.) sales mix is constant when the company sells more than one product. These assumptions facilitate the planning process by removing many of the economic complexities.

Responsibility Accounting

Responsibility accounting is an underlying concept of accounting performance measurement systems. The basic idea is that large diversified organizations are difficult, if not impossible to manage as a single segment, thus they must be decentralized or separated into manageable parts. These parts, or segments are referred to as responsibility centers which include: 1) revenue centers, 2) cost centers, 3) profit centers and 4) investment centers. This functional approach allows responsibility to be assigned to the segment managers that have the greatest amount of influence over the key elements to be managed. These elements include revenue for a revenue center (a segment that mainly generates revenue with relatively little costs), costs for a cost center (a segment that generates costs, but no revenue), a measure of profitability for a profit center (a segment that generates both revenue and costs) and return on investment (ROI) for an investment center (a segment such as a division of a company where the manager controls the acquisition and utilization of assets, as well as revenue and costs). Conceptually, ROI is some measure of the segment's income divided by some measure of the segment's investment. Typically, ROI is net income divided by total assets.

Responsibility accounting has been an accepted part of traditional accounting control systems for many years because it provides an organization with a number of advantages. Perhaps the most compelling argument for the responsibility accounting

approach is that it provides a way to manage an organization that would otherwise be unmanageable. In addition, assigning responsibility to lower level managers allows higher level managers to pursue other activities such as long term planning and policy making. It also provides a way to motivate lower level managers and workers. Managers and workers in an individualistic system tend to be motivated by measurements that emphasize their individual performances. However, this emphasis on the performance of individuals and individual segments creates what some critics refer to as the "stovepipe organization." Others have used the term "functional silos" to describe the same idea. Consider Exhibit 9-6. Individuals in the various segments and functional areas are separated and tend to ignore the interdependencies within the organization. Segment managers and individual workers within segments tend to compete to optimize their own performance measurements rather than working together to optimize the performance of the system.

An implicit assumption of responsibility accounting is that separating a company into responsibility centers that are controlled in a top down manner is the way to optimize the system. However, this separation inevitably fails to consider many of the interdependencies within the organization. Ignoring the interdependencies prevents teamwork and creates the need for buffers such as additional inventory, workers, managers and capacity. Of course, a system that prevents teamwork and creates excess is inconsistent with the lean enterprise concepts of just-

in-time and the theory of constraints. For this reason, critics of traditional accounting control systems advocate managing the system as a whole to eliminate the need for buffers and excess. They also argue that companies need to develop process oriented learning support systems, not financial results, fear oriented control systems. The information system needs to reveal the company's problems and constraints in a timely manner and at a disaggregated level so that empowered users can identify how to correct problems, remove constraints and improve the process. According to these critics, accounting control information does not qualify in any of these categories because it is not timely, disaggregated, or user friendly.

This harsh criticism of accounting control information leads us to a very important controversial question. Can a company successfully implement just-in-time and other continuous improvement concepts while retaining a traditional responsibility accounting control system? Although the jury is still out on this question, a number of field research studies indicate that accounting based controls are playing a decreasing role in companies that adopt the lean enterprise concepts. In one study involving nine companies, each company answered this controversial question in a different way by using a different mix of process oriented versus results oriented learning and control information. Since each company is different, a generalized answer to this question for all firms in all situations cannot be given in a textbook.

New Ethical challenges in a changing public administration

Administration ethics is an important field of study since the mid 1970s, undoubtedly motivated by the paradigm of the *New Public Administration* that placed the issue on the agenda of public administration. The recent paradigm of *Reinventing Government* has also an imperative position in ethical concerns. Given that, work and literature about this subject have largely expanded and its application to practice became quick while rich evidence appeared all over the world. As Cooper refers, administration ethics was not an ephemeral fashion, but it has confirmed its sustainability and its centrality to the field.

However, what is missing in this spectrum is a directed effort to study specific sets of major research questions that would be the core of administrative ethics. Therefore, allied to the dynamization and crescent interest of ethics, the current public administration reality of constant mutation, namely in matters of new developments, raises pressing ethical topics and challenges. The example of E-Government is a clear representation of this new reality. These are ideas that we intend to define as significant research questions.

Beyond the establishment of the essential interaction between ethics and the new administration forms and consequent new ways of governance, it is crucial to demonstrate the difficulties of

ethics definition, treatment and control in this reality. In order to achieve this and in this precise context, it is also vital to exemplify how it can be implemented, motivated and managed, through a new ethical approach.

One of the subsequent focal points of our discussion is based on the relationship of ethics and law. In our Portuguese framework, laws followed the alterations promoted by *New Public Management*, but the norms, regulations, values and beliefs conceived by the old Public Administration were not revoked and are not suitable to the demands of the recent law. For that reason, we can describe a great number of tensions between, for instance, tradition and quality. This is a major high point of discussion, because it has direct influence on ethics.

Influence of New Public Administration Paradigms on Ethics

The paradigms of *New Public Management* and more recently *Reinventing Government* provided a crucial mutation in the parameters and concepts of the public administration role. For that reason, not only ethics became an important area of concern, as its conception needed to adapt to the new formulations of governance and public service. Therefore, in order to define the correct interaction among these models,

public administration and ethics, it is vital to provide an advance to these theories.

We are now aware that the satisfaction of citizens' needs is essential when we refer to Public Services. This is a significant subject for *Managerial School* supporters, who have been debating the ways that governments should produce and deliver public services. They pinpoint that every element that involves public production is more expensive and inefficient than those of private production (Rocha, 2000). Because of that assumption, the *Managerial School* (plainly influenced by New Economic Institutionalism) promotes a modification in the delivery of public services. Consequently, the State must constantly endorse the provision of public goods or services, while third parties can supply production. *Managerial School* approach also maintains that large public services organizations should be broken down into independent units (the *agency approach*), with enough independence to function on a relatively free basis. This school integrates two major movements, namely *New Public Management* and *Reinventing Government.*

New Public Management

Globally speaking, NPM supports that *privatisation* is the adequate mechanism to establish efficiency, efficacy and quality in the delivery of public services, mainly because private practices are more qualified and accurate. In fact, as Emanuel Savas underlines "privatisation is the *New Public Management*"

(Savas, 2000: 319). Kieron Walsh defines that the central characteristic of this movement is "the introduction of market mechanisms to the running of public services organizations: the marketisation of the public service" (Walsh *et al*, 1997: *xi*). This author demonstrates that the main principle in the use of privatisation mechanism in the United Kingdom was the alteration in the delivery of public services through the organizational and cultural transformation of the Public Sector. The reform purposes were to:

- Reduce the costs of government action,
- Reduce the number of public employees and action,
- Change organizational public values.

Within the ethical area, this movement challenged the ancient understandings of administration, believing that administrators worked as technical professionals, without making much use of good judgment according to the desires of their political masters. The NPM denied ideas of administration as ethically neutral instrumental thinkers apart from the electorate. Accordingly, intellectual proponents of this perspective were responsible for the first noteworthy approach of public administrators' ethical obligations and the importance of citizen participation in administrative decisions.

This movement gained impact with Ronald Reagan's administration in the United States of America and Margaret Thatcher in the United Kingdom.

Reinventing Government

The movement emerges from Osborne and Gaebler´s work, and becomes relevant with Bill Clinton's administration. RG supports that Public Administration must consider two features: mission and improving productivity. Its mission is to satisfy the needs of the customers. Improving productivity is achieved by means of a distinction between the results and the quantity of resources implied. It is unavoidable to point out results (and not only rules) and objectives (not only the resources). The customers requests must also be fulfilled, since "the purpose of a business is to create a customer".

This perspective is not drastic and radical as the previous one, primarily because it defends that in order to make the productivity progress possible in Public Administration, hierarchical structures must be flexible, and opposite to concentration and centralisation. Privatisation can be an answer if the alterations in the hierarchical structure do not have any influence on productivity.

If it is not possible, delegation mechanisms can be a solution. Concerning ethical position, the authors of this movement, advocate that the use of privatisation devices does not alter the fact that the State has the responsibility as the organizer. It has to supervise and control all the process, bearing in mind the satisfaction of citizens, and the execution of efficiency, effectiveness and accountability.

The Present Impact of These Paradigms on Ethics

These two movements, in spite of their clear difference in methods, believe that administrative reform is an evolutionary process. In sum, they shaped important aspects that had consequences on nowadays ethics. The transition from the Weberian model to the present one also brought new ethical concerns. To be exact, the Government becomes a partner among others, public and private; therefore the delimitation between public and private is imprecise. New forms of public delivery are available. The activities of Government are distributed through organizations that involve numerous actors and decentralisation is expanding, achieving flexibility and responsiveness. With more and more autonomous new units and networks, it is obviously difficult to define responsibilities and to control them. The NPM formulates an unambiguous distinction between state bureaucracy and market modes of organization. The implementation of the notion of business and competition in *managerialism* intensifies the idea of customer orientation. This idea promotes government transparency, denying the old close bureaucracy. The introduction of a market type mechanism signifies innovating forms like contracting out, agentification and privatisation, among others. The performance of public servants is evaluated and controlled, chiefly because the service to the public (and its quality) has become a core value in public administration. Public service users are now faced as clients or costumers. Otherwise, "While in the traditional Weberian bureaucracy the responsibility of public servants is restricted to

the execution of orders given by the legitimate power, public servants now have a broad spectrum of responsibility". As Parsons highlights, "In this Weberian world there was a place for everything and everything was in its place. Civil servants knew their place and parliaments knew where things were and who was responsible for them". In fact, public servants turn out to be more accountable, sustained by audit mechanisms. When the Weberian hierarchical forms become more elastic, it is difficult to define unbending roles.

The key words of this new reality are diversity and complexity, against the consistency and predictability of the older bureaucratic model. These postulations carry an expected increase in the diversity of *modus operandi*, procedures and actions. In the same way, this diversity acts also in the field of values. It is also relevant to refer that the *managerialist* notions of government are not neutral, they imply an ideology, a defined conception, and largely that, "The rapid spread of NPM practices has been their utility and acceptability to dominant political elites.". In effect, it seems clear that managerial reforms brought new ethical problems and doubts; however, it is undisputable that the paradigms that support these reforms have made an open space for ethics awareness and discussion possible. Actually, not only has ethical conduct become an important issue, but also the widening ideas of governance include "democratic and participative values which give greater weight to accountability than efficiency, while recognizing that citizens

want government to be efficient too.". In fact, the common problem of corruption may be a symbol of the insufficiencies of a poor public management. The new focus on ethics derives then, not only from fresh interest, but also represents a double sign: of the evolution and improvement of society and of the declining public reliance in government.

The Nature of Ethical Weakness at Present

Before we proceed further, it is worthwhile to have a look at the dynamics of ethics in public administration. This will help us to identify the basic elements that shape ethics in public administration. We can then appreciate how, while changes may be taking place in society due to various factors from time to time over centuries, values remain constant. As values remain constant, the principle of ethics also remains constant. As they remain constant, we all stand to gain by looking at the classical insights on ethics in public administration so that we can improve our current practice.

As a society evolves, it is realized that the behavior of people has to be regulated if society as a whole is to survive. The welfare of a society is the result of cooperation between its members. No man is an island. The Ten Commandments evolved because if everybody was indulging in stealing, murdering, or coveting his neighboring wife, no orderly society could be possible. The Ten Commandments reflect the values that a society cherishes so that they become guidelines for action. The values are the

fundamental principles that are essential for a good, orderly society. Practicing those values in terms of code of conducts gets translated into morals or ethics. As values of society remain the same, ethics also in principle remains constant. This is the underlying dynamism of ethics in public administration. So faster growth is not just a consequence of appropriate economic policy, savings rate, human capital and fiscal deficits, but, somewhat surprisingly, the level of honesty in the citizenry.

Many people make a mistake in trying to cash in on these gains too often, not realizing that each time one does it, one tends to damage ones reputation. If a person breaks too many promises, people will be wary of getting into agreements with him or her. In other words, excessive dishonesty and corruption, as in our society, is a sign of several things but, importantly, of myopia. To a person interested in nothing but his or her own welfare, the Machiavellian lesson would be simple: try not to tell lies so that you can get away with the rare one when you have to. So even if people were fully selfish, if they calculated their own interest rationally (that is, without myopic short-sightedness), they would be more honest than they typically are.

Collectively, people may have an interest in being even more honest and trustworthy than what the selfish rationality calculus induces. This is not always easy to understand. Let us begin by noting that people use group characteristics to judge individuals. Thus, people hold views as to how trustworthy

Indians are and how punctual Latinos are; about the ethics of Protestants and the materialism of Calvinists; about how dependable the Japanese are as business partners and about how untrustworthy such and such people are.

We realize how values can lead to evolution of codes of ethical conduct. In the context of public administration what will be these values? The first of course is the concept of dharma or righteous behavior. When the British came and we inherited the British system of administration, we became familiar with the concept of the rule of law. The rule of law is nothing but the rule of dharma. As *Brihadaranyaka Upanishad* says, the law is above the king himself. In fact, it is necessary that we accept this, and try to shape our conduct and system in such a way that the principle of dharma or law is re-established. In the Indian democratic system we will be able to establish the rule of law only if we ensure that law makers do not become law breakers, or law breakers do not become law makers in the first instance.

Remedial Action against the Current Rot

I would like to present the following ideas in the context of current practices that have turned ours a highly corrupt country. We are looking at the issue only from the point of view of how the rule of law can be re-established with the help of the right type of law makers. The law makers in our country are the members of parliament and legislature. They can play a very important role in promoting a corruption-free government. Even in government,

while the bureaucratic executive implements the law, it is also supervised by the political executive in the form of chief ministers, the prime minister and the cabinet. The political executive is also responsible to the legislature. The role of the law makers therefore can be seen from two different angles. The first relates to the enactment of the law and the second relates to the implementation of the law.

The minimum requirement for ensuring that our law makers are able to promote a corruption-free government is that the law makers should not themselves be law breakers. The Vohra Committee Report had highlighted one negative aspect of our politics, namely, the criminalization of politics. So if we want to start a process by which we will be able to achieve a corruption-free government, where law makers play a very effective role in achieving this objective, it is necessary that we should first take steps to ensure that law breakers and criminals do not become law makers.

No political party can be permitted to contest the elections unless it has got the latest annual accounts duly audited by an auditor as may be prescribed by a notified agency like the Election Commission, the CAG or the Supreme. Court.

No political party may be permitted to contest the elections unless it has cleared its income tax dues and has got the requisite certificate from the income tax authorities.

Complaints regarding corrupt practices during elections can be looked into by the Election Commission even before the date of polling. The Election Commission has an excellent communication system to receive complaints of this type and can immediately take action so that there will be a healthy check and deterrent effect on corrupt practices during elections. Prevention is always better than cure.

A person who has been accused of an offence involving moral turpitude or any other criminal offence cannot be permitted to contest elections. The Election Commission may identify these offences. Instead of going only by the gravity of the offence and FIR being filed, the critical test for applying the ban on the candidate contesting an election should be that a concerned judicial authority like a magistrate should have examined the FIRs and the data, and gone to the stage of framing a charge sheet.

If a person who has been charge sheeted for grave offences and moral turpitude as identified and notified by the Election Commission, is banned from fighting the elections, it will ensure that criminals do not enter politics and become representatives of the people. The responsibility can be cast on the candidate who must be asked to certify that he or she has not been charge sheeted or, if he or she has been, to give details. Such a person must also give details of the past punishment awarded by the court. We do not know what action the Election Commission

might take. Nevertheless, I think it is necessary to have a nationwide debate on this issue so that appropriate action is taken to tackle the issue of corruption at the political level.

One of the reasons for corruption in government is that there are too many complicated and obsolete laws. The greater the number of laws, greater is the scope for red tape. Greater the scope of red tape, greater the temptation for corruption. It will be good if the law makers can have a look at the existing laws in the statute book and see how many of them can be done away with. In fact, when Shri I.K. Gujral was prime minister, the Indian government had set up the Jain Committee to identify the administrative laws that were obsolete. If I remember rightly, the committee identified about 3,500 laws of which about a third could be done away with. So in order to promote a corruption-free government we should start with a systematic campaign to remove obsolete laws from the statute book.

In addition to the removal of obsolete laws, there is need to introduce a system that will ensure that no law remains on the statute book forever and thereby become another source for corruption. We should therefore bring in a concept like the sunset principle as in the United States. No law remains on the statute book forever and has a life of say five or 10 years, at the end of which period, unless it is consciously reviewed and re-promulgated, it will exit the statute book. This will automatically ensure that we do not have laws cluttering the statute book.

The next important aspect is that law makers should pass laws that will promote an atmosphere of a corruption-free government. Transparency is increasingly recognized as a method for checking corruption. There is therefore an urgent need for passing a Freedom of Information Act. There is a fear that the Freedom of Information Act will be passed in such a way that there will be so many provisos and safety clauses that ultimately the basic objective of transparency in administration may be defeated. It will be necessary for law makers to ensure that such loopholes are not provided and citizens of the country have access to as much information as possible so that the degree of transparency in the government is enhanced. In fact, except for a small negative list of items having a bearing on the security of the nation or some aspects that have a direct bearing on maintenance of peace and so on, there should be no restriction at all for the public in accessing government information. To the extent our law makers are able to create such an environment, they will have taken an important step towards bringing in a culture of honesty in government.

The dynamics of corruption in government starts with a systematic attempt at politicizing the bureaucracy. Though in principle we are supposed to have a politically neutral permanent civil service of the British type, what we have in practice is the spoil system of the USA, without the corresponding checks and balances in that country that makes it far less corrupt than India. The simple instrument by which the political executive has

found that the bureaucracy can be made to dance to its tunes is the instrument of transfers and postings. The importance of insulating at least the important and sensitive posts from this transfer instrument was highlighted by the Supreme Court in the Vineet Narain case, popularly known as the *Hawala* case. The Supreme Court pointed out that at least the two key investigating agencies of the Government of India, namely, the CBI and the Enforcement Directorate must be insulated from outside influences. This was sought to be achieved by making the Central Vigilance Commission a statutory body and making the CVC supervise the activities of the CBI. The CVC also chairs a committee in which the concerned secretaries are represented to choose the panel of names for the posts of director and senior officials of CBI as well as that of Enforcement Directorate. In addition, there is also an assured tenure of two years for the officials and they cannot be transferred without the consent of the CVC.

This initiative of the Supreme Court so far as CBI and ED are concerned points a way by which we can systematically depoliticize the executive, or at least reduce the possibility of corrupt elements in the bureaucracy getting into sensitive posts and exploiting their position. It will be worthwhile to identify all the sensitive posts in the government and bring in a discipline that these posts will be filled up from a panel of names recommended by ant objective and independent committee like the CVCï¿½s committee for the CBI and ED. The composition of

this committee can be different for different posts. Once posted, the incumbents will have a minimum tenure of two or three years. This will promote a certain amount of objectivity and relieve the present situation where corrupt elements literally bribe their way into sensitive posts. The above method of investing the filling of key sensitive posts with objectivity will go a long way towards better control over corruption in government.

A New Fundamental Right

Apart from the overwhelming importance of the rule of law, equally important is the empowerment of the citizen. Perhaps the most important law governing modern societies is the Constitution. In the context of the review of the Constitution, which is being undertaken by the Venkatachaliah Committee at present, I would also suggest a new right, the right to corruption-free service as a fundamental one for every citizen. As India has become a corrupt country today, the need for strengthening the citizen becomes important. The rationale for corruption-free service as a new fundamental right is worth exploring at this stage.

The fundamental rights enshrined in the Constitution represent two important facts. The first is that they are an explicit and significant articulation of the basic rights that every citizen must enjoy in a meaningful democracy, and the ideals articulated in the Preamble to the Constitution are realized in practice. The second important fact is that they represent the rights that a citizen must enjoy if we want to have good governance.

These rights have evolved over generations. They represent the lessons society has learnt from past experience when these rights were not available and consequently there was suffering and mis-governance. For example, the protection from double jeopardy must have arisen because there was a time when a person could be punished again and again for the same offence. The right to property must have arisen because there was a lime when these rights did not exist. The right to freedom of speech probably has been very much appreciated because we have seen in our own times regimes where this right did not exist, resulting in bad governance.

Fifty-three years of our existence as an independent nation and 50 years of working of the Constitution have resulted in one common experience for all Indian citizens. They cannot go to any public organization or office today and get the services they are supposed to without either paying a bribe or bringing influence by way of recommendations or references from VIPs..

The first reason why corruption-free service must become a fundamental right of every citizen is that it is a basic necessity for good governance. Good governance today can be considered to be a universal human right. We already have a National Human Rights Commission, and human rights have been recognized by the United Nations. In this era of globalization, human rights are getting articulated very effectively and also being implemented. The right to good governance must be a part of human rights,

especially in the context of our current state in history. We have had experience of different types of regimes and governance, and we have adopted democracy, which ensures government of the people, by the people and for the people as the best model for good governance.

The negative impact of the phenomenon of corruption is now being recognized by international bodies like the World Bank, which have realized that good corporate governance is necessary in the context of globalization. Good governance cannot follow unless there is a check on corruption. This new fundamental right therefore should be taken as the crystallization of the experiences of the last century, which has seen greater interaction among various nations and the evolution of certain universal principles like those relating to human rights.

It is obvious that corruption, which is the use of public office for private profit, can never go along with good governance. In other words, corruption totally distorts the machinery of the government. If the public servant, while he is occupying an office, can utilize it for exploiting the citizen and enrich himself, should there not be a right on the part of the citizen to ensure that he is not exploited by the corrupt public servant? After all, a fundamental right like double jeopardy is only articulating the principle that the state, which has the power for punishment, will not use that power to punish a person more than once for an offence. Basically the fundamental right should be seen as a right

given to the citizen to ensure that he has a level playing field so far as his interaction with the state, which has all the power, is concerned.

There is an argument that other countries do not have this fundamental right in their constitutions. The countries with which we may be comparing ourselves are of two types. They may be countries that are developed like United States or Britain, which, thanks to years of evolution, have much less corrupt governments. So far as the common citizens in these countries are concerned, at least they do not have to face the problem of corruption at every stage when they interact with a public office. In India this is not the situation. Therefore, the Indian citizen has to be protected by being offered this additional right.

The other type of countries are those that are less developed than India or more corrupt than India. The point is, if these countries do not have such a fundamental right, should we also emulate them and sink deeper into the morass of corruption and bad governance? I am sure any sensible Indian would agree that it is better that we realize the corrosive effect of corruption, which is anti-national, anti-poor and anti-economic development. We must strengthen the foundation of good governance by including this right in the fundamental rights chapter.

The next question that is raised is how will] this fundamental right be different from other issues, like a fundamental right for breathing or fundamental right for housing, which one former

prime minister is now raising? The fundamental right of corruption-free service is different because in the absence of this right, all the other rights that have been conferred on the citizen become meaningless. Take for example Article 14 of the Constitution, which confers on the citizen the fundamental right of equality before law and equal protection of law. If a citizen is interacting with a corrupt public servant, he or she is definitely not going to be treated on the same footing as another citizen who bribes that corrupt public servant. Thus, the principle of equality before law and equal protection of law is distorted because the corrupt public servant and the phenomenon of bribery.

Article 19 gives a fundamental right to business or profession. It is the experience of our permit license raj that one of the points generally made by public servants who control clearances is that the citizen who is in business is going to make a lot of profit because of the clearance. The corrupt public servant thinks that he or she has a right to share in the profit of the professional or the businessmen. This is the kind of corruption by which the public servant exploits the public office for his or her private gain. The fundamental right for profession or business therefore is directly affected by the public servant insisting on his or her rent. We can thus see that corruption goes directly against the guaranteed fundamental right of profession. The same can be said about the right for freedom of speech and freedom of movement. If a corrupt police official uses his or her power of

office to restrict a citizen because the latter has not bribed him or her, then the official is indirectly preventing the exercise of the fundamental right of the citizen by his act of corruption.

At this stage, a point may be raised. So many fundamental rights are already in existence and are being not implemented; then how will addition of one more fundamental right make the situation better? The great advantage is that the inclusion of a new fundamental right like the right to corruption-free service sends a signal throughout the country that there is a national consensus on the problem of corruption as a social evil. So the Constitution confers a right on the citizen to enable him or her to take on the corrupt public servants. Widespread awareness about the inclusion of this new fundamental right will bring in a new generation of students who, right from their school days, will become aware of this right as they study the structure of governance in our country. Public awareness in turn will crystallize into public opinion, which will provide the requisite sanction for modifying social behavior.

Further, the very fact that this is a fundamental right will ensure that the highest court in the land, the Supreme Court, can be approached. In addition to the provisions relating to Prevention of Corruption Act or other preventions about misuse of public offices, the fact that a citizenï¿½s fundamental right has been violated will also make the courts take a more serious view. We can expect a series of decisions from the court, which in turn will

go a long way in bringing about a sea change in the legal framework and the administrative culture under which the executive functions.

Criticisms like those from Buch do not take into account the fact that sometimes inclusion of a right in the Constitution itself leads to social changes. This probably can be said of the provisions made in our Constitution regarding the abolition of untouchability, non-discrimination, ill-treatment, empowerment of the weaker sections and so on.

It can be argued that the fundamental rights already enshrined in the Constitution also ensure the right for corruption-free service. If we consider that the state shall not deny any person equality before the law and equal protection of law within the territory of India, it can perhaps be argued that Article 29 (ii) need not be there at all. The main purpose of Article 29 (ii), from my plain reading of the Constitution, is to particularly articulate an important fundamental right of minorities, so that this is not lost sight of. More important, minorities can exercise their right and get the protection of the law in exercising their right.

Another social evil that has been specifically abolished by inclusion in the fundamental rights is prohibition of traffic in human beings and forced labor (Article 23). Prohibition of employment of children in factories, etc. under Article 24 is another example of a social evil being eliminated by including the

elimination and conferring the rights on the Indian citizens by specific mention in the chapter on fundamental rights.

Generally, the values in a society underlie traditions. Traditions in turn get crystallized into legislation. The soul of traditions or the most essential principles underlying the legislation get reflected in the Constitution. With the experience of the last 50 years of the working of the Constitution and international developments, especially the phenomenon of globalization, it is high time that we included the fundamental right for corruption-free service in the chapter on Fundamental Rights in the Constitution.

Such a measure will make patent what is presumed and latent. There are many who point out to the other provisions of the Constitution and say that corruption-free service follows by the observance of the other provisions of the Constitution. As we have seen above, the phenomenon of corruption in a way goes against the exercise of other fundamental rights mentioned in the Constitution. There is therefore a need for explicitly articulating corruption-free service as a patent fundamental right of the Indian citizen so that what is latent and lying hidden in the other provisions of the Constitution becomes explicit. Making this explicit has the advantage of sending a signal throughout the country about the commitment of the state for improving the quality of life of the citizens of this country. There may be many who will say that at best this will remain only on paper. At best,

it may be only a cosmetic verbal gesture. But the Constitution is not a cosmetic verbal document. It is a living document articulating the spirit of the people as crystallized by the legislature and interpreted by the judiciary. Including this fundamental right therefore may begin perhaps as a verbal gesture, but in the course of time, with the continuous interpretation of the right by the Supreme Court and the judiciary, we can expect that a social change can be brought about in society. After all, we have seen, for instance, the affirmative action in favor of weaker sections of society, Scheduled Castes and Scheduled Tribes, and minorities being articulated first in the Constitution and the subsequent history of 50 years and the judicial action. This has, in a way, resulted in bringing about social change. Bringing about social change, especially by way of checking I corruption and improving governance, there-fore is an important aspect, and inclusion of the new fundamental right can be taken as a first step in that long journey. The journey of a thousand miles begins with a single step, says a Chinese proverb. Perhaps as we begin the journey as a republic in the twenty-first century, articulating this new fundamental right may be a right step towards making India a well-governed country.