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**THE ROLE OF PUBLIC SECTOR REFORMS IN
CONSUMER PROTECTION**

China and the UK

By

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Thesis Submitted for the Degree of Doctor of Philosophy

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Glasgow, United Kingdom

April 2001

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April 2001

Abstract

Recent managerial and organisational changes through the new public management, organisational restructuring and consumerism are studied from the backgrounds of each country, for example, the significance, peculiarity and influence of public sector reforms in the UK or in China or elsewhere. Fewer articles have centred on a comparative perspective in public sector reforms, which have occurred recently in both the UK and China. The aim of this study was to provide readers with a better understanding of the major thrusts of administrative reforms, how they have affected those managing the services, and their restructuring, and how public sector reform ideas have integrated with the practice of public sector reforms. A comparative legal method was employed by which these changes were investigated and studied theoretically and practically, with a wide range of studies from government documents, both published openly and internally, a literature search from academic sources and interviews. The results indicated that similar objectives, namely streamlining governmental institutions, raising efficiency and effectiveness in administrative management, and the primacy of consumers, are pursued in both China and the UK although the developments varied in degree and scope. These findings suggest that a comparative approach might be the most suitable in seeking to provide an interpretative rationale rather than a purely abstract analysis of administrative reform agenda. No one should accept the ready-made blueprints of public sector reforms without considering their own economic circumstances, social culture and political manifesto.

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List of Abbreviations

ACE	Agency Chief Executive
CC	Central Committee
CCPCC	Chinese Communist Party Central Committee
CPC	the Communist Party of China
CPPCC	Chinese People's Political Consultative Conference
FMI	Financial Management Initiatives
FOI	Freedom of Information
GAC	Government Administration Council
LAC	The Legislative Affairs Commission
MAC	Military Affairs Committee
MP	Member of Parliament
NPC	National People's Congress
NPCSC	Standing Committee of the National People's Congress
NPM	New Public Management
PCA	Parliamentary Commissioner for Administration
PCR	Proletarian Cultural Revolution
PFI	Private Finance Initiative
PFI	Private Finance Initiative
PRC	People's Republic of China
SOEs	State Owned Enterprises
TCSC	Treasury and Civil Service Committee of the House of Commons
TQM	Total Quality Management

Chapter 1

INTRODUCTION

For the public sector, recent managerial and organisational changes that have affected the formation of public services, such as the civil service, are highly significant. The most common features of significance are the delegation of public services, and the injection of private sector principles into the public sector, which have impacted on the ways in which public services are being managed. In addition, the emergence of agencification of the services and increasing contractualisation and privatisation impact on many areas of public sector strategies, including policy making, implementing managerial decisions, and structural reorganisations. The overall structure of these changes captured a core element in the process of readjusting relationships between management and policy, between public and private, and between the state and citizen. A continuation of the trends since the late 1970s onwards has attracted scholarly attention and many researchers and scholars are involved in these developments in response to a series of radical political, legislative and organisational changes, encouraged by government initiatives.

Attitudes towards public sector reform have turned out to be completely different among different authors. Supporters of 'new public management' and government restructuring claim that they are of great importance because they are transforming the structure, public ethics, and the culture of the civil service, as discussed in academic journals, diverse conferences and colloquia, and mass media. Conversely, critics claim that the injection of the private sector elements into the public sector devalued traditional public ethics and culture. Some argue that emphasising unduly the importance of managerialism in public sector reform has given rise to increasing numbers employed in managerial posts at the expense of those actually delivering services, which is contrary to government claims to empower citizens.

In public sector reform practice, it is generally recognised that integrating public ambitions with public reality will be difficult to achieve, as there tends to be a gap between theory and practice.

As a consequence, this study provides an account and assessment of these changes and how they have affected those managing the services, how they have restructured the services, and how public ethics have shown the significance of combined public sector reform ideas on the practice of public sector reform.

This thesis presents these changes through economic circumstances, new ideas and dominant management techniques, which have influenced the introduction of new managerial practice into Britain's public services and the onset of Chinese public sector reform in response to economic reforms since the late 1970s, in the belief that a comparative approach might be the most suitable in seeking to provide an interpretative rationale rather than a purely abstract analysis.

Indeed, the last decade has witnessed rapid and profound changes in both domestic and international politics. Familiar concepts such as national sovereignty are being challenged by the forces of globalisation. New issues, such as those presented by the economic environment, the emergence of the new public management, and information technology, demand innovative solutions which test basic assumptions regarding the international legal order and the processes of diplomacy. At another level, the very distinctions between domestic and international politics are being eroded. The world polarisation between capitalist and socialist countries is being gradually undermined. The Western and Eastern countries are looking for more inclusive co-operation not only in the economy and but also in politics. This has posed very radical problems for the vision of public sector reform in the post-Cold War world.

Different countries have diverse policy ambitions, which inevitably result in the different policy outcomes they have actually achieved. Because of this, all changes are highly particular and are not subject to definitive formulae of success. Therefore, any

attempts to establish a scientific path and an model example merely add to the confusion, particularly in trying to regularise what are often intuitive processes.

Against this background the aim of this thesis is to provide readers with more legal and practical materials to examine the changing nature of public services at the beginning of the twenty-first century. It does so by offering a comparative approach between the UK and China based on government initiatives, radical changes in reacting to public sector reform, and the influence of the public service ethos.

However, the objectives of public sector reforms, such as streamlining governmental institutions, raising efficiency and effectiveness in administrative management, and the primacy of consumers, are pursued almost everywhere in the world. No one can accept the ready-made blueprints for public sector reforms without considering their own economic circumstances, social culture and political manifestos. Frequently in the area of public sector reform we can learn not only from our own experiences but also from the experiences of others. By comparing the experiences of different countries one is in a better position to understand the rationale, logic and trends of public sector reform so as to discover each country's own peculiarities in policy making, practical implementation and legal preparation for public sector reforms. The objectives of this thesis are to explore the tension between simplistic notions about public sector reform and the complexities in reality, while incorporating both countries' experiences and some constitutional issues resulting from government reforms.

In this thesis, some important aspects of the changes are investigated and studied theoretically and practically, with an extensive review of academic books, and journals of both the UK and China; government documents including House of Common papers, Parliamentary Questions, Hansard, the bulletins of the State Council of the People's Republic of China and laws promulgated by the National People's Congress of China; newspapers available both in Glasgow libraries and libraries of China; and databases on the computer networks. Interviews that I conducted in early 1998 in China are also employed. The materials collected from these sources, though being far from comprehensive, are believed to be sufficient to provide a sound base as a starting point for the research and draw a general picture of the changing civil service processes facilitating consumer protection both in the UK and China.

Therefore, this thesis offers an assessment of the themes and experiences of public sector reforms in the United Kingdom and China, including their different backgrounds, state regimes, and political beliefs. It is my intention to provide tentative hypotheses based on more information rather than on intuition and anecdote so as to lay a solid foundation of legal theory as well as facts to ascertain the relationship between executive, consumer and the state.

This thesis is in four parts, split into thirteen chapters, looking at the changes in the public services that have taken place in recent years. It includes the emergence of consumerism, new public management techniques and studies of institutional restructuring that have already impacted on the traditional public ethics, culture and structures.

Part I includes two chapters examining the background to the UK and the Chinese civil service. Following this chapter, chapter 2 discusses the environment and the need for changes, the consequences of change and the research objectives. A selective review of the published literature relevant to the research is also presented in this chapter which gives a general picture of current public service changes. Understanding the likely impact of the change is one thing, endeavouring to establish methods to solve issues in public sector reform in reality may be a quite different matter. Having identified the gap between theory and the current situation, it is then possible to commence the core research process.

Part II consists of four chapters, which detail the great contributions that ancient China made to the system of the civil service, the institutions of the Chinese government, the modern Chinese civil service reform, and case studies of cadre entrepreneurs and party-led anti-corruption campaigns. State Owned Enterprises (SOEs) will be the central theme of this part because they not only dominate the Chinese economic landscape, but also are one of the toughest problems surrounding the political system reform. In other words, SOEs reform is the biggest problem in relation to both economic and political systems reform. In China, 60 per cent of government revenue is derived from SOEs, two third of employees in cities and towns work in the state sector. The state enterprises

dominate vital areas such as infrastructure and basic industries including petrochemicals, steel and electronics. All state firms in China are under direct control of relevant government departments at central and local levels, the scale of control including their production, sale and key leaders' appointments. For instance, state commercial firms are controlled by government commercial departments, provincial state firms are controlled by provincial government departments, and so are other state companies according to the nature of the companies. They also account for up to 90 per cent of the loans granted to the enterprises by China's state banks.

China's leaders agreed that the SOEs remain technologically backward; that the firms have insupportable obligations to look after their employees from cradle to grave, paying for schools, hospitals, pensions and so forth; that the spread of open markets and liberalised prices is eroding the enterprises' former dominance. Swathes of production capacity lie idle. The state admitted in 1997 that for nearly half of some 900 industrial products, state factories reported that only 60 per cent of the relevant capacity was in use. Others survey suggest that state firms could cut staff by a third with no effect on output.¹

One result of these facts is that a growing proportion of SOEs is losing money. According to the a study by the World Bank, about half of all industrial SOEs made a loss in 1996, up from one-third just two years ago.² These loss would be undoubtedly be greater were it not for the fact that the enterprises have access to subsidised credit. The return on assets of the state owned companies falls remorselessly, and is less than three-fifth that of China's foreign-funded private companies. Aggregate profits had collapsed, from the equivalent of 6 per cent of GPC in the late 1980, to about 1 per cent of GDP in the late 1990s.³

Since 1979 China began to open its doors to the outside world, China's policy-makers have long recognised the need to reform the SOEs. Their effects have lately become somewhat more vigorous and wide-ranging. First came the "contract responsibility system", then "lease responsibility system", "shareholders responsibility system", and so

¹ China Statistical Yearbook 1997, State Statistic Bureau.

² "China's Management of Enterprise Assets: The State as Shareholder." World Bank, June 1997.

forth. These aim to separate the state as a owner from day-to-day management, but none of them succeeded in doing so. In late 1990s, the “modern enterprise system” has been introduced under which the government claimed to establish 100 large-media-sized SOEs in early 21st century so as to encourage state firms to face market, and to expose them to competition for international market. In general, reforms have attempted to grant greater autonomy to management, to impose financial discipline, to encourage firms to merge and restructure, and to expose them to competition.

As far as the 1998 state reorganization programme is concerned, prominence had been also given to the transformation of the function of government from managing state enterprises’ day-to-day work to excising macroeconomic control to manage and guide it, mainly using economic means and legal means. This claimed ambition, to some extent, compassed the proper handling of administrative powers. However, the mechanism by which government tried to separate the regulatory role of ministries from their commercial interests - one of the main reasons for the reform, was still far from clear. The establishment of the state owned enterprise ombudsman is the only measure to supervise this division to be achieved in practice, no other legal means has been adopted so far to ensure it to be achieved.

The issues listed here give us a reasonable explanation why reforming SOEs is significant and imperative relating to both economic and political system reform in China. It is believed that the solution to this problem will bring innumerable benefits to China. Therefore, the SOEs will be the main theme of my research. And more details will be discussed in chapter four.

It is well acknowledged that ancient China created many of the most vital traditions of representative government that entered the common heritage of personnel administration in the modern state. China early developed techniques to promote an examination system and the promotion of government officials on the basis of ability. Chapter 3 presents the structure of ancient government, and the recruitment examinations, which were used to supplement recommendations as a measure of talent.

³ *The Economist*, September 13th to 19th 1997, “China’s Next Steps: The long march to capitalism”. P 23.

Chapter 4 examines the structure of the National People's Congress (NPC) and its Standing Committee, although it is still true that the Communist Party of China (CPC) enjoys political supremacy. The process of legislation is a matter in which the NPC and its standing committee take part and the two-legislature system is an integral part of the NPC system. In particular, the conventions of the Chinese administration, e.g. party-core leadership, are demonstrated through actual practice and theory.

Chapter 5 presents Chinese personnel system reform from its beginning, the emergence of the civil service system in the Chinese political arena, and four governmental reorganisations. Most importantly, in chapter 6, two distinct developments relating to government restructuring campaigns are described: one is the rise of cadre entrepreneurs,⁴ the other is the widespread corruption involving high officials. The author will describe the three ideological liberations, which happened in China since the late 1970s. Then, I shall conclude by suggesting that current problem concerning political and administrative system reform is partly due to the difficulties in curbing corruption and regulating the cadre entrepreneurs. These difficulties have disabled the government from searching for effective means to solve these problems.

Part III is composed of five chapters in which the author details the most significant changes taking place in the British public sector since the late 1970s. The central theme of the redefinition of the consumer in the administrative realm is given in chapter 7. The consumer orientation not only captures the trend of public sector reform but also plays a wide ideological role in constructing the relationship between the public and the state. Some important implications behind consumerism that have challenged the traditional means of evaluating the quality of the public services are also discussed in this chapter.

Chapter 8 discusses the creation of executive agencies from the operational arms of government, and its significant impact on the public sector reform. A whole spectrum of arrangements for policy-making and policy-operation by means of 'contract' to regulate relationships and responsibilities is also examined in this chapter. Additionally, the author will outline the general trends in civil service reform.

The evolution of 'new public management' in the public sector is of great practical importance. Chapter 9 assesses the nature and extent of this theory. The author discusses and analyses the similarities and differences between managing private and public institutions so as to reach conclusions as to why two radically different types of organisation are converging with private sector management ideas, techniques and practices penetrating the public services. In addition, grievance and resolution, including the courts, tribunals, ombudsmen and the internal complaints systems are discussed in chapter 10.

Chapter 11 addresses the crucial constitutional issues stemming from the creation of executive agencies. The paradox between the convention of ministerial responsibility and the implementation of the Next Steps is explored in this chapter, as is the role of parliamentary control and its peculiarities through case studies, for example, on how to reform the prison system, particularly in arrangements for policy control and accountability.

Part IV focuses on a comparative study of public sector reform between China and the UK, with the intention of outlining a complete picture of the history of the public service, consumer protection and the influence of the currently changing situation. Finally, I shall conclude by raising some of the constitutional problems which China needs to solve in future civil service reform and by offering some thoughts for future civil service reform in the UK.

The overall conclusions of this study are given in chapter 13. The findings lead to a number of recommendations for future reform that are also summarised in that chapter.

⁴ See also Liqing Liu (1999), *The rise of cadre entrepreneurs in China - elite transformation?* Paper presented to the International Institute of Administrative Sciences, Sunningdale - United Kingdom, 12-15 July 1999.

Chapter 2

THE CIVIL SERVICE: BACKGROUND REVIEW

2.1. Introduction

The public service is far from being static, and the recent changes consist essentially of three constituents: new public management, organisational restructuring and a consumer orientation. Institutional reorganisations such as the creation of new efficient service delivery mechanism for the public can exert significant influence on the responses of public management techniques. The public management techniques can rationalise the administrative culture so as to implement and execute government initiatives for the public.

Many researchers and scholars have examined the significance, peculiarity, and influence of public sector reforms from the backgrounds of the UK and China individually. The depth and breadth of public sector changes have led to heated arguments centred on the role of the government in contemporary society, on the ethos of the public sector and the managerial culture of administration. These changes in working practices of the administration have been taking place since the late 1970s with varying degrees of improvements in public services both in the UK and China. It is certain that the changes will dominate the ongoing trend of public sector reform.

What changes resulted from public sector reforms and how have these changes been brought about? In this chapter, the reasons for change in the public services of the UK and China are examined. Additionally, it also examines the consequences of these changes for public administration. Thirdly, a brief review of the previously published work in this area is given. Finally it will include a brief statement of the problems of public sector reform and the objectives of this study.

2.2. The Reasons for Change in the Public Sector

It is well acknowledged that there have been many changes in the public services since the late 1970s both in the UK and China, though the reasons for these changes are quite different. The ongoing civil service reform that has taken place in the Chinese administration has been primarily a response to economic reform and the acceptance of the market economy, whereas significant changes in the Britain civil service have taken place owing to the crisis of the welfare state or the economic crisis.¹ Nonetheless, both of them share some similar problems in reforming public services, such as low efficiency in administration, over-reliance on traditional mechanisms, and the lack of incentives to attract civil servants to serve the public. On the other hand, the increasing competitive global market in the private sector has required a fundamental reappraisal of the working practice of governmental mechanisms in order to get the best fit for the changing situation.

From this viewpoint, endeavouring to reform public services to keep pace with the increasingly changing situation is being carried out both in the UK and China within different types of political system and different social backgrounds. The United Kingdom claims to be harnessing scientific and technological advances to best effect in industry, commerce, and in public service delivery. So does China, committing itself to establishing a “well-coordinated, and standardised administrative system”² suitable for a socialist market economy and an economic revolution aiming at providing quality service to the public.

2.2.1. Changes in China

¹ Jan-Erik Lane (1996), *Public Sector Reform*, SAGE Publications Ltd. 3, P. 2; David Farnham and Sylvia Horton (1996), *Managing the New Public Service*, p 11-12.

² An explanatory of the government mechanism reform delivered by Luo Gang at the 9th NPC in March 1998. People’s Daily, March 7, 1998.

From cadre³ to civil service

The period since 1984 has witnessed more radical reform in the Chinese personnel management system than at any other time in its history. Civil service legislation was initiated in 1984, inspired by Deng Xiaoping and his supporters who were determined to establish a more competent and efficient ‘merit-based civil service system’ and administrative reform supplemented the economic system reform. In October 1987, the words ‘civil service’ firstly officially appeared in a report of the 13th CPC⁴ congress presented by Zhao Ziyang, the former General Secretary of the Party Central Committee (1987-89), for the reform of the government personnel structure and very largely given over to establishing a civil service system for the replacement of the age-old management of cadres controlled by the CPC. Zhao Ziyang was highly critical of the low priority given to preventing maladministration in using people within the civil service. Thus he pointed out sharply that the priority of current personnel reform was to establish the civil service system by classifying the civil service into two categories: political civil servants and career civil servants. The former, recommended by the party, handled political affairs during their terms of office and took the critical role in the personnel management system, and were the key feature of China’s ‘*Nomenklatura*’.⁵ They would be managed according to constitutional law and organisational law.

The latter, recruited through open competitive examinations in society, are destined to become the permanent framework of Chinese personnel reform as the pace and scale of economic reform accelerates in the growing and developing socialist market economy. They are subject to supervision by the public and governed by the relevant provisions of constitutional and organisational law.

The structural reorganisation drive

As it will be explained later, in China, the government failed to seize the time to adjust the political system promptly for the needs of economic reform although China made

³ This is in a sense similar to civil servants in the western countries. But it has a more extended meaning than such civil servants. The characteristics of a cadre are based on management functions. Those whose work is connected with the public management functions are called cadres in China. Thus cadres exist in five categories; Party, government, armies, enterprises and social units and mass organisations. For more details see chapter 6.

⁴ The report of the 13th CPC Congress represented by Zhao Ziyang in 1987.

great efforts to respond to the fundamental changes brought about by economic reform. The number of government employees grew from 15 million in 1978 to 34 million in 1992.⁶ Government expenditure increased from 6,68 billion-yuan RMB (Chinese money unit) in real terms in 1980 to 8758 billion yuan RMB in real terms in 1991.⁷ In order to prepare for opening up to the rest of the world, the Ministry of Personnel was created by splitting the functions of the Labour-Personnel Ministry in 1988. Since then, the Personnel Ministry has devoted time to drafting ‘Provisional Regulations on State Civil Servants’. The final draft was released on August 14 1993 by the State Council, and came into effect on October 1, 1993. This event indeed represented a new era in the Chinese civil service reform with a stride towards the rationalisation of the bureaucracy.

The more recent governmental reorganisation campaign was launched in 1998, claiming to restructure the existing ministries and offices from 40 to 29 by removing half of the civil servants from their posts by the end of 1998. The priority of the government-restructuring programme is to adjust and abolish departments directly in charge of economic management and reinforce departments handling macroeconomic control and those enforcing the law and supervising law enforcement. The changes have some important implications both for the functions of the government and the tradition of the civil service. The role of the National People’s Congress (NPC) seems to be strengthened owing to this readjustment. Managing the state by law rather than Party discipline has been emphasised though there is some distance between this lofty rhetoric and reality.

The changing public ethos

In present-day China, the priority of politics, such as in the slogan “politics first and the Party’s interests over anything else”⁸, has gradually given way to economic interests, which have a strong influence on the ethos of civil service. Officialdom, which once was admired by most people, has been eclipsed in contemporary commercialised China.

⁵ More details will be considered in chapter 5 on the modern Chinese civil service reform. For analysis see John P. Burns (1987), ‘China’s Nomenkatura’, *Problems of Communism* September-October.

⁶ People’s Daily, Overseas Edition, March 18 1998.

⁷ *Shibao zhoukan* (Shi Bao Weekly), February 27 1994, p. 62.

⁸ According to the Party constitution, the Communist Party of China is the vanguard of the working class, and the faithful representative of the people. See Party constitution (1992), the general principles. Beijing: China Fangzheng Press. 1997. For analysis see chapter 5.

The principle of ‘serving the people’ for both civil servants and Party members has been challenged by new cadre entrepreneurs who seek themselves to become ‘*dakuan*’ (literally wealthy women/men), and by higher officials involved in corruption cases. To a certain extent, Chinese ‘*guanxi*’⁹ and nepotism helped to stimulate widespread corruption and the formation of cadre entrepreneurs. At the time I was writing this thesis, another higher official Hu Changqing, the former vice governor of Jianxi province, had been sentenced to death owing to corruption.¹⁰

The emergence of the new public management

The 1998 governmental institutional reorganisation reflects some substantive themes of the new public management though its outline cannot be illustrated with clarity. The stress on separating the sphere of the government from managing the day-to-day operation of the state enterprises opened the way for the concept of ‘public entrepreneurial management’¹¹ and autonomous management. Similar sentiments have been expressed vigorously in the British administrative reform, notably in the Next Steps programme launched in 1988, on which departments have been split between the policy-making departments proper and much large Next Steps agencies responsible for the administrative services. The policy/operation split represents one of the main features of civil service rearrangements in the UK.

Many of the matters only outlined here are each considered in more detail in chapters 3, 4, 5 and 6 concerning Chinese administrative and political system reform.

2.2.2. Changes in the UK

Supply and demand

⁹ It means personal relation “you do something for me, I will do something for you in return”. ‘*guanxi*’ is built into the fabric of day-to-day activities covered every field in China. More details see Lucian W. Pye (1992), *The spirit of Chinese politics*. Cambridge, Mass. Harvard University Press, 1992. For an analysis see chapter 6 of this thesis.

¹⁰ People’s Daily, Overseas Edition, February 16, 2000.

¹¹ David Osborne and Ted Gaebler (1993), *Reinventing government - How the entrepreneurial spirit is transforming the public sector*. A Plume Book. P 4.

Contradictions between supply and demand for public expenditure grew intense as a result of world recession and the crisis of the welfare state during the late 1970s. This crisis has frustrated the government's attempt to manage the economy successfully or to curb public expenditure and the growing expectations of demands for more public spending. From the Second World War until the oil crisis of early 1970s, public expenditure tended to grow along with the economy. For example, public expenditure in 1948 as a proportion of Gross Domestic Product (GDP) was 36.3 per cent. By the mid-seventies it rose to nearly 50 per cent as it is shown in Table 2.1.

Alongside the increase in public expenditure, the civil service grew from 387,000 in 1939 to 750,900 at its peak in 1976, with about 570,500 of those non-industrial civil servants and 180,400 industrials.¹² Most importantly, public sector performance problems loomed large at the same time as the welfare state crisis emerged. But these two processes are not identical although they shared common causes.

The increasing awareness of incompatibility between public expenditure and the reality of public services called for reform strategies, which carry with them new ideas about the role of government as a manager of the economy and as provider of public services. The theory of 'new public management' has emerged from attempts to control public expenditure through civil service reforms to lead to the creation of new, it is hoped, efficient service delivery for the public.¹³

¹² CSEG Index CSEG Home page Cabinet Office Home page (1998), *Civil Service Staffing*, 1st January 1998, available at <http://www.open.gov.uk>.

¹³ See Christopher Hood (1991), 'A Public Management for All Seasons?' *Public Administration* Vol. 69 Spring 1991 (3-19); Kieron Walsh, Vivien Lowndes, Kathryn Riley and Jackie Woollam (1996), 'Management in the Public Sector: A content Analysis of Journals', *Public Administration* Vol. 74 Summer 1996 (315-324); Lan Kirkpatrick and Miguel Martinez Lucio (1996), 'Introduction: the Contract State and the Future of Public Management,' *Public Administration* Vol. 74 Spring 1996 (1-8); Andrew Gray and Bill Jenkins (1995), 'From Public Administration to Public Management: Reassessing a Revolution?' *Public Administration* Vol. 73 Spring 1995 (75-99).

Table 2.1. General government expenditure as a percentage of GDP, 1900-1997.

	<i>General government expenditure</i>	<i>Spending on goods and services only</i>		<i>General government expenditure</i>	<i>Spending on goods and services only</i>
1900	14.4	12.6	1949	34.8	20.0
1901	13.5	11.6	1950	33.8	20.1
1902	13.2	11.2	1951	36.1	21.2
1903	12.9	10.8	1952	37.2	23.4
1904	12.4	10.3	1953	35.9	23.0
1905	11.8	9.6	1954	33.8	21.8
1906	11.7	9.5	1955	33.0	20.5
1907	11.8	9.5	1956	33.4	20.5
1908	12.5	10.1	1957	34.3	20.2
1909	12.4	9.9	1958	34.4	19.6
1910	12.2	9.7	1959	34.5	19.7
1911	12.2	9.8	1960	34.1	19.4
1912	12.4	9.9	1961	35.1	19.8
1913	12.1	9.8	1962	35.7	20.3
1914	24.6	21.8	1963	35.6	20.3
1915	30.5	27.7	1964	36.0	20.6
1916	34.4	29.7	1965	36.6	20.6
1917	33.4	27.9	1966	37.4	21.2
1918	46.3	40.4	1967	40.9	22.6
1919	*	*	1968	41.4	22.3
1920	26.6	16.6	1969	40.0	21.6
1921	27.9	15.4	1970	40.1	22.0
1922	25.77	13.2	1971	40.5	22.2
1923	23.4	11.6	1972	40.8	22.4
1924	23.2	11.8	1973	41.1	23.0
1925	23.1	11.9	1974	46.8	25.2
1926	25.2	13.0	1975	48.8	26.6
1927	24.0	12.5	1976	46.9	26.0
1928	23.5	12.0	1977	42.5	23.6
1929	23.4	12.0	1978	43.0	22.7
1930	24.4	12.3	1979	43.3	22.3
1931	26.9	13.3	1980	45.1	23.7
1932	26.6	12.7	1981	46.0	23.6
1933	25.0	12.4	1982	46.4	23.4
1934	23.5	12.0	1983	45.9	23.9
1935	23.7	12.6	1984	45.5	23.7
1936	24.2	13.7	1985	44.5	22.9
1937	24.7	14.9	1986	42.8	22.9
1938	28.5	18.7	1987	42.0	22.2
1939	32.9	23.8	1988	39.5	21.1
1940	51.9	43.3	1989	40.0	22.0
1941	60.4	49.4	1990	40.0	22.4
1942	61.1	50.3	1991	42.0	23.6
1943	61.4	50.4	1992	44.5	*
1944	61.4	50.3	1993	44.0	*
1945	58.8	44.3	1994	43.5	*
1946	45.5	23.6	1995	42.5	*
1947	38.8	19.1	1996	41.8	*
1948	36.3	19.2	1997	40.8	*

* = not available.

Source: derived from HM Treasury and *Economic Trends*.

From a single monolithic service to a federation of executive agencies

Advances in modern technology have fundamentally changed working practices in government administration. With the development of technology, society has achieved greater complexity, and this inevitably has led to a large dispersal of civil service jobs suitable for the variety of tasks performed by the government in modern society. Obviously, there is no institution with a monopoly of the ability to delivery good quality public service, owing to the variety of public services with various objectives using different skills and different management methods.

It has been suggested that the single integrated civil service with its 19th century structure is an antiquated apparatus that is not attuned to the needs of the 20th and the 21st century functions of a modern states as the new functions have been managed by grafting them onto the existing structure.¹⁴ As a result, a loose federal civil service of many smaller agencies, units and cores now predominates in the civil service arrangements. This structure aims to emphasise the primacy of the customer and the centrality of the tasks that need to be performed.

New public management

Public service delivery demands structures not only to make the civil service adhere to impartiality, integrity, objectivity, selection and promotion on merits, but also to give value for money and high quality services customers want. This gave rise to a gap in the structure with its rigid management. Dissatisfaction with the single integrated civil service structure, which has an adherence to formalised processes and procedures, led to a new institutional structure with new public management concerned with the use of resources to achieve results which evolved in the 20th century. Such principles of managerial techniques from the private sector have been injected into public sector services. This in turn changes the methods of leadership in public administration, the move from ‘the traditional managerial skills of planning, organising, directing, co-ordinating and controlling’¹⁵ to the new public managerial skills involving ‘motivation,

¹⁴ Sir Peter Kemp (1993), *Beyond Next Steps: a civil service for 21st century*, The Social Market Foundation; Gavin Drewry (1995), *The Civil Service Today*. 2nd edn. Blackwell; Jeffrey Jowell and Dawn Oliver (2000), *The Changing Constitution*, 4th Edition, Clarendon Press, Oxford.

¹⁵ Roger Lovell (1994), *Managing change in the new public sector*, Longman. P 7.

inspiration, communication and coaching’.¹⁶ Reshaping public sector performance will also bring about further changes in the relationships among citizen, society and the state.

What has been mentioned here will be discussed in greater depth in the following chapters with the Next Steps agencies, new public management and accountability systems of UK public sector reform.

2.3. Objectives of Chinese and British Administrative Reforms

The search for a highly efficient and effective civil service for adaptation to the changing situation is by no means restricted to the UK. China is also active in creating the need to design a new civil service structure to replace the old cadre system, emphasising the division of functions between the Party and government, and the existing principle of ‘serving the people’. These sentiments are destined to have a great effect on the values and ethos of both Chinese and British public services, and determined the working practice of government administration. The following themes have been expressed in both China and the UK.

2.3.1. Consumer Orientation

Giving the definition of the ‘consumer’ in the context of public service has never been easy. However the thrust of the consumer focus is part of the organisational politics of emerging managerial regimes, as are the themes of involving the customer to manage and transform the public service culture, and to implement and execute government initiatives for the public. Notably, the creation of Next Steps agencies provides the internal apparatus for fixing attention on customer needs. The Citizen’s Charter has endeavoured to make the public service responsive to the ultimate controller—the consumer.

¹⁶ Roger Lovell (1994), *op. cit.*, p 7.

By comparison, the public ethos of ‘serving the people wholeheartedly’ in the Chinese administrative culture is in harmony with a customer focus. In principle, it is manifest in the “Provisional Regulations on the State Civil Servants”. Civil servants should be in “close contact with the masses, listening to the opinions of the masses, being supervised by the masses, and serving the people”.¹⁷ In practice, the activity of ‘people’s satisfied civil servants’ has been launched to reward those who deliver good service to the people.¹⁸

Although a consumer orientation is typical of the great trend in shaping public sector reforms, there are still some limitations, for example, the lack of legal rights to back up the sentiment of consumer orientation in Britain, and this will be examined in chapter 7.¹⁹ In China, the notion of ‘serving people wholeheartedly’ is largely ignored by governmental officials who profit themselves by abusing their administrative powers, this matter will be discussed in more details through case studies in chapter 6.²⁰

2.3.2. Structural Reorganisation

The significant changes brought out by NPM can be seen in the dismantling of the model of a single service monolith, and the establishment of executive agencies. To this end, the age-old problems of arm’s length government - of balancing autonomy and accountability and of clearly distinguishing between the appropriate responsibilities of the various actors - have been solved by means of ‘contracts’ to regulate relationships and responsibilities. There exists a huge distance between theory and practice in working practice of government administration. However, the creation of executive agencies from the operational arms of government and the adoption of ‘contract’ to regulate responsibilities and relationships have challenged the long-standing

¹⁷ *Provisional Regulations on the State Civil Servants* (1993). Chapter 2 art. 3.

¹⁸ People’s Daily, Overseas Edition, 7 October 1998.

¹⁹ For analysis see chapter 7.

²⁰ See case studies in chapter 6; and Liqing Liu (1999), *op.cit.* Sunningdale, United Kingdom, 12-15 July 1999.

conventions of public administration. These themes will inevitably dominate future civil service reform.²¹

In the context of China, the ongoing public sector reorganisations have also centred on themes including delegating civil service tasks to the executive bodies, macroeconomic control, and building a new administrative management suitable for the system of a market economy.²² The ambitious plan of cutting half of the civil service, launched in 1998 at the 9th NPC, facilitates the process of this administrative readjustment. Striving for ‘small government better service’ is seen to dominate the theme of the Chinese structural reorganisation.

The pros and cons of the structural reorganisations are examined in each of the Chinese and British chapters throughout the thesis.

2.3.3. Policy and Implementation

Gone are the days when public sector employees are expected to carry out solely the preparation of legislation and management of public services, while the Minister held the ultimate responsibility for policy implementation. The creation of executive agencies born from the Next Steps initiative represents a significant movement away from the traditional conventions towards a loose federation of many small agencies and units, including public and private entities to deliver public services. In other words, it is no longer felt that the traditional government department is the sole body to carry out policy implementation. The drive has witnessed the general approval of separating policy making from policy implementation in public sector reform. Specifically, the role of the government in modern society is to provide the ‘steering’ while others are left in the position of the ‘rowing’.²³

²¹ Ian Harden (1992), *The Contracting State*, Open University Press; Jonathan Boston (1995), *The State Under Contract*. Bridget William Books Ltd; Ian Kirkpatrick and Miguel Martinez Lucio (1996), *op. cit.*, p 1-8; Mark Freedland (1994), ‘Government by Contract and Public Law’, *Public Law*. p 86-104; Simon Domberger and Christine Hall (1996), ‘Contracting for Public Services: A Review of Antipodean Experience’, *Public Administration* Vol. 74 p 129-147.

²² Luo Gang (1998), *op. cit.*

²³ David Osborne and Ted Gaebler (1993), *op. cit.*, Chapter 1, p 25-48.

The very recent Chinese institutional restructuring launched in 1998, by comparison, introduced the idea of separating the sphere of the government from managing the day-to-day operations of the state enterprises, which embodies the substantive element of a policy and operations split. To effect this approach, the system of a state-owned enterprise ombudsman was established in April 1998 under the meeting of the 9th NPC, with the aim of changing the basic function of the government in governing large-scale state owned enterprises. Therefore the primary role of the state owned enterprises' ombudsman is to supervise the division between policy and operations, so far, the State Council has appointed 38 staff who are ministers and under-secretaries to undertake this job.²⁴ Noticeably, the UK Parliamentary Ombudsman system and the Chinese ombudsman system are similar in name but distinct in role. The former has been designed as an extension of Parliament to investigate independently complaints from individuals relating to maladministration by departments and authorities. The latter has been established as an adjunct to the State Council, not the NPC, to supervise the division between the government and the operations of the state owned enterprises.

Admittedly, the role of the ombudsman system in the administrative field is just beginning to be recognised by both Chinese government and scholars, yet this is a positive sign that China is destined to follow the path of separating policy from operations in administrative reform.

2.4. Brief Literature Review on Civil Service Reform

2.4.1. Key Questions in the UK Civil Services

Many authors (Ian Harden, 1992, Robert Baldwin, 1988, Peter Barberis, 1995, Geoffrey K. Fry, 1997, Gavin Drewry & Tony Butcher, 1991, Leo Pliatzky, 1992, John Clarke and Janet Newman, 1997, Jan-Erik Lane, 1996.) have studied the significant consequences of institutional restructuring brought about by the recent Next Steps

²⁴ People's Daily, Overseas Edition, 13 November, 1998, and 9 January 1999., and also see *The State Council Supervision Commissioner Regulations* (1998).

initiative.²⁵ Indeed, the very creation of agencies has naturally placed them at the centre of attention, which had ‘substantial implications’ for the core and central departments in Whitehall.²⁶ The relationship between agencies and their respective core departments has become the most ‘important and difficult’²⁷ areas, which led to a constellation of different terms to enunciate and capture these structure reorganisations, for example, “The Contracting State”²⁸, “The Managerial State”²⁹, “Reinventing Government”³⁰, the “Rebuilding the State”³¹, and so forth.

Ian Harden states that the 1990s public sector reform has centred on the increasing use of contract to pursue ‘specific political objectives’³² on the one hand. On the other hand, ‘the contractual approach has a genuine potential for promoting constitutional values through an institutional separation of functions’.³³ Jan-Erik Lane demonstrates that there tends to be a great gap between the public sector reforming theory and practice through comparative research in terms of privatisation, deregulation, and marketisation in the advanced capitalist countries, including Germany, Canada, Australia, France, Britain and Spain.³⁴ Geoffrey K. Fry critically examines the recasting of the organisation of central government departments that has taken place under the Next Steps initiative. In his account, a tendency that the civil service has become ‘fragmented’ has alarmed some observers.³⁵ There are many other authors who contribute their opinions to this debate and they will not be rehearsed one after another here. Though these discussions relating

²⁵ Ian Harden (1992), *op. cit.*; Robert Baldwin (1988), ‘Ministerial Responsibility and Government by Agency’, *The Modern Law Review*, Vol. 51, (622-28) p 622; Peter Barberis (1995), ‘Next Steps: Consequences for the Core and Central Departments’, in Barry J. O’Toole and Grant Jordan (1995), *Next Steps: Improving management in government*. Dartmouth Publishing Company, p 99; Geoffrey K. Fry (1997), “The Conservatives and the Civil Service: One Step Forward, Two Steps Back?” *Public Administration* Vol. 75.p 695; Gavin Drewry (1994), ‘Revolution in Whitehall: The Next Steps and Beyond’, P 155-174 in Jeffrey Jowell & Dawn Oliver (2000), *The Changing Constitution*. 3rd edn. Clarendon Press, Oxford; Gavin Drewry & Tony Butcher (1991), *The Civil Service Today*. Blackwell: Oxford UK & Cambridge USA; Leo Pliatzky (1992), ‘Quangos and Agencies’, *Public Administration* Vol. 70. (555-563); Jane Erik Lane (1996), *op. cit.*

²⁶ Efficiency Unit (1988), *Next Steps: Improving Management in Government*. Para. 25.

²⁷ Office of the Minister for the Civil Service (1990), *Progress in the Next Steps Initiative - The Government Reply to the Eighth Report from the Treasury and Civil Service Committee, Session 1989/90, HC 481, Cm 1263*. P 11.

²⁸ Ian Harden (1992), *op. cit.*

²⁹ John Clarke and Janet Newman (1997), *The managerial state*. SAGE Publication.

³⁰ David Osborne & Ted Gaebler (1993), *op. cit.*

³¹ Joachim Jens Hesse, ‘Rebuilding the State: Public Sector Reform in Central and Eastern Europe’, in Jane Erik Lane (1996), *Public Sector Reform*. SAGE Publications. P 114-147.

³² Ian Harden (1992), *op. cit.* p xi.

³³ Ian Haren (1992), *op. cit.*, p xi.

³⁴ Jan-Erik Lane (1997), *op. cit.*, p 1-16.

to governmental reorganisations vary in description and key points, nevertheless they share some similarities, and have a strong implication that ‘contract’ has become a centred theme in the government restructuring campaigns, which will affect the future civil service arrangements. Clearly core departments have been slow to come to the forefront as the Next Steps agencies dominate civil service delivery.

There is a perceived problem in the fragmentation of public services under the Next Steps agencies, which led to “a narrow concentration on departmental targets”.³⁶ In order to solve this problem, the Blair government published its White Paper *Modernising Government* in March 1999, proclaiming its aim to ensure that policy-making and administration is more joined-up and strategic³⁷ as a solution to fragmentation. ‘Joined-up’ government is a theme that represents a novel approach to policy making, where different policies that have an effect on a single result should be made in a holistic way. Moreover, ‘joined-up’ government also introduces a new way of management, where budgets and other resources of different departments and even agencies should be combined to deliver related services,³⁸ such as ‘Invest to Save Budget’³⁹ and ‘Pooled budgets’.⁴⁰ The implication of the modernisation agenda represents a shift from old-fashioned practice to modern practice by addressing joined-up policy making process so as to assure the focus of service users, not providers.

It is inevitable that discussion has now transcended the restructuring matters and the primary focus is now on constitutional issues such as public accountability and ministerial responsibility and micro-management with which agencies are more closely identified. Thus, the question remains, however, first, how to use ‘contract’ in future public services to solve the existing problems of discretion and accountability? Second, how do these changes reflect the growth of a more specific and explicit managerial

³⁵ Geoffrey K. Fry (1997), *op. cit.*, p 695.

³⁶ Norman Flynn (1999), ‘Modernising British Government’, *A Journal of Comparative Politics*. Vol. 52. No. 4. P 587.

³⁷ *Modernising Government*. Cm 4310. P 6.

³⁸ Norman Flynn (1999), *op. cit.*, P 584.

³⁹ ‘Invest to Save Budget’ as a special fund has been set up by government to fund projects that involve collaboration among agencies and developing better ways of delivering services. Also see *Modernising Government*, March 1999, Cm4310, P 31.

⁴⁰ It refers to cross-departmental budgets involving several departments on delivering programmes as a more permanent solution to fragmentation. And also see Cm 4310. P 31.

agenda derived from the private sector, which is popularly called new public management?

As regards the system of responsibility, many authors contribute their valuable opinions on this discussion, including Norman Lewis and Diane Longley (1996), Vernon Bogdanor (1997), Colin Turpin (1994), Sir Richard Scott (1996), William K. Reid (1992), Christopher Foster (1996), Diane Woodhouse (1997), Adam Tomkins (1996), Barry J. O’Toole and Richard A. Chapman (1995), and Keith Dowding and Won-Taek Kang (1998), and many other authors not listed here.⁴¹

The following themes have dominated the core debate on ministerial responsibility because it poses ‘a clear tension between the delegation of powers/responsibility to the Chief Executives of the Next Steps agencies and continuing accountability to Parliament’.⁴² Firstly, the government-suggested division between ‘accountability’ and ‘responsibility’⁴³ to re-formulate the concept of ministerial responsibility to reflect the modern realities of British politics has not been accepted as satisfactory. Second, ministerial responsibility concerning a matter which has been delegated to an executive agency under the Next Steps initiative has been called into question. Third, the debate on ministerial responsibility focuses on present practices with regard to parliamentary acquisition of government information in Britain. What has been implied is that the doctrine of ministerial responsibility has been maintained only in theory, whilst the

⁴¹ Norman Lewis and Diane Longley (1996), ‘Ministerial Responsibility: The Next Steps’, *Public Law*, 1996, p 490; Vernon Bogdanor (1997), ‘Ministerial Responsibility’, *Parliamentary Affairs*. Vol. 50, No. 1; Colin Turpin, ‘Ministerial Responsibility’, in Jeffrey Jowell and Dawn Oliver (1994), *The Changing Constitution*. Clarendon Press: Oxford. Chapter 5; Sir Richard Scott (1996), ‘Ministerial Responsibility’, *Public Law*, p 410; William K. Reid (1992), ‘Changing notions of public accountability’, *Public Administration*. Vol. 70. P 81; Christopher Foster (1996), ‘Reflections on the True Significance of the Scott Report for Government Accountability’, *Public Administration*. Vol. 74, No. 1; Diane Woodhouse (1997), ‘Ministerial Responsibility: Something Old, Something New’, *Public Law*, p 262; Adam Tomkins (1996), ‘A right to mislead Parliament?’ *Legal Studies* Vol. 16, No. 1; Barry J. O’Toole and Richard A. Chapman (1995), ‘Parliamentary Accountability’, in Barry J. O’Toole and Grant Jordan (1995), *op. cit.*, p 118; Keith Dowding and Won-Taek Kang (1998), ‘Ministerial Resignations 1945-97’, *Public Administration*, Vol. 76, No. 1. P 411.

⁴² Lewis, Norman and Diane Longley (1996), *op. cit.*, p 503.

⁴³ A split between ‘policy’, for which ministers could held to responsibility, and ‘operational matters’, for which Next Steps executive agencies were supposed to be accountable has been suggested by the previous government. More details of this see chapter 11 of constitutional issues.

reality is far from it. Therefore, Norman Lewis and his co-author claim that the ruling convention of ministerial responsibility/accountability is hollow.⁴⁴

Ostensibly, Next Steps reforms raise a series of constitutional, legal and practical difficulties. It is shown as follows:

- There is a gap of separation between policy and operational matters in practice;
- There will be discontinuities and efficiency losses where agency policies are overridden by Ministers;
- Ministers will not give agency heads as much freedom as may have been anticipated;
- A new tier of ‘agency watchers’ may be required in the department;
- Parliament will find it difficult to hold agencies to account.⁴⁵

These difficulties call for reform of the operation of ministerial responsibility/accountability alongside both Parliament and extra-parliamentary accountability mechanisms so as to reflect the modern realities of British politics.⁴⁶ The issues in relation to ministerial responsibility only outlined here will be detailed in chapter 11.

Moving now from ministerial responsibility to new public management, there is a fairly extensive literature on this, and many authors have been involved in prolonged discussions, including Norman Lewis(1994), Christopher Hood (1991), Andrew Gray and Bill Jenkins (1995), Carol Harlow (1999), Paul Hoggett (1996), John Stewart and Kieron Walsh (1992), Jane Broadbent and Richard Laughlin (1997), Peter Aucoin (1990), Roger Lovell (1994),⁴⁷ and more others. These authors have extensively studied

⁴⁴ Norman Lewis and Diane Longley (1996), *op. cit.*, p 490.

⁴⁵ Robert Baldwin (1988), *op. cit.*, p 627.

⁴⁶ Norman Lewis and Diane Longley (1996), *op. cit.*,(490-507) p 491.

⁴⁷ Norman Lewis (1994), ‘Reviewing Change in Government: New Public management and Next Steps’, *Public Law*, 1994. P 105; Christopher Hood (1991), ‘A Public Management for All Seasons?’ *Public Administration*, Vol. 69, No. 1, p 3, and (1995), ‘Emerging Issues in Public Administration’, *Public Administration*, Vol. 73, No. 1, p 165; Andrew Gray and Bill Jenkins (1995), ‘From Public Administration to Public Management: Reassessing a Revolution’, *Public Administration*, Vol. 73, No. 1, p 75; Carol Harlow (1999), ‘Accountability, New Public Management, and the Problems of the Child Support Agency’, *Journal of Law and Society*, Vol. 26, No. 2. P 150; Paul Hoggett (1996), ‘New Modes of Control in the Public Services’, *Public Administration*, Vol. 74. P 9; John Stewart and Kieron Walsh (1992), ‘Change in the management of public services’, *Public Administration*, Vol. 70. P 499; Jane Broadbent and Richard Laughlin (1997), ‘Evaluating the ‘New Public Management’

the emergence, features and limitations of new public management, which will be discussed in chapter 9.

Research on public sector reforms in the UK so far has centred on the difficulty of reshaping the relationships between public bodies and conventional ministerial responsibility in the content of the Next Steps agencies responsible for the administration of services, and the new public management. Fewer articles have been written about the legal rights of consumer, or citizen, or customers though the Citizen's Charter⁴⁸ declares its aim to raise quality public service by way of empowering citizens. Theoretically, as a political manifesto for empowering the citizen it is of limited legal effect, being merely aspirational. In practice the search for improved public services are to be measured by the Charter Marks Awards, service principles/standards and the People's Panel for citizens to voice their opinions on the delivery of services. Thus the role of civil service reform in consumer protection in modern society deserves to be fully researched.

2.4.2. Literature Review on the Chinese Civil Service Reform

So far Western studies of public sector reforms in China have centred on the following aspects. The first category concerns Western understandings of the bureaucracy of China's nomenklatura system as represented by John P. Burns.⁴⁹ He demonstrates that the Chinese personnel system was executed and coordinated not by an open competitively recruited civil service but by the 'cadre' recommended by the Chinese Communist Party organisations which in China means the 'nomenklatura'. In practice, the process of recruiting civil service is usually controlled by means of 'zhengshen'.⁵⁰ All this demonstrates the Party's supremacy and the NPC's legal sovereignty in the

Reforms in the UK: A Constitutional Possibility?" *Public Administration*, Vol. 75, p 487; Peter Aucoin (1990), 'Administrative Reform in Public Management: Paradigms, Principles, Paradoxes and Pendulums', *Governance*. Vol. 3, No. 2; Roger Lovell (1994), *op. cit.*

⁴⁸ The Citizen's Charter, *Raising the Standard* Cm1599, London HMSO (1991).

⁴⁹ John P. Burns (1987), 'China's Nomenklatura', *Problems of Communism*, September-October. For analysis see chapter 5 and 6.

⁵⁰ 'Zhengshen' means the way of examining the cadres' political reliability in China. Those who want to join the civil service jobs must pass through 'zhengshen' conducted by the party organisations. One of

Chinese polity. This peculiarity of the Chinese political and administration system will be described in great depth in chapter 4.

The second category deals with the Chinese civil service system based on the provisional regulations of civil servants of the State Council. Many authors contribute their views in this area, including Koutsai Tom Liou (1997), Lam Tao-Chiu and Hon. S. Chan (1996), Joseph Fewsmith (1996), George Maharay (1991), Guobin Zhu (1995), King W. Chow (1991), Jean-Pierre Cabestan (1992), John P. Burns (1989), Weiqiang Li (1990),⁵¹ and so forth. They examine the issues, lessons, and public personnel management principles under Deng Xiao ping's pragmatic economic strategies.

The final group falls into the realm of Chinese “*guanxi*”,⁵² the informal personal relationship. The Chinese “*guanxi*” is deeply rooted in the fabric of day-to-day economic, culture, and government activities. It is accepted as a rule so basic that it requires no statement. With respect to Chinese “*guanxi*”, the informal relationships, chapter 6 will contribute to this discussion through case studies of cadre entrepreneurs and higher government officials constantly involved in corruption.

By contrast, many fewer articles have been written on cadre entrepreneurs although they represent a new round of elite transformation, apart from four major government institutional adjustment campaigns, which has loomed very large in today's China. There tends to be a huge distance between economic developments and a rigid backward

my interviewees said that a civil servant in favour of the CPC is different from civil servants of western countries.

⁵¹ Koutsai Tom Liou (1997), 'Issues and Lessons of Chinese Civil Service Reform', *Public Personnel Management*, Vol. 26 No.4 (winter); Lam Tao-Chiu and Hon S. Chan (1996), 'Reforming China's Cadre Management System: Two Views of a Civil Service', *Asian Survey*, Vol. xxxvi. No. 8, August; Joseph Fewsmith (1996), 'Institutions, Informal Politics, and Political Transition in China', *Asian Survey*, Vol. xxxvi, No. 3. P230; George Maharay (1991), 'Civil Service Reform in the People's Republic of China', *The Bureaucrat*. P 26; Guobin Zhu (1995), 'Reform or reorganisation: constructing and implementing the new Chinese civil service', *International Review of Administrative Science*, Vol. 61. P 91; King W. Chow (1991), 'Reform of the Chinese cadre system: pitfalls, issues and implications of the proposed civil service system', *International Review of Administrative Sciences*, Vol 57, p 25; Jean-Pierre Cabestan (1992), "Civil service reform in China: the draft 'Provisional Order Concerning Civil Servants'", *International Review of Administrative Sciences*. Vol. 58, p 421; John P. Burns (1989), 'Chinese Civil Service Reform: The 13th Party Congress Proposals', *The China Quarterly*, Issue 117. P 739; Weiqiang Li (1990), 'Reform in the Chinese Public Personnel System', *Public Personnel Management*, Vol 19, No. 2. P 163.

personnel system, which challenges the late Deng Xiaoping's pragmatic economic strategy of "crossing the river by feeling the stone".⁵³

Thus in which directions and through which channels to guide the development of cadre entrepreneurs remains an extremely urgent matter.⁵⁴ Cadre entrepreneurs are businessmen using their special powers and connections to do business with their administration, rather through economic and legal means.⁵⁵ Doing business with administrative powers creates fundamentally unequal competition in the market place, which aroused people's greater indignation. Having experienced 'elite-driven transformation' in China, the backlash came emphatically: the 1989 student movement was massacred, and then Zhao Ziyang was forced to leave office because he made a 'support' speech at Tiananmen square at that time. The scandal of corruption involving high officials has attracted particularly attention, which led to a popular demand for large-scale reform of the political system. Jiang Zemin cautiously chose anti-corruption as a measure to launch his political system reform, although it is impossible to wipe out corruption without fundamental political system reform - greater decentralisation of decision making and more checks to the Party's power.

2.5. Objectives of This Study

Thorough and systematic understanding of the characteristics of public sector reforms is of very great importance for study of civil service systems both in the UK and China. In this thesis, new public management, organisational restructuring and consumer

⁵² For definition of 'guanxi', see note 19 above. For more details see Lucian W. Pye (1992), *The spirit of Chinese Politics*. Cambridge, Mass. Harvard University Press, 1992. For a discussion of how 'guanxi' being applied in practice, see chapter 6 case studies.

⁵³ Since there are no set examples for China to follow on the economic modernisation, the political debates of the economic system always touch the whole country. The question whether it is "socialism" or "capitalism" has been regularly asked, whatever measures are taken or to be taken in practice. In order to explore ways and means to guide economic reform, and stop ideological debates, Deng Xiao-ping said these words. Later on "crossing the river by feeling for the stone" has become the ruling strategy of the economic reform. It is called 'muolun' in Chinese. See Ma Lichen and Lin Zhijun (1998), *Jiaofeng* (China's problems), Modern China Press, in March 1998, p.377.

⁵⁴ Liqing Liu (1999), 'The Rise of Cadre Entrepreneurs in China - Elite Transformation?' *International Institute of Administrative Sciences*. Sunningdale, United Kingdom, 12-15 July 1999.

⁵⁵ For more details see chapter 6.

orientation are described through studying government documents, both published openly and internally, a literature search from academic sources and interviews.

As has been mentioned above, there is little research on giving the customers legally enforceable rights, such as they would have in an active role of requiring what they want from the government, in the UK. In China, research in this area is woefully deficient on the grounds that citizens are not very clear about what they should get from government, and there are no concrete measures formulated by government to assure the notion of ‘serving the people’ is achieved in practice. Furthermore, few attempts have been made to study cadre entrepreneurs, although they have had great impact on the Chinese administrative and constitutional reform, let alone comparative research on public sector reform between China and the UK, the very different political systems and social backgrounds. For this reason, this thesis endeavours to provide readers with a comparative study of public sector reform in the UK and China so that others may come up with valuable opinions. Therefore, these are the objectives of this study.

In short, the objectives of this study are:

1. How to make structural reorganisations beneficial through giving consumers enforceable rights. This will properly require a new approach as the existing public apparatus is deficient in the empowerment of consumers (chapters 6 and 7).
2. Attempting to suggest that a series of radical political, legislative, and organisational changes should respond to the demands of the fast growing global marketplace (chapters 5 and 8).
3. Attempting to offer some suggestions to solve the practical problems stemming from constitutional and administrative reforms, so as to shape the public sector reforms in such a way as to produce better government suitable for the changing economic circumstances (chapters 9, 10 and 11).
4. To ask to what extent the Chinese administrative reform can learn from the UK’s experience of the public sector reform such as the Next Steps and the Citizen’s Charter programmes (chapters 11 and relevant parts in chapters 7, 8, 9 and 10).

5. Attempting to explore the next steps to be taken in China public sector reform for the purpose of challenging the Party-led anti-corruption campaigns and exposing the pitfalls of current governmental reorganisations (chapters 3, 4, 5, and 6).

Chapter 3

THE CHINESE CIVIL SERVICE IN ANCIENT TIMES

3.1. Introduction¹

Chapters 1 and 2 of this thesis review overall developments relating to public sector reform in the areas of consumer orientation, governmental restructuring and the new public management, which have been fundamentally important in reshaping the relationship between the state and citizens. This chapter will introduce some of key issues in relation to the Chinese administration in ancient times on the ground that the ancient China created many of the most important traditions of representative government, which are still of constitutional significance to restructuring the modern civil service.

It is widely recognised that ancient China, like ancient Greece and mediaeval England, created many of the most important traditions of representative government, which have entered the common heritage of personnel administration in the modern state. The civil service recruitment system, as one of the great contributions ancient China made to the world's personnel administration, experienced two main stages in its development from “*shiqingshiluzhi*”² connected with blood and kindred to “*kejuzhi*”³ relying heavily on a series of public, competitive examinations. Ancient China not only developed techniques early to promote the recruitment and advancement of governmental employees based on ability, and to minimise the role of political patronage, but also

¹ A brief Chinese chronology is presented at the end of this chapter.

² The old Chinese term of aristocracy hereditary connected with blood and kindred by which government officials were recruited. For more details see Zhou shao yuan & Chen yan lei (1996), *zhongguo gudai wenguan xuanba zhidu de shanban yu libi (Values and devalues of changing civil service recruitment systems in ancient China)*. *Xinzhen faxue yanjiu (Administrative Law Studies)*, Vol. 2, 1996 (24-25). And Johanna M. Menzel (1963), *The Chinese Civil Service: Career Open to Talent?* D. C. Heath and Company, Boston.

pioneered applying techniques to maintain honesty, discipline and initiative among government personnel.⁴ All this carried within itself the seeds of modern administrative responsibility. But civil service recruitment systems including "kejuzhi" eventually declined as the feudal society degenerated.⁵

This chapter is a study of such techniques at the time when they first attained substantially their modern forms so as to understand better the objectives guiding Chinese personnel policy at this formative time. At the same time this study will provide readers with an historical evaluation of the civil service recruitment systems for a purpose: learning from history to serve the modern civil service reform. By doing so I shall first give a brief introduction to the civil service as a career open to talent. Then, the structure of the ancient civil government will be illustrated by way of examining functions of each of the government organs of the day. Finally, I shall address the utilisation of civil service personnel.

3.2. The Background of the Civil Service as a Career Open to Talent

When the right talented men are available, government flourishes; if not, government declines.⁶ These words have long been borne out by the history of ancient China from the Han Dynasty to the Qing Dynasty.⁷ Certainly the state mechanism cannot be operated well without such men, and to some extent, the quality of the government officials has great influence on the efficiency and effectiveness of the administrative system. Ancient China created many of the most vital traditions of representative government that entered the common heritage of personnel administration in the modern

³ The old Chinese term of recruitment systems for government officials based heavily on open, competitive examinations.

⁴ For an introduction on the history of recruitment processes and on critiques of the examination system see Wolfgang Franke (1960), *The Reform and Abolition of the Traditional Chinese Examination System*. Cambridge. For characteristics of Chinese mechanisms see C. K. Yang, 'Some Characteristics of Chinese Bureaucratic Behaviour', in Arthur F. Wright, edn., *Confucianism in Action*. Stanford, 1961.

⁵ Zhou shaoyuan & Chen yanlei (1996), *op. cit.* P 25.

⁶ Zhou shaoyuan & Chen yanlei (1996), *op. cit.*, p 21.

⁷ See appendix.

state. China early developed techniques to promote an examination system and the promotion of government officials on the basis of ability.⁸

Whether coping with routine problems of administration or facing serious crises in the life of the state, political thinkers were agreed that the recruitment of talented men into the government was the chief remedy for any problems at hand. Legal and institutional change, so much pursued in the Western political tradition as a remedy for political ailments, has had to take second place in the Chinese tradition behind the search for “men of talent”.⁹

The idea that the ruler should be served by a group of advisers prominent for their moral integrity and wisdom has deep roots in Chinese history. It probably derives from the Confucian¹⁰ insistence that the essence of righteous rule is moral guidance, and it was transmitted to the men of the early empire in the writings of the Confucian school. Searching for the civil service structure in ancient China without taking Confucius into consideration would be unwarranted since Confucius and his disciples provided the basic teachings of the school, which were largely translated by Mencius¹¹ some thirteen centuries earlier. The Confucian classics became a fundamental part of the state constitution, with a force which neither the emperor nor his subjects could venture to deny, even though they might on occasion follow other teachings privately. The function of the classics was not formally stated in the legal code, it was accepted as an assumption so basic that it required no support. When the Han Dynasty (206 B.C.-220 A.D.) established the centralised bureaucracy, these Confucian ideas began to affect public policy. The Confucian dictum that office should go to men of proven merit and ability was to some extent incorporated in the civil service procedures.¹²

⁸ Johnna M. Menzel (1963), *op. cit.*, P 1-8.

⁹ Johnna M. Menzel (1963), *op.cit.*, P vii; and also see Zhou shaoyuan & Chen yanlei (1996), *op. cit.* P21-25.

¹⁰ A school of thought while existed in early Qin Dynasty. This thought stressed on traditional and feudal personal relationship, which was known as Confucius. For an analysis of Confucius see H. G. Creel, *Confucius, The Man and the Myth*. New York, 1949.

¹¹ The representative of Confucius. More details of Mencius see the works of Mencius (c. 372-289 B.C.). The Chinese term of Mencius is *menzhi*.

¹² E. A. Kracke, JR. (1953), *Civil Service in early Sung China*. Harvard University Press. p 1-7.

*Recruitment examinations*¹³

The Han Dynasty created the recommendation system of recruiting civil servants called “*cha-ju-zhi*”¹⁴ It was the first step taken to organise the recruitment of the civil service on the basis of merit in Chinese history. Appointments to official posts went to “men of talent” who had been recommended to the central government on the initiative of local officials, and were regularly classified, before receiving office, by written examinations. Indeed, this was the earliest link between an official career and an education in the Confucian classics in ancient China.¹⁵ From this point of view, the system of recommendation became the parent of the examination system. In other words, examinations were designed to supplement recommendations as a measure of talent, because it is very difficult to check the morals of officials, which were easily inclined to administrative corruption. Indeed, it was said that “those who were recommended to office had no knowledge at all”.¹⁶ In the late Han period, the way to disunity had been prepared by administrative corruption; the Chinese officialdom was no freer than others from tendencies toward self-seeking, graft, and nepotism. Eventually the defects of “*cha-ju-zhi*” combined with administrative morale, which had deteriorated, led the Han Dynasty to collapse.¹⁷

After several centuries of division, the Sui Emperor Yangjian in 589 successfully re-established, and his Tang successors preserved, a single Chinese state¹⁸. The pressing need for officials was felt in such a single united Chinese state, and the task of improving the bureaucracy was undertaken once more by the Sui and Tang rulers. *De facto*, the development of fixed civil service procedures had already made rapid strides under the earlier Han Dynasty.¹⁹ The rulers saw in the training and recruitment of a centralised civil service the best means for overcoming the powers of regionalism and the hereditary aristocracy.

¹³ Deng Ciyu (1936), *Zhongguo kaoshi zhidushi* (A general history of the Chinese civil service examination system. Nanjing, China.

¹⁴ The old Chinese term for recommending people for civil service posts on merit from a lower class. This system reflected the characteristics of the day of showing respects to the Confucian school. For an analysis see Zhou shaoyuan & Chen yanlei (1996), *op. cit.*, Vol. 2, 1996 (24-25).

¹⁵ Zhou shaoyuan & Chen yanlei (1996), *op. cit.*, P 21.

¹⁶ Ge Hong, *baobuzi*, Chapter 15, *shenju* (recommendation).

¹⁷ Zhou shaoyuan & Chen yanlei (1996), *op. cit.*, p 22-23.

¹⁸ Chen Ying (1943), *tangtai zhenzhi shi lunshu gao* (A group of significant studies on the government of the Tang Dynasty). Chungking.

¹⁹ Zhou shaoyuan & Chen yanlei (1996), *op. cit.*, p 22.

To train such an elite of merit, a new, open, competitive “*keju*”²⁰ was established in the Tang Dynasty. The Tang from the first reacted strongly in favour of the need for recruitment examinations for officialdom, rather than recruiting officials largely by aristocracy hereditary connected with blood and kindred. The subsequent major Chinese dynasties, the Song (960-1279) and the Ming (1368-1644) relied heavily on a series of public, competitive examinations to recruit government officials. *De facto*, in Song times, a systematic and centralised recruitment of civil service absorbing “*shi*”²¹ to serve the state attracted much attention. The significance of the establishment of recruitment examinations ended the history of official recruitment being monopolised by aristocracy heredity, creating the opportunities for civilians to enter into officialdom, providing huge human resources for the state.

By Ming Times, examinations existed at three levels: prefectural, provincial, and metropolitan, and led to three successive degrees, which have often been identified with the Western sequence of Bachelor, Master, and Doctor²². The system of competitive civil service examinations had begun to assume an important role throughout the remaining centuries of the Chinese Empire. For the most part, only those who were qualified for degrees served in officialdom. Moreover, to some extent, people in society were classified by the degree of education they received.

Recruitment examinations, on the one hand, promoted the civilisation of ancient China, but on the other this determined the backwardness of modern China.²³ Year by year recruitment examinations increased the bureaucracy. More and more men were recruited into the officialdom and they formed a new bureaucratic clique, controlling the state, monopolising the examinations, and this resulted in many defects.²⁴ Furthermore, during earlier dynasties, there had been much experimentation with the content of the

²⁰ The old Chinese term of recruitment examination created in the Tang Dynasty, which influenced the way of examination for several centuries. For an assessment of *kejuzhi* see Zhou shaoyuan & Chen yanlei (1996), *op. cit.*, P 24. And also see Johanna M. Menzel (1963), *op. cit.*

²¹ “*shi*” is the old Chinese term for scholars. Those who were qualified with “*shi*” were able to enter into the officialdom. Thus the path to become officials were called “*shitu*” in old Chinese. See also *songtai zhiju gaoshi (A study of the Song decree examinations)*. *Shixue nianbao*, I, No. 5, 17-378 (1938).

²² Johanna M. Menzel (1963), *op. cit.*, P vii.

²³ Zhou shaoyuan & Chen yanlei (1996), *op. cit.*, P 25.

²⁴ Zhou shaoyuan & Chen yanlei (1996), *op. cit.*, p 24.

examinations, and degrees were offered in any one of several fields, including classics, letters, law, and others. By Ming times, this range had narrowed considerably, examinations had become standardised and consisted chiefly of a eight-part essay²⁵ known as "*baguwen*" in Chinese, and the study of four books and five classics²⁶ which heavily shackled people's thoughts.

Although ancient China paid much attention to education, the aim of learning was to become an official, otherwise learning became useless. Learning, examination, and officialdom joined together. To a certain extent the ancient Chinese mechanisms were staffed by those who were good at ancient Chinese culture and poems.²⁷ The perceived deficiencies of the knowledge of natural sciences were completely ignored in ancient China. The periodic examinations meanwhile became the great public events of China political life. The traditions of Chinese thought and learning began to be shaped increasingly by the standards and the practices of the examination system.

Refined by the changing experiences and tastes of successive generations, the examination system developed into one of the chief ornaments of the traditional Chinese State. The scholar-official had become clearly established at the pinnacle of the Chinese social structure. His career, like no other in China or elsewhere, gave a man simultaneous access to power, prestige, and wealth. Western observers had earlier identified the civil service as one of the unique marks of the Chinese political body. An Italian priest who came to China at the end of Ming Dynasty, appraised highly the open and competitive system of recruitment examinations, regardless of background of social position, property, and prestige.²⁸ Later in the seventeenth century, and particularly in

²⁵ It was a kind of examination system in the Ming and Qing Dynasties, which had rigid requirements on composition of the examinations from the very beginning to the end. It consisted of eight contents which must strictly follow the rules of literature. For more details of this examinations see David S. Nivison *The Criteria of Excellence* in Johanna M. Menzel (1963), *op. cit.*, P 102. For developments of this system see Deng Ciyu (1936), *zhongguo kaoshi zhidu shi* (*A general history of the Chinese civil service examination system*). Nanjing, China.

²⁶ The four books are: *The Great Learning, the Doctrine of Mean, the Analects of Confucius and Mencius*. The five classics are: *The Books of Songs, the Book of History, the Book of Changes, the Book of Rites, and the Spring and Autumn*. Candidates were required to demonstrate their knowledge of the contents by memory. In addition, they had to show their knowledge of the contents by summarising in writing the meaning of ten passages from those works. But the major emphasis was placed on the writing of compositions by which they might demonstrate their originality and skills in reasoning and expression.

²⁷ Zhou shaoyuan & Chen yanlei (1996), *op. cit.*, p 25.

²⁸ Zhou shaoyuan & Chen yanlei (1996), *op. cit.*, p 24.

the eighteenth, reports about the civil service recruited on the basis of virtue drew the warm admiration of scholars. Those scholars helped to fix the image of the Chinese civil service as a career open to talent, and used such information to attack the forces of privilege and heredity in the Europe of the day. Thus, France, from 1791, pioneered adopting civil service examinations. Britain gradually popularised civil service examinations after 1853. Most importantly, the civil service examination was seen as one of the great contributions China made to the world.

3.3. The Structure of Civil Government in Ancient China²⁹

The government of ancient China belonged to the general type of the Confucian state owing to the fact that Confucianism occupied a place of influence in its basic teachings. It has been long realised that in practice the state was already concerned with administration through recruiting officialdom by examinations. Officialdom was offered to those who were qualified in the civil service examinations. From this point, the basic structure of administration in fact derived from the form created by legalist thinkers some twelve centuries before, although it incorporated an ethos in many ways the antithesis of Confucian. It proposed as its ultimate good the advantage of the ruler and as its ethos unquestioning obedience to authority. The classics taught that the imperial throne had been granted by Heaven, which might withdraw its gift from an unworthy occupant. The Confucian state, therefore, has at all times represented a combination of frequently conflicting ideas and inherited practices, which struck a new and distinctive balance in each period of Chinese history.

3.3.1. The Role of the Emperor³⁰

The emperor, theoretically a semi-absolute monarch, in practice usually restricted his action to arbitration between the frequently dissenting factions of the administrative

²⁹ E. A. Kracke, JR (1953), *op. cit.*, 28-53; Chen Yin ge (1943), *Tangdai zhengzhi shi shulungao*. (A group of significant studies on the Government of the Tang period.)

³⁰ Zhang-Sun Wu-Ji, *Tanglu Shuyi* (The code of Tang, with commentaries. Completed in 653.), and also see Chen Yin ge (1943), *op. cit.*

hierarchy. The new political ideas joined with political accidents to restrict the ruler in the arbitrary exercise of his authority.³¹ Concern with public welfare and opinion was reinforced by the natural concern of the emperors for the future security of their house. When the concern failed to correspond with popular opinions, the result was chaos, which could always be interpreted as manifest loss of the Mandate of the Heaven, and so encourage revolutionary movements. These facts made emperors realise that they could not afford to act in a way that would irritate the bulk of the officialdom, on whom their power depended.

The political pressures on the emperors led them to act in furtherance of accepting criticism of their acts when selecting, changing, and sometimes overriding their councillors of the state.³² Three kinds of criticism concern us. It might come from any subject who wished to offer advice or voice grievances. More often, it might come from government officials, either on occasions when an emperor specially called for such criticisms³³ or when an official felt it was needed.³⁴ Or it might come from the organs specially constituted for such criticisms, such as the Bureau of Policy Criticism or the Censorate.

The characters of the emperors themselves, in any case, contributed to restricting the scope of their actions on the grounds that some of them were neither forceful nor especially able apart from the founder.³⁵ As a result, the chief responsibility for normal administration fell to the Council of State. All measures were issued in the name of the emperor and usually received his formal approval.³⁶ However, the emperor played an indispensable role as the moderator and the final arbiter of divergent opinions since he

³¹ Sources of this section are from the following books: Chen Jun (1936), *huangchao biannian gangmu beiyao* 30 chapter. This works sometimes known as the (*Song*) *jiuchao biannian beiyao*. A brief history of the Northern Song in annals form. And Chang Menglun (1948), *songdai xingwang shi*. Shanghai China 1948. An analysis of the reasons for the early vigour and later weaknesses of the Song Dynasty.

³² Chen Yingge (1943), *op. cit.*

³³ The recurrent requests by emperors for "straight speaking" often followed some inauspicious or unfavorable happening. The "myriad word memorial" of wang an shi exemplified the voluntarily submitted criticism.

³⁴ Chen Jun (1936), *op. cit.*

³⁵ The founder of the dynasty was one who was always of ability, intelligence, and power. Those who came to be an emperor by means of inheritance sometimes were short of character for emperor.

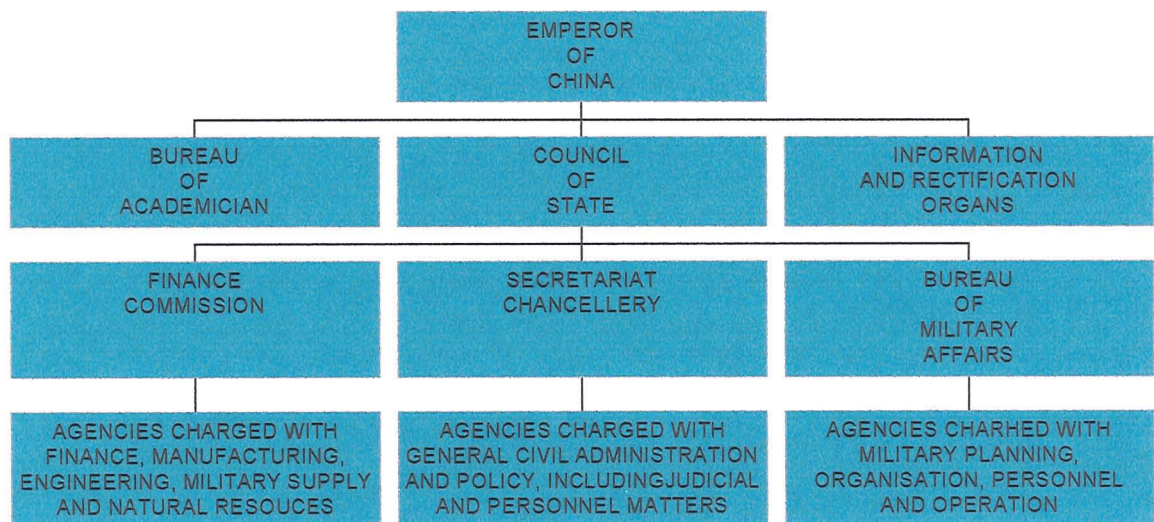
³⁶ A trusted councillor might act in the name of emperor without even obtaining formal approval.

indispensable role as the moderator and the final arbiter of divergent opinions since he was accessible to censors, political criticism officials, and others who might object to the policies pursued by the Council of State.

3.3.2. The Primary Policy Organs³⁷

The Council of State formulated measures which required the approval of the emperors. These measures were drafted with the technical assistance and political advice of the Bureau of Academicians, and were subject to criticism through the Censorate,³⁸ the Bureau of Policy Criticism, and other Information and Rectification organs, as is illustrated in Table 3.1.³⁹

Table 3.1 The basic structure of ancient government in China



³⁷ Jin Yufu (1942), *songdai guanzhi yu xingzheng zhidu* (Official system and administrative system of the Song Dynasty). wenshi zazhi II, No. 4, 3-25.

³⁸ Source from Gao Yihan (1933), *zhongguo yushi zhidu de yange* (A historical sketch of the Chinese Censorate). Shanghai China.

³⁹ E. A. Kracke, JR. (1953), *op. cit.*, P 28-53; Jin Yu fu (1942), *op. cit.*

The Council of State was composed of a variable number of “*dacheng*” or “*zhai zhi*”⁴⁰ of different grades during the ancient times. The “*zhai xiang*”⁴¹ most often numbered two, though sometimes differed in number from only one to as many as three. They were at the same time heads of the Secretariat-Chancellery. The “*zhizheng*”⁴² were divided between civil and military. The “*fuxiang*”⁴³ were at the same time the assistants of the chief councillors⁴⁴ in the Secretariat-Chancellery. Their number varied from one to three. The assistant military councillors with different titles were the chief officials of the Bureau of Military Affairs, and numbered from two to four accordingly. The total numbers of all councillors might vary from as few as five to as many as nine.

The chief councillors were usually chosen from those who had already served as civil or military assisting councillors. Before coming to the Council of State, they had very often gained experience either in the scholarly institutes or as special drafting officials.

The kind of business transacted by the Council of State was homogeneous only in its importance. It might consist of legislation, executive activities or even on occasion, judicial review. During the early years of ancient times, the emperor often dealt directly with his trusted and competent agencies such as the Bureau of Military Affairs, without informing even the chief councillors. But later most proposals and decisions passed through the Council, and might take effect in the name of the emperors.

The Bureau of Academicians

The Bureau of Academicians was staffed by distinguished scholars, commonly given the official title of Han-Lin academician⁴⁵. Han-Lin academicians might be classified into two kinds according to their functions: one as the Imperial special consultants called “*neizhi*” in old Chinese; the other as special drafting officials of the Secretariat called “*wanzhi*”. Together this constituted the two kinds of special consultants in ancient China. Their duties included drafting, research, and the advice for the emperors and the

⁴⁰ The old Chinese term for councillors.

⁴¹ The old Chinese term for chief councillors.

⁴² The old Chinese term for assisting councillors.

⁴³ The old Chinese term for assisting civil councillors.

⁴⁴ The old Chinese term is “*shu-mi-yuan*”.

⁴⁵ The old Chinese term is “*han-lin-xue-shi*” whose scholar title is “Doctor”.

Council of State. Sometimes they might also be assigned to other commissions while remaining their Han-Lin titles.

The Information and Rectification Functions

The Information and Rectification Functions were divided among several agencies in addition to the Censorate and Bureau of Policy Criticism. Between them, they had responsibilities to keep the emperors and authorities informed of local conditions and the functioning of the government throughout the empire, to provide the channel for complaints and suggestions, and to criticise policy suggestions. The functions of institutional expression of information and rectification combined with the protection afforded those performing the functions, forming the closest Chinese parallel to the Western constitutional separation of powers.

The Censorate,⁴⁶ was rather slow in developing during the early times of its establishment, and its duties were largely carried out by specially delegated investigators⁴⁷ or investigating auxiliaries.⁴⁸ Beginning with the periods of Song times, however, in practice the organisation began to realise the theoretical structure it had inherited from the Tang Dynast, and lessons learnt from the Tang decay. Thus the Censorate was seen to develop as an apparatus to watch over the policies of the central government, and as an elaborate procedure for checking day-to-day operations of all central government agencies. The Censorate was headed by an executive censor.⁴⁹ Its officials were composed respectively of the general, palace, and investigating censors who served in the three divisions: the Bureau of General Affairs,⁵⁰ the Palace Bureau,⁵¹ and the Bureau of Administration.⁵² Indeed, the Censorate in ancient China was developed as an organ to detect and protect against administrative misconduct in central government. The Song dynasty was seen as the innovator of policy censors, who took part in policy criticism in the administrative system of the ancient Chinese history.

⁴⁶ The old Chinese term is “*yu-shi-tai*”. See Gao Yihan (1933), *op. cit.*

⁴⁷ The old Chinese term is “*tui kan*”.

⁴⁸ The old Chinese term is “*tui zhi*”.

⁴⁹ The old Chinese term is “*zhong cheng*”.

⁵⁰ The old Chinese term is “*taiyuan*”.

⁵¹ The old Chinese term is “*dian yuan*”.

⁵² The old Chinese term is “*cha yuan*”.

It was as early as Song times that the information and rectification organs stressed strongly their functions of watching over the policies of the central government. The lesson from the Tang decay had made the statesmen concerned above all with the integrity of the central power and with the institutional checks on the day-to-day operations of all the central governmental agencies. Later this system covered the whole empire throughout the successive dynasties.

3.3.3. The Division of Administrative Authority⁵³

The administrative authorities in ancient China were grouped broadly into three spheres: economic, military, and ordinary civil administration. In particular, this division does not seem to have been designed according to any constitutional theory, but to have evolved during the late Tang period and thereafter because of the immediate need to supervise closely financial and military operations. The ordinary civil administration, the military administration, and the economic administration were headed respectively by the Secretariat-Chancellery, the Bureau of Military Affairs, and the Finance Commission.

*The Military Administration*⁵⁴

The Bureau of Military Affairs was headed by a varying number of officials whose titles differed from time to time. They might be commissioners of military affairs, or administrators of the Bureau, assistant commissioners of military affairs, or signatory or cosignatory officials of the Bureau.

Several auxiliary academicians⁵⁵ of the Bureau of the Military Affairs aided the head of the Bureau. Among those auxiliary academicians, one of them might on occasion act in the absence of a higher functionary as signatory official. Its duties were to plan and direct the national defence, either through its own activities or through its supervision of other military agencies.

⁵³ K. A. Kracke JR. (1953), *op. cit.*, P 38.

⁵⁴ K. A. Kracke JR. (1953), *op. cit.*, p 38-39.

*The Economic Administration*⁵⁶

The Finance Commission varied during the early years of the dynasty. Its duties were usually divided among three offices: the Office of Salt and Iron,⁵⁷ the Office of Funds⁵⁸ and the Office of the Census.⁵⁹ The Salt and Iron Office was generally in charge of the exploitation of national resources, river communications, supervision of commerce and the provision of materials for military use. The Office of Funds prepared and balanced the government budget, and cared for and distributed the funds and the products gathered for the state use. The Census Office administered the population census, the collection of taxes, long-term storage facilities, and certain construction projects.

*The Ordinary Civil Administration*⁶⁰

Apart from the military and fiscal realms, the oversight of government administration was entrusted to the Secretariat-Chancellery. This organ had authority over a number of subordinate offices with special agencies created to take over special functions. Some were independent, some were subordinated one to another.

Among all these functions, two groups concern us particularly: one concerned with judicial administration, and the other concerned with personnel problems. The judicial functions were partly performed by special organs and special personnel, but many functions fell in to the hands of general administrative officials. Moreover the threads of judicial administration were tied into the executive line of authority at a number of points. At the top of hierarchy, the supreme judicial organs were subject to the supervision of the Secretariat-Chancellery and the Council of State, as well as to the scrutiny of the information and the rectification organs.

The Bureau of Judicial Investigation,⁶¹ the Ministry of Justice,⁶² and the High Court of Justice⁶³ were three chief agencies at the summit concerned with the law. Their primary

⁵⁵ The old Chinese term is “*zhi xue shi*”.

⁵⁶ K. A. Kracke JR. (1953), *op. cit.* P 39.

⁵⁷ The old Chinese term is “*yan tie si*”.

⁵⁸ The old Chinese term is “*du zhi si*”.

⁵⁹ The old Chinese term is “*hu si*”. With the growth of the Empire during the latter years of the first Song Emperor, more attention was given to the personnel of the finance administration. At the same time, high-rank officials were entrusted with the task of recovering the control funds from the irresponsible local officials inherited from the Five Dynasty. See Chen Jun (1936), *op. cit.*

⁶⁰ K. A. Kracke JR. (1953), *op. cit.* P 41-45.

functions were both legislative and judicial. They proposed measures concerning judicial procedures and administration, and amendments of civil and penal law.⁶⁴ They reviewed sentences passed by lower judicial authorities throughout the empire, when there were difficulties in legal interpretation or severe penalties involved. As regards the procedure of review, cases were received by the Bureau of Judicial Investigation, from there sent to the High Court of Justice for opinions, and back to the Bureau for further review. Then the opinion of the Bureau was sent to the Secretariat. If the opinion met with general approval there, the verdict was then announced. If not, the case received further consideration by the chief councillors before the final decision was made.⁶⁵

The Censorate and its associated agencies also played an important role in the administration of justice. They provided the national channel for appeals if an injustice remained undiscovered through the chain of local supervision, or if the justice organs at the summit made a mistake. Certain of the censorate investigators and investigating auxiliaries were specially responsible for checking on local prosecutions, and seeking that no one was improperly detained under arrest. Censors were specially charged with inspecting the prisons at the top of the hierarchy for this purpose.⁶⁶

With respect to personnel administration, the Secretariat-Chancellery in general had authority over matters of personnel administration, but that organ delegated most of its functions to other organs, retaining for itself the right of general supervision and direct judicial review in certain cases. The personnel functions were distributed partly according to the class of civil service in question, and partly according to the kind of activity required of administrator.

The doctoral examination administrators, who possessed high prestige, were specially appointed on each occasion. They were aided by a corps of examiners and other officials

⁶¹ The old Chinese term is "*sheng xin yuan*".

⁶² The old Chinese term is "*xing bu*".

⁶³ The old Chinese term is "*da li shi*".

⁶⁴ There was no distinction between civil and penal law in ancient china, thus the traditional Chinese law applied penal sanctions to civil law relationship. See Zhang-Sun Wu-ji, *op. cit.*

⁶⁵ In early Song times of 990, the duty of review at first belonged to the Ministry of Justice. Late, the duty of examining cases were soon passed over to the high Court before cases were arrived at the Ministry. The review by Ministry, at first preserved, was dropped in 993. Source from li tao "*xu zhi chi tong jian chang pian*" Section 520.

who carried out the detailed administration of the examination procedures, and by a Bureau of Examination Copyists.⁶⁷

In addition to the doctoral examinations, routine details of civil service administration were carried out by the Ministry of Personnel.⁶⁸ But the more significant functions were removed from its control. The administration of merit ratings, the review of past performance for reward or penalty, and the proposal of specific appointments, all were divided among different agencies according to the rank and functions of the officials for which they were responsible.

The higher rank of administrative officials remained under the direct jurisdiction of the Secretariat-Chancellery through the representatives of "censors" at the central government, while local administration fell in the hand of civil circuit intendants⁶⁹ who acted as deputies of the central government in supervising the administration of the prefectures. The function of civil circuit intendants was seen as oversight of the government operations over large regions and they remained in direct administrative contact with the central government. In this way, civil circuit intendants were designed as a rectification apparatus similar to that of the Censorate in the central government. Intendants were grouped in four kinds: fiscal,⁷⁰ judicial,⁷¹ exchange⁷² and military.⁷³ It is noteworthy that the supervisory system in ancient China was developed into two forms: one stressed checking central administration through the system of "censors"; the other local administration through "civil circuit intendants" accompanied with elaborate procedures. In particular, men who were appointed to personnel administration had to

⁶⁶ Chen Jun, (1936), *op. cit.*

⁶⁷ The old Chinese term is "gong yuan".

⁶⁸ The old Chinese term is "libu".

⁶⁹ The old Chinese term is "jianci" corresponding to the modern term inspector. The responsibility for local administration throughout the empire was divided primarily on the basis of territorial units. The basic administrative unit was sub-prefecture, the smallest in area and closest in its contact with ordinary citizens. Groups of sub-prefectures were supervised by prefectures, and these in turn by the civil circuit intendants. In ancient times, prefectures were divided at different times from 15 to 20 civil circuits. The circuit division fluctuated greatly during the open years of the dynasty, but was comparatively stable during the eleventh century. Thus the prefectures remained in direct administrative contact with the central government. See Sun Fengji, *zhiguan fen ji*, 50 chapter. (in siku zhenben qung shu, Shanghai, 1934-35). An encyclopaedia of governmental institutions, with special analysis on the early Song.

⁷⁰ The old Chinese term is *zhuanyun-shi*.

⁷¹ The old Chinese term is *pan guan*.

⁷² The old Chinese term is *fa yun shi*.

⁷³ The old Chinese term is *an fu shi*.

have organisational ability to manage the office on the one hand, but on the other hand had to be capable of dealing with difficult cases. Often men of high personal prestige, they were frequently selected from the censors or the Han-Lin academicians.

3.4. The Utilisation of Civil Service Personnel⁷⁴

In ancient China, morale, efficient use of abilities and knowledge, budgetary considerations and immediate administrative expediency were important in determining the treatment of civil service personnel and the assignments. To boost the morale of the civil service, measures were adopted or proposed to raise officials' welfare, to enhance their prestige, and to offer hope of promotion in reward for good service. Classification to make better use of abilities made considerable progress in ancient China from the initiative of "nine-degree-classified-official system"⁷⁵ recommended on the merits in the Han Dynasty to the recruitment examinations on talents in the Tang Dynasty, developing gradually in the subsequent major Chinese dynasties.

*Classification and Responsibility*⁷⁶

During the early period of the Qin dynasty, formal rank in the service was indicated for the most part by a system of titular but non-functional offices. Functions were indicated chiefly by the system of commissions. Titular offices were divided into two major classes: the administrative officials⁷⁷ and the executory offices.⁷⁸ The commissions were the most clearly defined category of personnel classification in ancient China, especially in the Song Dynasty. They regularly implied a definite function. The rank relationship between commission and titular office was expressed by the form of the commission title, in which the name of the function or unit administered was generally preceded by a

⁷⁴ E. A. Kracke, JR. (1953), *op. cit.*, Chapter IV and V.

⁷⁵ It referred to the system of official recruitment, by which officials were classified into nine degrees on the basis of the family background, ability, and their morale. This system was created during the chao-wei times (220-265 A.D.). And also see Zhou shaoyuan & Chen yanlei (1996), *op. cit.*, p 23.

⁷⁶ Source from *song huiyao jigao* (Shanghai, 1936). It was composed of eight separate sections dealing with different areas of subjects including organisation and operation of the government; foreign people; law, and judicial and penal administration; methods of recruitment, appointment, and promotion in the civil and military services and so forth. *Zhiguan* section mainly concerned the organisation and operation of the government.

⁷⁷ The old Chinese term is "jin chao guan".

⁷⁸ The old Chinese term is "xuan guan".

term such as “administering”,⁷⁹ or “supervising”,⁸⁰ or “provisional”⁸¹ or a combination of these three. The exact use of these prefixes varied at different times.

The assignments were, like the commissions, held in addition to a titular office. They might imply a real function. But an official who already had an assignments might also receive a commission. In this case, his function was that of the commission, and the assignment was merely an additional honour.

*Recognition and Remuneration*⁸²

The flattery of honorific titles was invoked with extreme liberality. Dignities, decorations, laudatory epithets, prestige titles, honorary offices and the titles of nobility were generally distributed among both civil and military officials. They might obtain posthumous offices or promotions for their deceased ancestors. Such honorary offices, often given automatically, soon lost any real prestige. And from the Tang times, the only real rank of success to the men of that time was a position in the Censorate, an academic assignment, a post close to the throne, or an important local commission.

The practice of granting retirement benefits existed early, and gradually expanded in scope. Officials might be offered a gift of money or silk on retirement in ancient China. Moreover officials might be permitted to nominate a son or grandson for the office, and ensure their support. This was a form of retirement through protection.

The practices by which a civil servant was assigned to his rank and function, and promoted from one step of the structure to another, were basically affected by many factors, particularly, the procedure of appointment, the sequence and the tenure of offices, entrance method, the merit of ratings and public opinions.

3.5. Conclusions

⁷⁹ The old Chinese term is “*zhi*”.

⁸⁰ The old Chinese term is “*pan*”.

⁸¹ The old Chinese term is “*quan*”.

⁸² E. A. Kracke, JR. (1953), *op. cit.*, p 81-84.

In this chapter I have considered the ways in which the objectives of developing the civil service system, its procedures, its recruitment, and its policies evolved, and the basic structure of ancient government. Each of these, as we have seen, developed and changed in several aspects over a considerable period of time. The method of competitive examination offered a way of testing abstract powers and skills that could be formally taught, but it could not forecast how a man would meet the practical challenges that faced an official. Merit ratings attempted to measure ability, creative ability and discretion in the actual performance of duties, but were almost inevitably deficient in objectivity.

The attempt to increase responsibility in the civil service, including responsibility in the act of appointing and promoting officials, played a significant role in the Chinese administration. And most importantly, the supervisory system in ancient China was developed into two-level surveillance - censors for the central government and civil circuit intendants for the local government - over misconduct by officials which is of constitutional significance for the modern Chinese civil service reform. The play of personal influence had been brought into the open, and subjected to rules and standards. This practice calls into question the recent Chinese civil service reform which has over emphasised ideological education in reshaping civil service ethos, and ignored the supervisory system over misconduct by officials. The Chinese had long recognised not only that the establishment of recruitment examinations is important, but that developing their further into a vital part of the civil service system was more appreciated. The prosperity of ancient China owed much to the development of a more systematised personnel administration, which was comparatively effective in maintaining the responsibility of the individual official to the interests of the state. The real significance of personnel administration in ancient China lies in the endeavour to increase responsibility in the civil service, which will provide a historical background for modern government reform. In other words, the ancient personnel administration will be beneficial to the modern Chinese civil service reform. The aim of this chapter is to contrast with the modern Chinese civil service reform. Thus the following chapter will detail some peculiarities of modern Chinese government.

Appendix: A Brief Chinese Chronology*

Zhou Dynasty: Western Zhou Dynasty(11century B.C.-771 B.C.)
 Eastern Zhou Dynasty(770-256 B.C.)
 Spring and Autumn(770-476 B.C.)
 Warring states(475-221 B.C.)

Qin Dynasty (221-207 B.C.)

Han Dynasty: Western Han (206 B.C.-24 A.D.)
 Eastern Han (25-220A.D.)

Three Kingdoms: Wei (220-265)
 Shu Han (221-263)
 Wu (222-280)

Western Jin Dynasty (265-316)

Eastern Jin Dynasty (317-420)

Northern and Southern Dynasties: Southern Dynasty (420-589)
 Northern Dynasty(386-581)

Sui Dynasty(581-618)

Tang Dynasty(618-907)

Five Dynasty(907-960)

Song Dynasty(960-1279)

Liao Dynasty (916-1125)

Jin Dynasty (1115-1234)

Yuan Dynasty (1271-1368)

Ming Dynasty (1368-1644)

Qing Dynasty (1644-1911)

* The overlapping of major dynasties usually means that a new one was already established in north China while the founder still held sway in the south.

Chapter 4

The Institutions of Chinese Government

4.1. Introduction

The important thing to remember in relation to the Chinese administration is that ancient China not only created the civil service recruitment examination system but also established the basic concept of responsibility for the civil service, including responsibility in the act of appointing and promoting officials, and in surveillance over misconduct by officials. Those traditions of representative government have had a great influence on the ways in which modern Chinese government is managed. Therefore, this chapter will introduce some peculiarities of the modern Chinese government mechanisms.

It is widely acknowledged that the Communist Party of China (CPC) plays a considerable role in the Chinese polity, for example, in the area of legislative politics, key cadre¹ appointments, and national publicised anti-corruption campaigns, on which the party has the final say on most issues. The Party's functions are seen in the preamble to the 1982 Constitution, which reaffirmed the leadership of the Party and the Party statutes² pointedly did not exclude members who served in the National People's Congress (NPC) from party discipline, although the constitution placed the NPC at the apex of the state structure. Moreover, the role of the Party in the Chinese legislature has been legitimatised by the newly published law under the title of *Legislative Law of the*

¹ These are in a sense similar to civil servants in the western countries. But the term 'cadre' has a more extended meaning than such civil servants. The characteristics of a cadre are based on management functions. Those whose work is connected with the public management functions are called cadres in China. Cadres exist in five categories; Party, government, armies, enterprises and social units and mass organisations.

² *The 1982 constitution of the People's Republic of China*, Foreign languages Press, 1983. preamble, para.7.

People's Republic of China.³ Finally, the government reports reviewed by the deputies of the NPC were an expression of party policy, as a means to concretise and transform the party's policies in the political report into working arrangements for the government.⁴

Against this background, first of all, the structure of the National People's Congress (NPC) and National People's Congress Standing Committee (NPCSC) are examined in this chapter, although it is important to note that the Party enjoys political supremacy. It will also describe the relationship between 'policy' and 'law' through enumerating some case studies. The process of legislation is a matter in which the NPC and NPCSC take part and the two-legislature system is an integral part of the NPC system, which will be analysed afterwards. Finally I shall address the role of the NPCSC. Within the NPC, the NPCSC is the dominant committee, and has the right to supervise the working of the State Council, which, constitutionally, represents the executive body of the highest organ of the state and the highest organ of the state administration.⁵ The 1982 Constitution set out to transform the NPCSC into a legislature within a legislature, as that Constitution (article 67) granted the NPCSC the power to enact and amend laws with the exception of basic laws concerning criminal offences, civil affairs, and the structure of the state.

4.2. Composition and the Meetings of the National People's Congress

4.2.1 National People's Congress

The most striking feature of the NPC is that its composition depends on methods of direct and indirect election with nearly 3000 representatives in the large unicameral legislature on the principle of supporting party policy and working for its

³ *The Legislative Law of the People's Republic of China* was published at the third plenary session of the 9th NPC on March 15, 2000. It is stated in article 3 that 'adhering the leadership of the Party' has been verified as one of the principles for a legislature. See *People's Daily, Overseas Edition*, 20 March 2000.

⁴ Wang Chuan min (1998), *National People's Congress-the high authority organ of the state* (1998), New Star Publisher. p.5.

⁵ *Constitution of the People's Republic of China* (1982), article 85.

implementation. No members achieve their place by campaigning or by representing a certain district and certain voters. Deputies represent the people of the whole nation. This is the typical Chinese essence characterised by the Confucian assumption of a “natural harmony of interests”. Beyond this view, a Leninist conception of the political party influenced the views of the Chinese leaders on that the Party’s interests equate with the people’s interests. For years, generations of Party leaders took it upon themselves to circumscribe the “people’s will” and responded to outside opinions as a matter of choice and tactics. The 1982 Constitution (article 1) declared “The People’s Republic of China is a socialist state under the people’s democratic dictatorship led by the working class and based on the alliance of workers and peasants.”⁶ Theorists adopted a highly deductive definition of the Party that “the Communist Party of China is the vanguard of the Chinese working class, loyally representing the people’s interests of all nationalities”.⁷ Thus the party has sought to build up the NPC to legitimatise the Party’s leadership so as to integrate policy and organise it around the principle of one-party rule by educating people on their own interests. In contemporary China, the Party’s leadership in Chinese polity is even more emphasised. Zhu Rongji, the Premier of the State Council of the PRC, recently pointed out that strengthening the leadership of the Party within the governmental institutions has promoted the working of the government towards “honesty, diligence, pragmatism, and high efficiency”.⁸

According to the 1982 Constitutional Law of the People’s Republic of China, at the summit of the structure of power in Chinese Government is the NPC which was based on the Chinese People’s Political Consultative Conference (CPPCC) in the early fifties. The CPPCC was a temporary national assembly that symbolised the multi-class alliance upon which the state rested; it was the forerunner to the NPC that blended the form of a legislature with the functions of a united front organisation.

The First NPC was convened in September 1954, based on the 1954 Constitution and the NPC organic laws.⁹ The NPC was granted an array of powers that paralleled those of

⁶ *The Constitution of the People’s Republic of China* (1982), art.1, p.11.

⁷ *The Chinese Communist Party Constitution, General Principles* (1997), China Fangzhen Press.

⁸ *Ba guojia jiguan gongzhuo tuixiang xinshuiping* (promoting the workings of government into a new developing stage). *People’s Daily* (Overseas Edition), January 25, 2000.

⁹ *National People’s Congress of the People’s Republic of China* (1955), Documents of the first session of the first NPC of PRC, Foreign Languages Press.

Eastern European parliaments. The constitution placed the NPC at the apex of the state structure, deemed the NPC “the highest legislative authority”, “the highest organ of state authority” and the sole body empowered to amend the constitution.¹⁰

As the only legally sovereign organ and a conduit for “people exercising state power”,¹¹ the NPC legalised Communist Party rule and represented the popular sovereignty of Chinese constitutional myth. The NPC embodied socialist democracy on the one hand, and on the other hand boosted party legitimacy by emphasising “the principle of democratic centralism”¹² in the form of a dictatorship of the proletariat. “The system of political consultation and co-operation of multi-parties will continue to exist and be developed under the leadership of the Communist Party of China”.¹³

Since its founding, the NPC has “traversed a winding and tortuous road of development”¹⁴ with more than its share of detours and wrong turns. In Chinese history, the NPC’s ups and downs have been a prime illustration of political campaigns surrounding Party and state. Efforts to set up nonparty forces in policy making can easily run aground if leaders are unwilling to accept political reform toward procedural regularity to improve government efficiency. Most importantly, any determination to restructure the organisational machinery of the Party and state and reassign responsibilities needs to repudiate a long history of authoritarianism and heroic, charismatic style of rule. This is a daunting challenge.

The NPC in Mao’s era was full of capricious events in accord with revolutionary ideology and personal rule. The heyday of healthy development of the people’s congress system and steady progress in law making in the mid-1950’s shifted to a far more radical track when Mao advocated “let one hundred flowers blossom and one hundred schools of thought contend”, for outside help with Party rectification on political reform, including the reform of the NPC itself. Penetrating and cogent criticisms from deputies, universities, and research institutes poured down and advocated structural reform. Some

¹⁰ For details, see *Constitution of the People’s Republic of China* (1982), article 56, 62.

¹¹ *The Constitution of the PRC* (1982), art.2, P. 11.

¹² *The Constitution of the PRC* (1982), art.3, p. 12.

¹³ Coalition bureau of the NPC office (1997), *Handbook of the NPC*, China Fangzhen Press, p.128.

¹⁴ Xu Chongde & He Huahai (1982), ‘New development of the People’s congress system’, *Zhengzhi yu falu*, No.1, June 1982, p.29.

suggested that “the Party be removed from its position of superiority to the NPC and the government, the government be placed below the NPC, and the NPC must be made an organ of genuine power”.¹⁵ Others suggested setting up a bicameral parliamentary system with CPPCC as the upper chamber of a national assembly, the NPC the lower house.¹⁶

That so-called “Hundred Flowers Campaign” in Chinese history resulted in the notorious Anti-Rightist Movement (1957-1958). The Party asked NPC deputies and intellectuals to speak, and then labelled those who did anti-party and anti-socialist with the aim of preserving one-party rule. All in all, the Party had used the NPC to launch the Anti-Rightist Movement without hesitating to sacrifice the benefits of further legislative development, closed avenues of legislative development, and stocked the NPC with true believers and Party loyalists. The Anti-Rightist Movement shook the NPC on the one hand, but on the other hand made deputies and intellectuals see more clearly the dangers of criticising the Party and questioning Party dominance again. It was unrealistic to seek more power for nonparty bodies to supplant the supremacy of the Party. This view has been further borne out by recent warnings by President Jiang Zemin against “bourgeois liberalism” of Western ideas such as democracy and free-market capitalism.¹⁷ Eventually the Party monopolised leadership, and dominated state representatives and executive organs.

Political campaigns and legal nihilism led China astray. The constitution lacked any binding force which gave Party and charismatic leadership the opportunities to launch a series of political campaigns for two decades from the Anti-Rightist Movement (1957-1958), the Great Leap Forward (1958-60), to the Cultural Revolution (1966-1976),

¹⁵ Xu Chongde & He Huahai (1982), *op. cit.*, p.29.

¹⁶ Summarised from Chen Shouyi, ‘A review of new China’s law research during the past 30 years’, *Faxue Yanjiu*, No. 1, February, 1980.

¹⁷ The Chinese government is orchestrating a quiet purge of liberal officials in a new push to clamp down on the spread of Western ideas such as democracy and free-market capitalism. He Depu was dismissed in March 2000 from the Beijing Academy of Social Sciences for his association with the banned Chinese Democratic Party. Jiang Zemin has warned that implementing “The West’s model” of democracy would lead to chaos. Other dismissed liberal officials were Fan Gang who is an economist with a high international profile; Mao Yushi, an economist who heads an independent think tank called Unirule; Liu Junning, a liberal political scientist who has called for greater democracy and protection of individuals rights; and Li Zhenzhi, a veteran academic who posted an article on the Internet critical of the slow pace of reform. For more details see Damien McElroy, ‘China moves to crush liberal trends’, *The Scotsman*, 10 April 2000.

which circumscribed legislative development and ultimately drove the NPC into inactivity. In 1976 Mao's death ushered in a new era in Chinese politics which brought a reassessment of past politics and a series of political reforms, including revival and strengthening of the NPC. Legislative committees were re-established and the NPC involvement in law making, supervision representation, and regime- support activities re-established.

As a representative and mobilizational organ, the NPC reflected shifting relations between the Party and society; as the nation's law making and supreme supervisory organ, it prospered or suffered with changing attitudes toward legalising or regularising Party rule.

Although the NPC in Deng Xiaoping's era was getting into its stride toward democracy and developing legislation, the Tiananmen square events of June 1989 once again proved that the handful of men who ruled China enjoyed privileges and power beyond the reach of fixed procedures.¹⁸ Wan Li, as the chairman of NPCSC by that time, was unable to convene a special session of the legislature to revoke martial law and instead gave his blessing to the Tiananmen suppression. The event was portrayed as "counter-revolutionary rebellion", which aroused the world to condemn China.

Now, the third-generation collective leadership is beginning to use the NPC to oversee the bureaucracy and to ensure that party policies are standardised, legitimatised and carried out.

Based on the 1982 constitution (art.70), the NPC set up six permanent committees: (i) Law, (ii) Nationalities, (iii) Financial and Economic, (iv) Education, Science, Cultural and Public Health, (v) Foreign Affairs, (vi) Overseas Chinese, and can set up such other special committees as are necessary. As reforms deepened, an Internal Judicial Affairs Committee was established in 1988. These legislative committees work under the direction of the Standing Committee of the NPC when the conference is not in session. Committees draft legislative proposals and examine bills and inquiries referred by the

¹⁸ Robert Delfs, 'The old men still the power behind the scene', *Far Eastern Economic Review* 146, October 5, 1989, p.66-7.

NPC and NPCSC. The organic law and NPCSC proceedings regulations provided that all bills be examined by the Law Committee before submission to the NPC and NPCSC in order to maintain uniformity of the legal system and to avoid contradictions.

4.2.2. Meetings of the National People's Congress (NPC)

The NPC is elected for a term of five years. Two months before the NPC's expiry day, its standing Committee must ensure that the election of deputies to the succeeding NPC is complete. The election of the NPC can be put off by decision of a majority vote of more than two-thirds of all those on the Standing Committee of the current NPC if exceptional circumstances prevent such an election. In that case, the term of the office of the current NPC may be extended. The election of deputies to the succeeding NPC must be completed within one year after the termination of such exceptional circumstances.¹⁹

Usually, the NPC meets in session once a year and is convened by its standing Committee. Temporary NPC meetings will be held if its standing Committee thinks it is necessary or it is put forward by one-fifth of representatives of the NPC. When the NPC meets, it elects a presidium to conduct its session.²⁰

4.2.3. The Standing Committee of the National People's Congress (NPCSC)

Below the NPC, the formal apex of power is the Chairmanship Group consisting of the NPCSC Chairman and Vice Chairmen and Secretary-General. Within the NPC, the NPCSC is supposed to be the permanent functional unit when the congress itself is not in session. It is selected for the same term as the National People's Congress, and exercises its functions and powers until a new Standing Committee is elected by the

¹⁹ *Constitution of the People's Republic of China* (1982), article 60.

²⁰ *Constitution of the People's Republic of China* (1982), art. 61.

succeeding NPC.²¹ With 20 to 25 members, the chairmanship group deals with regular NPC work and guarantees continuity and implementation of NPC decisions.

The chairmanship group has met before every NPCSC session, and had the right to initiate bills, scheduled votes and interpellations. Directly below the Chairmanship Group is the standing Committee that is composed of the following: “the Chairman, the Vice-chairmen, the Secretary-General, and the members”.²² Staff members who work directly under the Standing Committee are divided into two departments: the General Office,²³ to be discussed later in this Chapter, and the Legislative Affairs Commission.²⁴

The General Office has nine bureaux: secretariat; research office; liaison bureau; press bureau; foreign affairs bureau; letters and visit bureau; personal bureau; administrative management bureau; and the Great Hall management.²⁵ The Legislative Affairs Commission (LAC) is divided into offices: co-ordinating office; LAC research office; the criminal law office; the civil law office; the state and administrative law office; and the economic law office.²⁶ Importantly, no one on the Standing Committee of the NPC shall hold any post in any of the administrative, judicial or procuratorial organs of the state. The Chart 4.1 illustrates the basic structure of the NPC.

Based on the 1982 constitution (art.3), three branches - the Supreme People’s Court, Supreme People’s Procuratorates and the State Council - are structurally subsumed under the NPC to which they are responsible and under whose supervision they operate, as is shown in Chart 4.2.

²¹ *Constitution of the People’s Republic of China* (1982), art. 66.

²² *Constitution of the People’s Republic of China* (1982), art.65.

²³ The Chinese term is *banggongting*. The Chinese staff system consists of two types of personnel: personal secretary-aids (*mishus*), who work directly for individuals leaders, and organisational secretary aids, who work in General Offices and provide staff support and assistance collectively to leadership squads at various levels.

²⁴ *Renda daibiao shouce* (The handbook of the representatives of the NPC). China Fanzheng Press, 1997. P 91-93.

²⁵ *ibid.*, P91-92.

Chart 4.1 The Basic Structure of The NPC

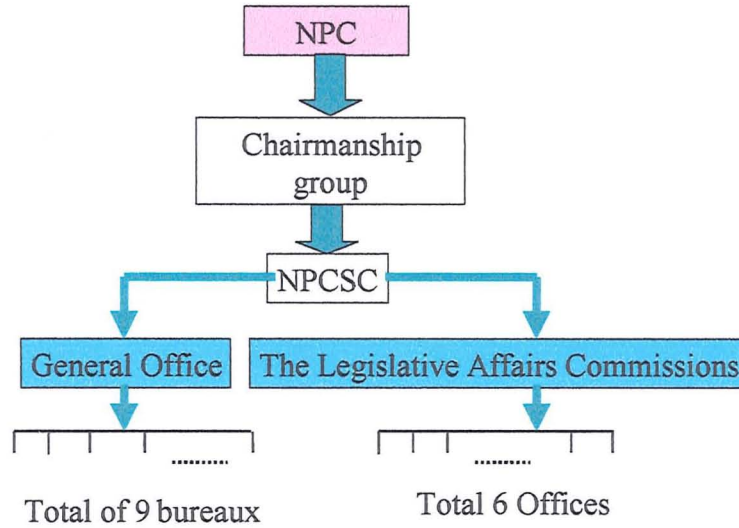
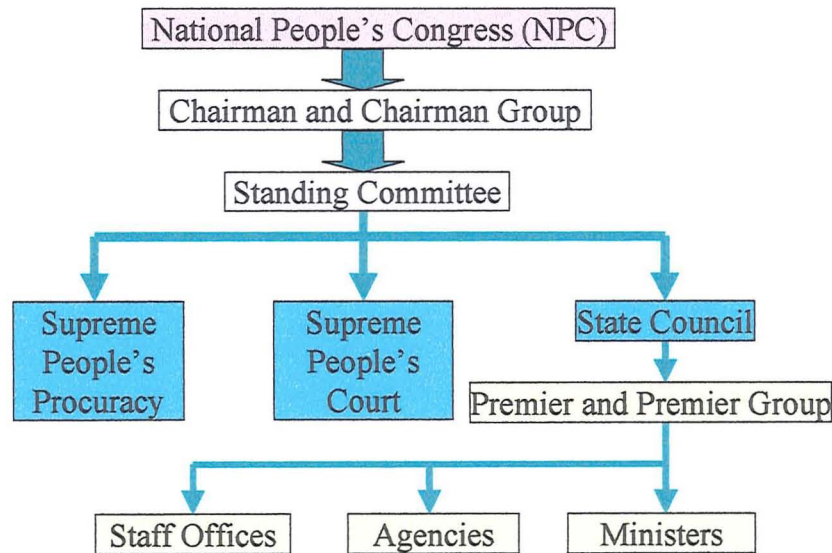


Chart 4.2 The Basic Structure of the Chinese Government Organisational Network



The People's Courts and People's Procuratorates constitute the judicial branch of the Chinese government, whilst the State Council is the executive body of the highest organ of the state power and the highest organ of state administration. More details of these will be discussed later on in this chapter.

4.2.4. Party and Government

The real challenge in Chinese political and administrative system reform is to separate the functions of the Party from the government as China is now determined to build the "rule of law".²⁷ How to reshape the Communist Party rule in the socialist market economy has become extremely important and has attracted great attention. Ostensibly, and most importantly, China will not put into practice the Western countries' bicameral system to reassign the division of the functions between the Party and the government.²⁸ Instead China will firmly continue and improve the system of multiparty co-operation through political consultation led by the CPC.²⁹

In order to have a better understanding of the Chinese government mechanism, it is important to examine the role of the Party at different periods of Chinese history, and to define relations between the Party and the state executive, the policy and law.

The state regime of joining the powers of the Party and government was created by the historical Soviet Union³⁰ and was promoted and applied into some other socialist countries among which China was a loyal follower. A Soviet-derived regime structure on blending Party's power with that of the government can be ascribed to the outside influence of the international communist movements. In addition, there were three inner reasons:

- Firstly, it was influenced by over 2000 years of feudal autocracy, e.g., a charismatic style of rule and personality cult.

²⁷ Endorsed by the 4th session of the 8th NPC on March 17, 1996.

²⁸ Wang Chuan min (1998), *op. cit.*, P 4.

²⁹ Party report delivered by Jiang Zemin at the 15th National Congress of the CPC on September 12, 1997. And also see Coalition bureau of the NPC Office (1997), *op. cit.*, P 128.

³⁰ *Selected Works of Lenin*. Chinese version. Vol. 32. P 166.

- Secondly, during the period of the liberation war (1945-1949), the Party's leadership had to be emphasised in order to strengthen the powers of occupied areas³¹ from Guomintang troops and army organisations.
- Thirdly, after the founding of the People's Republic of China, especially after 1957, the Party's leadership was given even more stress by leftist leaders, such as Lin Biao and the 'gang of four'. Those leftist leaders exaggerated the power of the Party and a charismatic style of the rule which gave their blessing to the launching of the Cultural Revolution (1966-76).

Owing to the above reasons, blending the powers of the Party and government was far more severe in the Cultural Revolution than in the historical Soviet-Union and the periods of liberation war. During the Cultural Revolution (1966-76), the state president Liu Shaoqi and a large number of leadership cadres were removed from office and suffered cruel persecution without the recourse to state authority organs³² and legal procedures. The whole country was shocked when Ye Jianyin made his speech after smashing the 'gang of four' that "in the Culture Revolution, 20 million people died, 100 million people suffered persecution and 0.8 billion RMB yuan were wasted".³³ Legal nihilism was rampant and existing laws were widely ignored. The whole country was shrouded in 'astonishing' sayings, such as that "Chairman Mao's words-one equals 10,000 words",³⁴ "political power is the power of suppression".³⁵ Party leaders and Party committees exercised supreme powers which severely impeded governmental organs from developing their executive powers, turned the NPC, the highest state organ, into a 'rubber stamp', and caused economic construction to suffer great damage.

For many years, the Party controlled China's political, economic, and cultural areas by organisational overlap and its supreme powers, as is shown in Chart 4.3.

³¹ During the period of the liberation war (1945-49), the CPC (led by Mao Zedong) fought against Guomindang (led by Chiang Kai-shek) troops in order to control China. The size of the occupied areas became the symbol of power.

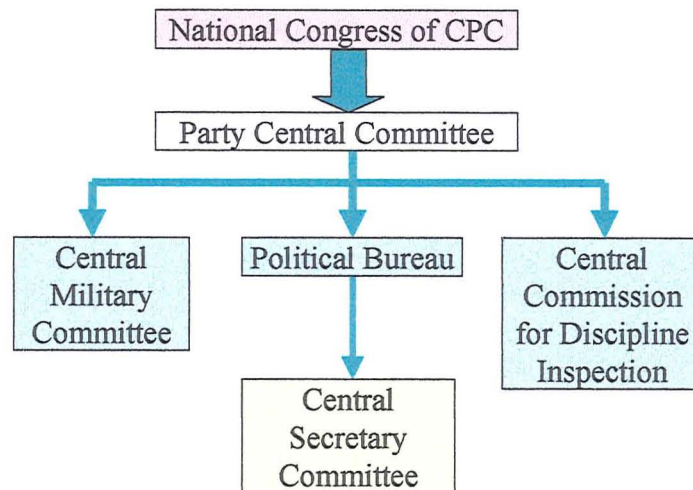
³² *Zhenzhi tizhi gaige lilun tantao* (Research theory of political system reform), Hua Xia press, 1987, p.130.

³³ Ma Lichen and Lin Zhijun (1998), *jiaofeng (China's problems)*, Modern China Press, March 1998, p.9.

³⁴ During the Cultural Revolution, Mao Zhedong's power reached a peak, and he was in absolute authority in the Chinese political realm. No matter whatever he said, people would follow him without asking why. The personality cult of Mao Zedong was widespread throughout the whole country. Apart from 'Chairman Mao's words - one equals 10,000 words', there were many other astonishing sayings like 'whatever Chairman Mao said is truth'.

For many years, the Party controlled China's political, economic, and cultural areas by organisational overlap and its supreme powers, as is shown in Chart 4.3.

Chart 4.3 The Basic Structure of The CPC Organisations



Based on the Constitution of the CPC, the National Congress of the CPC is made the apex organ of the Party leadership through the principle of election from the Party committees at grassroots level. The Party Central Committee is elected from the National Congress of the CPC, where in turn creates the political bureau from the Party Central Committee. The political bureau is supposed to exercise the power of the central committee when a plenary session of the central committee is not in session. The Central Secretary Committee is the executive organ of the political bureau.³⁶

According to the constitution of the CPC, the Central Commission for Discipline Inspection conducts its work under the direction of the Party Central Committee, exercising its power to defend the Party's constitution and inner regulations, helping the Party Central Committee strengthen Party discipline, and supervising the implementation of the Party's basic line, strategies, and policies in practice.³⁷ In

³⁶ See the revised Constitution of the CPC at the 15th National Congress of the CPC on 18 September 1997, art. 10, 11, 18, 19 and 20. China Fangzhen Press.

³⁷ See the revised Party constitution (1992) art. 43 and 44. China Fangzhen Press, 1997. P 44-45. And also see Research Office of Central Commission for Discipline Inspection and Supervisory Department

levels, which are organisationally unified into a sub-system operating vertically from the top to the bottom and collaborating with the Supervisory Department³⁸ in the field of combating corruption over the Party leaders. The Chinese system has emphasised the need to place the Central Commission for Discipline Inspection under the control of the Party Central Committee, which is the link between executive and judiciary, thus serving as a crucial integrative mechanism³⁹ under the exclusive leadership of the CPC.

In theory and according to the Party constitution, the political bureau and its standing committee are elected from the central committee's plenary session, which is widely acknowledged as the centre of the Party. However, in practice, the reverse is the truth in that the political bureau standing committee and its members are not elected from the central committee, as was the practice at the 15th National Congress of the CPC when Jiang Zemin, the re-elected general secretary of the central committee of the CPC, introduced six other members as the top CPC leaders including Li Peng, Li Ruihuan, Hu Jintao, Wei Jianxing and Li Lanqing. *De facto*, and on the contrary, standing members of the political bureau manipulated the members of the political bureau and central committee. Thus Deng Xiaoping, for a quite a long time, controlled the Party and the state. To put it clearly, the political bureau is an authority within an authority in the Chinese state regime. Such a state regime is essential to the maintenance of one-party rule, which has inevitably resulted in weakening government powers because government has to act on what the Party instructed on important matters and the Party has the final say on most issues.

4.3. Policy and law

'Policies', in the Chinese context, are principles formulated by the Party and state, which guide political, cultural, and economic life and all other work. Laws are guided by the Party's policies, and enacted to implement the Party's policies and realise the

Department (1996), *Jijian jiancha jiguan banan quanxiang chengxu he fangfa* (Jurisdiction, procedures and methods for the organs of discipline and supervision). China Fangzhen Press, P 1.

³⁸ In 1993, Central Commission for Discipline Inspection and Supervisory Department joined together to combat corruption in the Chinese administration. See Research Office of Central Commission for Discipline Inspection and Supervisory Department (1996), *op. cit.*, P 130.

³⁹ Research Office of Central Commission for Discipline Inspection and Supervisory Department (1996), *op. cit.*, P 130-33. And also see Law supervisory office for Central Commission for Discipline Inspection and Supervisory Department (1997), *Zhifa jiancha lilun yu shijian* (Theory and practice of law implementation and supervision). p 1.

Party's goals through their scope, stability and binding force.⁴⁰ Reforms in China were first implemented through policies, and later, were transformed into laws after they had been tested and verified in practice. This is because Party policies only applied to the Party members because of their conscientious commitment; whereas laws, with rigorously standardisation, explicit and concrete stipulations and binding force, applied to all citizens. In short, laws followed, elaborated and clarified policies, and provided an organisational framework for implementation. The relation between the policies and laws clearly explained the reasons why the Chinese leadership turned to law and is marching forward on the road of "governing the country according to law and making it a socialist country ruled by law".⁴¹

After twenty years of structural economic reform, especially after the events of May and June 1989, the Chinese leadership learned the need for economic development as its central task. Ruling the country by law is seen as a means to curtail abuses of power and to ensure stability. In turn it would protect the vitality of the Party and reassure an uneasy and untrusting populace so as to help leadership undertake an ambitious private and public sector restructuring plan.

As domestic economic and social relations become more complicated and the market economy has been endorsed as the main aim of economic reform in China, the leadership has relied on laws to confirm policy and regulate changes. Law was seen to regulate production and relationships among productive units, through codified rights and obligations and provided guidelines for economic activities.

Legal codes also promised to ensure social control by eliminating factors jeopardizing stability, and eradicating the system which led to the breeding and spreading of corruption. The explicit, concrete and standard provisions found in laws would be easier to implement than Party pronouncements with their conscientious commitments.

4.3.1. Enterprise law in China

⁴⁰ The Legislative Law of the People's Republic of China (2000), art. 3.

⁴¹ Political Report delivered by Jiang Zemin at the 15th National Congress of the CPC in September 1997.

As far as enterprise law is concerned, there are three types of enterprise law in China. They are (a) "State owned enterprise law of the People's Republic of China" (1988), (b) "Provisional regulations of the private enterprise of the People's Republic of China" (1988), and (c) so-called three joint venture enterprises in practice including "Foreign capital-joint enterprise law of the People's Republic of China" (first published in 1979, then revised in 1990), "Foreign operation-joint enterprise law of the People's Republic of China" (1988) and "Foreign capital enterprise law of the People's Republic of China" (1986). Categories (b) and (c) are real alternatives to the market, which are distinct from the SOEs by three features: (1) they are created by law, (2) searching for market satisfaction and needs are the top priority of these enterprises, (3) workers and managers are recruited through competitive examination based on techniques, abilities and merits, rather than party recommendation, lists of managers, or according to the state plan. For the purpose of this thesis, category (a) SOEs is my principal concern, as opposed to the latter two.

Firstly, in China, SOEs were created not by law but by administrative means or orders. SOEs, like China's economy, also experienced three stages of development. The first stage was from October 1949 to 1958, China's economy experienced the transition from a semi-colonial and semi-feudal economy to socialism, ending in the success of the liberation war.⁴² Faced with the arduous task of how to transfer the private industrial and commercial enterprises into socialist enterprises, the communist government pursued a course of "national capitalism"⁴³. During this period, quite a large number of SOEs were created to promote China's transitional economy. Starting from 1958, the second stage was characterised by a highly centrally planned economy. In this period, allocation decisions were made primarily by government ministries. The government simply assigned inputs to firms and ordered the delivery of particular output. Prices for each were also set by government. Naturally, SOEs were strictly controlled by government ministries, the scale of control including their production, sale and key leaders' appointments. With the ascent of Deng Xiaoping practising the reform and open policy in late 1970s, China entered the third stage. In this period, China proceeded to

⁴² It broke between the Communist troops and National armies from 1945 to 1949, which ended up with the Communist victory.

⁴³ An economic alliance of socialism economy with capitalism economy whilst it is transitional period with the aim of reinforcing the socialism economy and diminishing capitalism economy.

dismantle the old central planning systems and replace them with some form of market economy. In order to facilitate the transition from a centrally planned economy to a market economy, the Chinese government sought a series of measures to reform SOEs, including “contract responsibility system”, “lease responsibility system”, “shareholder responsibility system”, and so forth. The aims of these measures were to separate the state as a owner from day-to-day management of the SOEs, to grant autonomy to management, to impose financial discipline, to encourage state firms to face the market, and to expose them to competition. But none of them succeeded in doing so. On the contrary, many SOEs have been trapped in management and production difficulties. In 1996, the state sector as a whole made a loss for the first time since the 1949 revolution - the founding of the People’s Republic of China - losing Renminbe Yuan 3bn (£21.4m), the loss of industrial SOEs reached Yuan 69bn, an increase of 28% over 1995.⁴⁴

According to a report by China’s State Planning Committee, a dominant cause for such poor performance by the SOEs is the lack of a rational national asset structure. On the one hand, some SOEs utilized a great amount of assets with low efficiency for a long time, and suffered consistently from loss making. On the other hand, some SOEs with good management and saleable products confronted a shortage of assets which severely thwarted further development. One can identify several factors underlying such irrationality.

Fiscal management

For fiscal management, it is vitally important how profit is distributed, in China, the average distribution method predominates. After-tax profit can simply be taken by the government, and as a rule, losses will be covered in full by the government. Firms are obliged in principle to fulfil the production plan ordered by the government, even if doing so results in a lack of financial profit. Because of such government intervention rather than the free market mechanism, the wealth created by good firms is transferred to bad firms through this distribution system, consequently good firms are highly demoralized and bad firms cannot be motivated to improve their behavior.

⁴⁴ “China’s Management of Enterprise Assets: The State as Shareholder.” World Bank, June 1997.

Management system of asset investment

Under the traditional socialist economy in China, governmental finance authority did not invest and lend money on a commercial basis, for example, only to enterprises with further development prospects or with some current troubles, but with chances of being viable in the future. A major part of such money was spent as direct subsidies for non-viable state enterprises. Such subsidies were to be abolished very soon without expected improvement of economy. Another phenomenon followed such government finance scheme was that each sector/branch organ, each firm carried out investment without careful regard for the resulting asset portfolio, arguing that investment is necessary for fulfilling their statutory obligation, which lead to an irrational asset structure. The ground for this is that the monetary system in the extreme version of the centrally planned economy revolved around a monopolistic state bank. Its main function was to help enterprises to meet the targets for output and investment which had been laid down in the government's annual plan for the economy. State banks performed this function by putting at the disposal of the enterprises the necessary amount of credit to realize the "planned" transactions. Both price and credit served primarily as accounting tools. The system left no role for profit as a motivating factor.

Non-harmony of ownership and management of state asset

Abstractly, all assets in SOEs belong to the state or the people: the management is taken on by the firms. Under the socialist economy the ownership of the SOEs is not such a physical idea as a board committee,⁴⁵ which offers managers considerable power and discretion. As a result, managers obtain much scope to pursue their own self-interest at the expense of the owners. In addition, such separation of ownership and management leads to the rational reorganization or distribution of state asset being impeded.

Furthermore, SOEs are not subject to company law in the same way as private enterprises. They are regulated by "State owned enterprise law of the People's Republic of China". Strictly speaking, it was not until 1988 that China published such a law with the aim of facilitating the SOEs reform. Under this law, SOEs have become legal entities, taking civil responsibilities with the state property empowered to them to

manage by the state.⁴⁶ Managers are granted to manage the SOEs, and party secretaries are responsible for supervising the party's policies to be carried out in the SOEs.⁴⁷ "Contract responsibility system", and "lease responsibility system" are the main measures to separate the state as a owner from day-to-day management of the SOEs, but the decision whether to pursue the above two systems are depended on their parent ministries.⁴⁸

With regard to the "State owned enterprise law", there are obviously some limitations, which means that it does not function well under market economy in today's China. First of all, the expression "market economy" did not appear in the text of the law. Instead the key words were *commodity economy* (my italics).⁴⁹ In fact, "market economy" was accepted officially in the 14th Party report delivered by Jiang Zemin on October 1992. Moreover, planned economy stands out prominently,⁵⁰ for example, SOEs must accomplish the state plans first, then they are encouraged to face market. Thirdly, the "contract responsibility system" and the "lease responsibility system" have failed to make much difference in the separation of the ownership and management of the SOEs. Finally, and most importantly, the "modern enterprise system"⁵¹ has been introduced since the early 1990s, and this expression did not appear in the law at all. All this has implications for revising SOEs law to keep pace with the fast changing market economy so as to facilitate the process of public sector reform.

4.3.2. The *ad hoc* sequence of Chinese administration

⁴⁵ It means in SOEs managers have not in fact been granted the freedom from government control that they are promised. Many activities have been carried out not for economic reasons but on administrative orders.

⁴⁶ Article 2 of the "State Owned Enterprise Law of the People's Republic of China" (1988).

⁴⁷ Article 7 and 8. Ibid. For analysis see chapter 4 under the sub-title "The role of the Party in the state owned enterprise law".

⁴⁸ In China, all SOEs are controlled by relevant government ministries according to the nature of the SOEs, for example, some SOEs are under the control of commercial ministry, others are under the control of industrial ministries, and so forth. Therefore, government ministries have the final say on the activities of the SOEs.

⁴⁹ Article 2 of the "State owned enterprise law".

⁵⁰ Article 3, 19, and 22 of the "State owned enterprise law".

⁵¹ It is claimed that the Chinese government is determined to establish 100 large-medium-sized modern SOEs throughout the country by means of mergers and restructuring.

In the Chinese administration, the National Congress of the CPC customarily preceded NPC sessions by several months, e.g., the 15th National Congress of the CPC convened in September 1997, the 9th NPC convened in March 1998. On August 5, 1966, Mao Zedong wrote the article "Big gun shooting the headquarters-my great manifesto"⁵² and started the notorious Cultural Revolution without any specific governmental initiative. Again eight anti-corruption movements were launched recently in China by the Party central committee (more details will be discussed later on). It has very seldom happened in advanced democratic countries that such initiatives could be launched without the mobilisations of state authority organs. Ostensibly this is one of the advantages of blending the power of the Party and the government. It is true to say that, on a large scale, the convention of joining together the powers between the Party and the government remains fundamental and its reform is crucial to China political and administrative reform.

As regards the substantive context of assigning the powers between the Party and the government, the 1982 constitution placed the NPC as the highest authority of the state, and empowered the NPC to supervise state organs, but the core leadership of the Party was reaffirmed in the Preamble. Prevailing political theory placed the NPC at the apex of the state structure, but at the same time, delegitimated its legal role of sovereignty. Moreover, the NPC law making and supervisory power atrophied, NPC supervision receded in favour of Party penetration of all executive organs. Law was simply a manifestation of Party policy, as was evident from the practice in the Chinese polity that the National Congress of CPC passed the main reports, and instructed the NPC how to act on important matters.⁵³

For example, "Jiang Zeming's political report delivered at the 15th National Congress of the CPC laid down the Party's policies and programmatic documents, while Li Peng's governmental work report delivered at the 9th NPC transformed the Party's policies and programmatic documents into governmental work programme."⁵⁴ As was stated in the

⁵² This article was written by Mao Zedong on August 5 1966. The 'headquarters' here referred to Liu Shaoqi who was the President of China of the day. Liu Shaoqi was criticised and denounced and his right leg was broken by beating owing to this article. Thus the Cultural Revolution started in China. See Ma Lichen and Lin Zhijun (1998), *jiaofeng (China's Problems)*. Modern China Press. p 92.

⁵³ Summarised from Wang Chuan min (1998), *op. cit.*, P 5.

⁵⁴ Wang Chuanmin (1998). *op. cit.*, p. 5.

book entitled *National People's Congress - the highest authority organ*,⁵⁵ “the 9th NPC formed a connecting link between the preceding (15th National Congress of the CPC) and the following (the government work plan of the 9th NPC)”.⁵⁶ Although decisions of the central party committee only had the status of suggestions, Chinese history proved incontrovertibly that the Party organs, and *ad hoc* political bureau, give orders.

Leadership ambivalence characterised the endeavour of separating powers of the Party and the government. Theoretically, a strengthened NPC would guarantee that the Party's policies were legitimatised and contribute to the political stability so as to create political conditions conducive to economic development. Practically, very few proposed truly liberal reforms that challenged Party's power. All NPCSC and legislative committee leaders were on the central committee nomenklatura⁵⁷ list. The president of NPCSC was always a veteran Party cadre who was a stalwart supporter of the Party (e.g., Ye Jianguo, Peng Zhen, Wan Li and Li Peng). The requirements of civil servants recruitment depended largely on the “four basic principles”⁵⁸ in which one is to adhere to the Party's leadership.

4.3.3. The role of the Party in the state owned enterprises law

An example from the state-owned enterprises law focuses on the autonomy granted directors vis-à-vis party secretaries and the concerns that the law would weaken Party control over the economy. From January 1985 to March 1988, in discussion of enterprise reform, the NPCSC members acknowledged the need for enterprise reform and for expanding the responsibilities of state-owned enterprise directors. But many members were puzzled by the implications of reform for the Party committee in each factory, a body whose functions would be narrowed and whose role might be weakened

⁵⁵ Wang Chuanmin (1998), *op. cit.*

⁵⁶ Wang Chuanmin (1998). *op. cit.*, p. 5.

⁵⁷ The Chinese personnel system was executed and coordinated not by open competitive recruited civil servants but by “cadre” recommended by the Chinese Communist Party organisations which in China means the “nomenklature”. More details see John P. Burns ‘China's Nomenklatur’ *Problems of Communism*, September-October, 1987. P36-51.

⁵⁸ They are: upholding the socialist road, upholding Marxism-Leninism and Mao Zedong thought, upholding the dictatorship of the proletariat, and upholding the leadership of the Communist Party. See Chang Chen pang, “On the four cardinal principles”, *Issues and Studies*. February 1987.

with the introduction of the 'modern enterprise system' by separating the enterprise's ownership from operational management.

Debate was intense with two "completely different" draft proposals on the director role: one favoured by Party and trade-union⁵⁹ cadres, which gave the director responsibility for production and management of the enterprise, and empowered Party secretaries and trade union cadres to supervise directors in carrying out the Party's policies. The other favoured by most enterprises' directors, gave directors the central position in all activities in the enterprises. Finally, in January 1988, an acceptable compromise was reached that specified grassroots Party organisations in the enterprises would supervise the implementation of Party policies and support enterprise directors in exercising their powers. That resulted in chaos on implementing state-owned enterprise law in practice, as it was the case that the Party cadres criticised directors for not following the Party's policy, whilst directors censured the Party cadres for interfering in the production and management of the enterprises.

It is thus commonly acknowledged that China is a one-party state, where the Party controls the state from the inside by overlapping personnel and double responsibility for exercising powers. Legal processes had to find a niche next to political requirements. Lawyers and judges had to be trained and judgement had to be made on how (if at all) law is different from Party policies in scope, stability, and binding force. For many years, no legislative committee, practically rather than legally, could challenge Party's power. Party and Party committees dominated the state executive, and had no obligation to accept outside oversight.

4.3.4. Reshaping the functions of the Party and government

The state structure of blending the powers of the Party and government is an antiquated apparatus which is not attuned to the needs of a market economy and a country ruled by law. Since the early 1980s, Deng Xiaoping has made a series of speeches, emphasising

⁵⁹ The trade union is a kind of organisation existing in every unit to represent the interests of all staff such as benefits, promotion and housing.

several times over on political and administrative reform that “separating the function of the Party from the government should be put in the first place”.⁶⁰ Yet in China, the Party’s documents enjoy almost the same authority as the law. The obvious evidence is that a series of Party decisions made at the 3rd plenary session of the 11th National Congress of the CPC on December 12-22, 1978 ended the era of “class struggle” which had perplexed the Chinese people for two decades, and initiated economic modernisation.

From that time on, China entered the new era of the “second revolution” of economic reform.⁶¹ Furthermore, the report entitled “Accelerating the reform, the opening to the outside world and drive for modernisation, so as to achieve successes in building socialism with Chinese characteristics” delivered by Jiang Zemin at the 14th National Congress of the CPC on October 12-18, 1992 first officially affirmed that the objective of Chinese economic structural reform was to establish a socialist market economy.⁶² Coincidentally, in November 1993, the 3rd plenary session of the 14th National Congress of the CPC fully approved the Party’s document entitled “The Resolution of the CPC central committee on establishing a socialist market economy system” which stopped the long lasting theoretic battle on the economic structural system chosen for China.⁶³

For a long time, there had been a dominant view among Chinese leaders and intellectuals that the market economy belonged to “capitalist countries”, whereas the planned economy was the quintessence of socialism. Twenty years’ economic and political system reform had given rise to the convention that ‘politics’ and ‘ideology’ dominated every work in China. Everything was seen as ‘socialism’ or ‘capitalism’.⁶⁴ Political turmoil would inevitably affect the economic situation. In the context of Chinese economic and political system reform, it is all the more necessary to give the

⁶⁰ Cited from Chi Fulin and Huang Hai (1987), *Deng Xiaoping zhenzhi tizhi gaige sixiang yanjiu* (Research on Deng Xiaoping’s thoughts of political system reform). Spring and Autumn Press. p 51. And also see Select Works of Deng Xiaoping, *Issues on political system reform* (September to November, 1986). Vol. 3. P 177. Renmin chubanshe. 1993.

⁶¹ The economic reform started in 1978 was marked as the “second revolution” in China. See Select Works of Deng Xiaoping, *Economic modernisation is the second revolution in China*. Vol. 3, p 113-14.

⁶² Put forward at the 14th National Congress of the CPC on October 12-18, 1992.

⁶³ Ma Lichen and Lin Zhijun (1998), *op. cit.*, p 236.

⁶⁴ For analysis, see 5.4.2 under the title ‘Contemporary China’s three ideological liberations’ of this thesis.

first priority to concentrating on reassigning the division of the functions between the Party and the government. Thus curbing the power of the Party and the government will be the real test of the third generation leaders in governing the country according to law and making it a socialist country ruled by law.

Admittedly, since 1979, China has made great strides forward on the way to building a “rule of law”, namely:

- Establishing the secretary bureau of the Party central committee, strengthening the collective leadership of the Party, instead of personal leadership.⁶⁵
- Enacting the new constitution (1982), further promoting the distinction of responsibilities between the Party and the government.
- Readjusting the leadership at various levels, recruiting middle aged and young cadres in line with the principle of economic modernisation, so party leaders at different levels will no longer serve in any of the government organisations.⁶⁶
- Strengthening the law. Law has been given prominently emphasis in both economic and political system reforms in recent China.

Nonetheless, the age-old problem of clearly distinguishing the functions of the Party and the government has remained unsolved. Twenty years have passed since Deng Xiaoping made his speech entitled “reforming the leadership system of the Party and the government”, which was commonly acknowledged by leaders, reformers, and legal intellectuals as the programmatic document referring to China’s political reform, on August 18, 1980.⁶⁷ But there still existed a strong insistence on combining the relations between the Party and the government, which result in an unfortunate distribution of power amongst the national authorities. Thus there was a popular saying in the society that “the Party committee made decisions, government carried them out, NPC existed in name only”.⁶⁸ Cadre economic crimes are typically the corollary of this unclear

⁶⁵ The title of chairman of the Party changed to general-secretary of the party at the 12th National Congress of the CPC on September 1-11, 1982.

⁶⁶ Selected Works of Deng Xiaoping. Vol. II. Renmin chubanshe. 1983. P 323-27.

⁶⁷ Deng Xiaoping’s speech at the enlarged meeting of the political bureau on August 18, 1980. See *Selected Works of Deng Xiao ping*. Vol. II. People Press. 1983. P 320-343.

⁶⁸ *Research theory of political system reform*. Hua Xia press, 1987, p.137.

structural regime although there are other reasons linked with economic reform.⁶⁹ *De facto*, Chinese history has witnessed the interaction of blending the Party's supremacy and the NPC's legal sovereignty; sometimes, in certain circumstances, the Party has intervened directly in state affairs or supplanted state administrative organs. That has formed a fundamental characteristic of the Chinese government system.

In practice, failure to separate the functions of the Party from the government has given rise to corruption and inefficiency, in turn damaging the reputation of the Party. Whether coping with routine problems of administration or facing serious crisis in the life of the state, it will be a central theme of this thesis that the distinction between the Party and the government is the chief remedy for low efficiency in government. Legal and institutional changes must take second place in Chinese civil service reform behind the search for a distinction between the Party and the government. For current administrative departments are not only led by the government but also by the Party committees. Moreover, practically, China is still interested in emphasising the role of the Party in economic and political reforms. Jiang Zemin's recent "three representatives" speech is a good illustration of this, in which he said that the party is the representative of the advanced social productive forces, of the advanced culture and of the interests of the broad masses.⁷⁰

The socialist market economy⁷¹ and anti-corruption movements⁷² are calling for "the rule of law"⁷³ to challenge the Party's privileges. Political and administrative reform requires organisational re-construction strengthening the NPC's constitutional role to serve as a counterweight to other institutions with the aim of distinguishing functions between the Party and the government and a desire to recast Party power in accord with

⁶⁹ For analyses of cadre crimes and newly developing stratum - cadre entrepreneurs, see Liqing Liu (1999), *op. cit.* These issues will also be addressed in the following chapter.

⁷⁰ This is evident from the very recent movement launched by President Jiang Zemin by which the role of the Party in the contemporary China is even more emphasised. This is embodied in Jiang Zemin's 'three representatives' speech that the party is the representative of the advanced social productive forces, of the advanced culture and of the interests of the broad masses. *People's Daily*, 4 March 2000.

⁷¹ Put forward at the 14th National Congress of the CPC, on October 12-18, 1992.

⁷² Corruption cases involving high-rank officials such as the Party secretary and mayor of Beijing loom large in present China. In recent years, corruption has still been on the rise to such an extent that the party leadership has repeatedly called for nationwide anti-corruption campaigns. More information will be detailed in chapter 6.

⁷³ Endorsed by the 4th session of the 8th NPC on March 17, 1996.

structural economic changes. Economic changes will inevitably bring about political changes.

The 15th National Congress of the CPC held in September 1997 pushed China to the verge of a third revolution with its essence resting on curbing the power of the state and the Party, although Jiang Zemin had deliberately little to say about 'political reform'. However, he did not acknowledge that, as regards Chinese political and administrative reform, priority should be given to distinguishing the functions of the Party and government rather than blindly adhering to the leadership of the CPC, establishing a highly efficient, well co-ordinated and standardised administrative system dominated by law rather than by Party's policies. The leaders in office are to learn needs from popular opinion on recasting Party power so as to help enhance the vitality of the Party and state.

It is clear and important that distinguishing the power of the Party and the government is crucial as it affects the reform of the NPC system, governmental reconstruction and personnel management. Without great decentralisation of decision-making and more checks and balances on the Party power, reform may be trapped in struggles for power at the top. What China lacked is the organisational muscle to challenge the Party for its constitutional violation.

4.4. Functions of the NPC

4.4.1. Law-making

The NPC's formal involvement in law making began in 1979 with "legislative forecasting" and "legislative planning" after a lapse of two decades of near lawlessness. Legislative forecasting entailed anticipating the social results of law, determining which laws were to be revised or repealed, drafting timetables and evaluating trends in law making. Legislative planning entailed using the information gained from forecasting to set out specific legislative measures and goals.

Legal drafting resumed in 1979. Over 20 years, the NPC and NPCSC have enacted 326 laws. From 1993-1998, the 8th NPC and its standing committee enacted 85 laws and 33 resolutions concerned with laws, accounting for 35.8 per cent of the total legislation since China started economic reform and opened its doors to outside.⁷⁴ As economic reform deepened and the socialist market economy developed, the leadership relied on law to confirm policy, rationalise rule, generate international support for modernisation, and increase government efficiency. Rule by law would protect elites and reassure an uneasy and untrusting populace. To enhance legislative capabilities proposed by reformers, the 1982 constitution (art. 67) granted the NPCSC the power to enact and amend laws (as well as decrees) with the exception of basic laws concerning criminal offences, civil affairs and the structure of the state which were legally delimited to the NPC. Thus it transformed the standing committee into a legislature within a legislature, forming a division of the law making system with Chinese characteristics. As China's second law-making body, the NPCSC also gained the right to discuss and pass statutes that could not wait for NPC deliberation.⁷⁵

In addition, constitutionally, the NPC has also the authority to elect the members of the highest Government organisations, including the President and Vice President of the People's Republic of China, Premier of the State Council upon nomination by the President of the People's republic of China, Chairman of the Military Affairs Committee (MAC), the President of Supreme People's Court, and Procurator-General of the Supreme People's Procuratorate.⁷⁶

Besides the two-layer law making within the NPC, there are two other hierarchies, the state council and provincial level people's congresses, that share the rights to translate broad programmatic decisions of the Party leadership into specific legal norms.

The State Council heads the executive bureaucratic complex involved in law making through drafting administrative regulations or ordinance.⁷⁷ Since 1980s, the State

⁷⁴ Xu Ru jun etc. *Promoting a principle*. People's Daily, Overseas Edition, March 6, 1998.

⁷⁵ Gao zhaoxian (1982), 'New development of the NPC system seen in the draft constitution', *Faxue Jikan*, No.4, October, 1982, p.10.

⁷⁶ *Constitution of the People's Republic of China* (1982), art. 63.

⁷⁷ In China, there is distinction between the "laws" (*fa* or *falu*) and the "regulation" or "ordinance" (*jueding* or *tiaoli*). Laws are enacted either by the NPC or by its standing committee and

Council has gained the authority to enact “delegated legislation” (*shouquan lifa* in Chinese) which is called “quasi-law” (*zhunfalü* in Chinese). From 1993 to 1998, the State Council drafted 66 laws, and passed 197 administrative regulations 197.⁷⁸

Provincial-level people’s congresses are the third set of law making bodies. Although most Chinese commentators continued to reject federalism, the evolving legislative system exhibited a strong, relatively autonomous, local component. Legal scholars argued that China’s size and diversity made it impossible for the NPC and NPCSC to pass all necessary laws and suggested delegating power accord with the spirit of reform, reducing over-concentration of power.

4.4.2. Supervision of Government Officials

Concentration on economic construction in the 1980s and efforts to reduce functional duplication brought new responsibilities to state organs and less Party involvement in day-to-day administration. In principle and according to constitution, the Party central committee is responsible for policy-making relating to economic reform, while the implementation of policy is delegated to the state organs. To ensure the Party’s policy is carried out in practice, the 1982 constitution granted the NPC supervision over the State Council, Central Military Committee, People’s Court and People’s Procurator. Legislative supervision may be conducted by the full NPC, its committees or individual deputies and it may be directed at state functionaries or the institutions they head. Supervision may be personal and sporadic or it may be institutional and regular. Prior to 1980, formal questioning of ministers had not been used although past constitutions charged the full NPC with constitutional supervision. From 1979 to 1982, reformers looked to other experiences of rationalisation for methods to guarantee that the questioning of ministers was to evolve into a regular, institutional form of supervision. For example, deputies in small group meetings at plenary sessions in 1979, 1980, 1981, 1985, 1987, and 1988 took exception to passages in the premier’s government’s work

promulgated by decree of the President of the PRC. Regulations or ordinance are issued and promulgated by various administrative and judicial agencies which are called subordinate legislation.

⁷⁸ Wang Chuan min (1998), *op. cit.*, p.11.

report and criticised state officials for immorality, incompetence, and mistaken priorities.⁷⁹

The constitution (art.73) and the rules of procedure affirmed the right of deputies to address questions to the State Council and its ministers and commissions and required either written or oral responses. Those receiving inquires were instructed to answer questions in a responsible manner. If questioners were not satisfied with a reply, they were permitted to submit another inquiry and the department questioned was required to give another reply. Moreover, when they deem it necessary, the NPC and its Standing Committee may appoint committees of inquiry into specific questions and adopt relevant resolutions in the light of their report. All organs of the state, public organisations and citizens concerned are obliged to supply the necessary information to those committees of inquiry when they conduct investigation.⁸⁰

“In theory the NPC was the highest organ of the state power, but in practice it did not control state power; it was unable to supervise the enforcement of the constitution or to exercise its executive powers of supervision”.⁸¹ The result is that corruption cases involving high officials are on the rise in the Chinese administration. High officials could act as they pleased and were immune from criticisms by deputies.⁸² This is because deputies were unfamiliar with government work and lacked sufficient data to draw conclusions,⁸³ as all members of the NPC achieve their place neither by campaigning nor by representing a certain district and certain votes. Individual deputies rarely called ministers and state officials to account.⁸⁴ Moreover, “the people at large were not in a position to supervise the deputies and leaders they elected, to say nothing

⁷⁹ Kevin J. O'Brien (1990), *Reform without liberalisation*. Cambridge University Press. p 165.

⁸⁰ See *Constitution of the People's Republic of China* (1982), Article 71.

⁸¹ Shi Xiaozhong (1981), *Jianquan guojia zhengzhi zhidu wenti dangyi* (Current discussion on perfecting the nation's political system), *Minzhu yu fazhi*. No. 10. October: 6.

⁸² Jin Zhiming (1980), *Lun zhongguo minzhu qiandu* (Discussing China's democratic future). *Dong Xi Fang*, No. 22, October: 27.

⁸³ Xu Chongde and He Huahui, *Xianfa yu minzhu zhidu* (Constitution and democratic system). P 60-1. On the limited data released to deputies, see Zong Nankai (1979), *Chuping renda huiyi* (First evaluation of he NPC. *Dong Xi Fang*, No. 7.July: 7.

⁸⁴ The Chinese leaders regard interpellation as a stricter form of supervision, and in most cases they are subject to practical restrictions, such as questions to the state organs and state officials can be raised only during the time when the NPC is in session, deputies numbers must procure a quorum, usually over 30 deputies, and the questions should be made to the departments, rather than a single person. And also see Kevin J. O'Brien (1990), *op. cit.*, P 77.

of exercising the right to remove them from office".⁸⁵ Therefore, lacklustre supervision offers a chance for the Party to interfere in state affairs in China.

4.5. The State Council

4.5.1. The State Council

The State Council, the executive body of the highest organ of state power and the highest organ of state administrative, is the most elaborate functional arm of the NPC. It is composed of "the Premier, the vice premiers, the State Councillors, the ministers in charge of ministries, the ministers in charge of commissions, the Auditor-general; and the Secretary-general".⁸⁶ The term of office of the State Council is 5 years, the same as the NPC. The Premier, vice-premiers and State Council are to serve no more than two consecutive terms. The organisation of the State Council is prescribed by law. The constitution and organic law of the State Council stipulate that the Premier has overall responsibility for the State Council. The vice-premiers and State Councillors have legal obligations to assist the premier in his work. The ministers have overall responsibility for the ministries or commissions under their charge.

According to the Organic Law of the State Council of the PRC, meetings of the State Council should be divided into "plenary meetings and executive meetings".⁸⁷ The plenary meetings of the State Council are composed of all members of the State Council. The executive meetings of the State Council consist of the Premier, the vice-premiers, the State Councillors and Secretary-general. The Secretary-general is in charge of the day-to-day work of the State Council as a branch of the general office.⁸⁸

⁸⁵ Feng Wenbin (1980), *Guanyu shehuizhuyi minzhu wenti* (Problems concerning socialist democracy). Renmin Ribao, November 25, 1980. P 3.

⁸⁶ *The Constitution of the PRC* (1982), art.86.

⁸⁷ *Organic law of the State Council of the PRC*, China law No. 143.

⁸⁸ The functions, structures and dynamics of the institution of the organisational secretaries are commonly called in China "General Office" (bangongting/bangongshi in Chinese). A GO at the central, ministerial or provincial level is called a bangongting; one at the level of prefecture, municipality, county is called a bangongshi. At lower levels it is sometimes called a mishu chu (secretarial division) or mishu zu (secretarial team). In fact functions of a GO in the sense that it contains counterpart of sub-units to all the bureaucratic departments under the leadership squad. See Wei Keyi et al., *Mishu*

Speaking generally, the correspondence between the formal power of an organisational network and its actual functional power may be approximately measured by the extensiveness of the development of the network's units in different functional areas. In this respect, of all the branches of the NPC, the State Council is most extensively developed. At the top of the State Council is the Premier Group, which is regarded by scholars as the "inner cabinet". Under the Premier Group are the staff offices, agencies, ministers and some special committees (see chart 4.2 above). The exact number of each type of units has undergone many changes, especially since China carried out economic system reform initiated in the late 1970s. The State Council is responsible to and reports on its work to, the NPC or the NPCSC when NPC is not in session.⁸⁹

4.5.2. Government Departments⁹⁰ and the General Office⁹¹

The term "government department" has no precise meaning in law, it usually refers to those branches of the State Council which are staffed by "cadres" in the conventional term, or "civil service" in the fashionable term compatible with other countries.

There are now 29 ministries or commissions of the State Council after the 9th NPC announced ambitious restructuring reform transforming the Chinese system of central government, except the general office of the State Council.⁹² The ministers of ministries or commissions are responsible for the work of their respective departments. They have rights to convene and preside over ministerial or commission meetings on discussing and deciding major issues in the work of their respective departments.

gongzuo tongshu (A general guide for mishu work). Nanning: Guanxi renmin chubanshe, 1992. More details will be discussed later on.

⁸⁹ *Constitution of the People's Republic of China* (1982), article 92.

⁹⁰ *Zhongguo renmin gongheguo dang zheng jun qun lingdaoren minglu* (Who's who in the Party, army, government, popular organisations of the People's Republic of China). Beijing: Zhongguo dangshi chubanshe, 1990.

⁹¹ Zhang Feng et al., eds., *Dangdai zhongguo baike dacidian*. P 115, 85; *Zhongguo zhengfu gongzuo gaiyao*. P 21-25. And see notes 78 above.

⁹² For more details see chapter 5.

In addition, the State Council also establishes state audit under the direction of the Premier of the State Council, exercising its independent power to supervise through auditing the revenue and expenditure of all departments under the state council and of local government at different levels, and those of the state financial and monetary organisations in accordance with the law, subject to no interference by any other administrative organ or any public organisation or individual.⁹³

In China every bureaucracy is directed by a leadership squad (*lingdao banzi*)⁹⁴ consisting of only a few leaders, but every leadership squad is served and assisted by a large secretarial (*mishu*)⁹⁵ squad or “General Office” (GO).⁹⁶ In effect, the functions of a General Office are equivalent to that of all the bureaucratic departments under the leadership squad. The tasks of GO are to provide the leaders with a countervailing base of expertise, information and necessary organisational capacity so as to take an effective control over the bureaucracy. At the centre, there are two important GOs: the GO of the Communist Party Central Committee and the GO of the State Council.

Formally a GO has equal status with a bureaucratic department at each level of the bureaucratic hierarchy. Thus the GO of the Party Central Committee and the State Council have the same rank as a central department or ministry institutionally. Practically, a GO has responsibilities for constantly monitoring and supervising the subordinate departments and the units in policy implementation. To be more precise, all the subordinate departments and units are said to be subject to this supervision. The members of a GO are empowered to call them at anytime on the phone, send letters, either order them to report in person or inspect them personally, and press them to expedite the completion of the tasks assigned them by the leadership squad.⁹⁷ Moreover

⁹³ *Constitution of the People's Republic of China* (1982), article 91.

⁹⁴ Leadership squad refers to personalities of the bureaucracy, for example, at the central level, including twenty-five to thirty-five top leaders, the paramount ruler in particular like Mao Zedong and Deng Xiaoping in the Chinese polity. Those leaders have a final say on most important matters.

⁹⁵ *Mishus* are divided into two types in the Chinese staff system. One is personal *mishu* (secretary-aids), who work directly for individual leaders, the other is organisational *mishu*, who work in General Office and provide staff support and assistance collectively to leadership squads at various levels. For more details see, Wei Li and Lucian W. Pye (1992), *The Ubiquitous Role of the Mishu in Chinese Politics*. China Quarterly, No. 132 (913-936).

⁹⁶ See notes 78 above.

⁹⁷ Qi Peiwen et al. (1990), *Zenyang danghao lingdaoren mishu* (How to be a good personal secretary for a leader). Beijing: Dangan chubanshe. P 47. Wang Fangzhi et al. (1990), *Wenjian shoufa yu chuli* (Receiving, dispatching, and processing of official documents). Beijing: Dangan chubanshe. P 78.

all GOs are organisationally unified into a sub-system operating vertically from the top to the bottom and cutting horizontally across various hierarchies of the Chinese bureaucratic structure, thus serving as a crucial integrative mechanism.⁹⁸

In a sense, the General Office system resembles UK civil service systems. The staffs of GO are expected to be neutral, non-partisan and supportive toward the political leadership at all levels to provide the stability and continuity of the political system as a whole, regardless of policy disagreements, power struggles, and personnel changes among individual political principles.

In practice there are two basic roles of GO performance:

- 1) to prevent or at least minimise conflict by co-ordinating various interpersonal and work relationships.
- 2) to provide constant monitoring and supervision to strengthen the political leadership's control over bureaucracies.

GO's two basic roles are most remarkably reflected in the processing of information, the writing of official documents, and the organising and servicing of conferences, which are all handled almost exclusively by the GO system in the Chinese political process. For example, subordinate departments and units are not allowed to send their documents directly to individual leaders. If they do so, leaders are supposed to turn such documents, called "extra-channel documents" (*zhangwai gongwen*), over to the GO for proper processing before they can be accepted.⁹⁹

It is clear that so far as the Chinese civil service reform is concerned, the GO system is perhaps the most secretive and sensitive institution in the Chinese political arena, and remains one of the conundrums of the Chinese mechanism in the post-Mao era.¹⁰⁰ As a result, only recently has there been any information available about its organisation and

⁹⁸ Wang Zhaoguo, *Chongfen fahui bangongting de canmou, zhushou zuoyong* (Give full play to the role of GOs in providing advice and assistance), in *lingdao tongzhi tan mishu gongzuo* (Remarks by leading comrades on *mishu* work). Beijing: Xiandai chubanshe, 1989. P 76-77.

⁹⁹ Source from personal interviews. And also see Wei Keyi et al., *Mishu gongzuo tongshu* (A general guide for *mishu* work). Nanning: Guanxi remin chubanshe, 1992. P 121-22; Hou Huiyi, *Huiyi zhuzi yu fuwu* (organising and servicing of conferences). Beijing: Dangan chubanshe, 1990. P 104, 106.

inner working. So understandably the GO has received insufficient scholarly attention in the existing literature. The GO system is a crucial mechanism for bureaucratic control and integration so that it deserves serious attention in understanding how the Chinese mechanisms work.

In terms of political/administrative support the State Council GO (*guoban*) carries out basically the same staff service for the State Council leadership squad which consists of the premier, vice-premiers and state councillors.

As far as the daily operation of the State Council is concerned, the most important sub-unit of the State Council GO is its Secretary Bureau, which contains specialised divisions for such issue areas as finance and economy, agriculture, foreign affairs, education and culture, industry and transportation, laws and regulations, science and technology, and the like. In a word, it has the capacity to handle and process all incoming information from every commission, ministry and directly administered bureau of the State Council. The integrating and co-ordinating role of a GO is largely carried out by its head who is called "GO director" as in the case of the CPC Central Committee, or "Secretary-general" as in the case of the State Council.

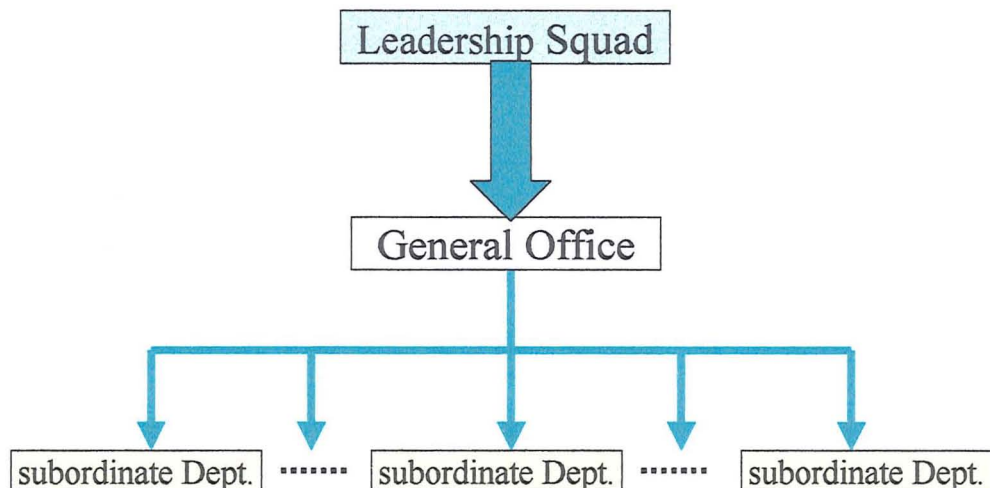
As I mentioned earlier, there is some similarity between the Chinese GO system and UK civil service system in the sense that to preserve the stability and continuity of the political system as a whole, both are expected to be non-partisan. However, there is a significant difference in that a civil servant is supposed to stay away from partisan politics altogether, whereas a GO head is expected to be an active participant, getting to know all the political tricks and even personal secrets, but at the same time playing the role of impartial reconciliator among various factions or individual rivals.

A GO has a primary role to play in co-ordinating relations between the leadership squad and the subordinate departments and units. Moreover, a GO head is regarded as a powerful figure because he enjoys the easiest access to all the leaders and all the secrets and is officially entitled to speak in the name of the entire leadership squad. The

¹⁰⁰ The General Office of the State Council remained unchanged within another new wave of the governmental restructuring launched at the 9th NPC in March 1998.

A GO has a primary role to play in co-ordinating relations between the leadership squad and the subordinate departments and units. Moreover, a GO head is regarded as a powerful figure because he enjoys the easiest access to all the leaders and all the secrets and is officially entitled to speak in the name of the entire leadership squad. The relationship between the leadership squad, the GO, and the subordinate departments is illustrated in Chart 4.4.

Chart 4.4 The relationship between the leadership squad, the GO, and the subordinate departments



Sources: Zhonghua renmin gongheguo sheng zizhi qu zixiashi dang zheng qun jiguan zuzhi gaiyao; personal interview conducted in early 1998 in Beijing.

Usually the leaders pass most of their orders, instructions, decisions and task assignments to the subordinate departments and units through the GO, and in most cases the subordinate departments and units have to go through the GO to get access to individual leaders.¹⁰¹ Furthermore the GO plays a particularly important role with regard to the subordinate departments' annual work plans involving budgets and

¹⁰¹ See note 89 above. And also see Min Li (1992), *Deng Xiaoping de 'zhinang tuan'* (Deng Xiaoping's 'brain trust'). *Jingbao yuekan* (Mirror monthly), January. P 40. Zhong Xingzhi (1993), *Jiang Zemin quanmian jieban* (Jiang Zemin is taking over the supreme power). *Zhongguo shibao zhokan* (China

It is noteworthy that one of the GO's most important responsibilities is constantly to monitor and supervise the subordinate departments and units in the implementation of Party policy, rather than check maladministration. Practically all the departments and units are said to be subject to this supervision.

In the past decade, the Chinese leadership has strengthened the role of the GO system in favour of centralised control and co-ordination, although it has allowed greater decentralisation in some areas, the economy in particular. It is important to notice that a GO used to be accountable primarily to its immediate leadership squad, but now it is more explicitly placed under the dual leadership of both its immediate leadership squad and the higher-level GOs, which are to provide 'professional guidance'.

4.5.3. Letter and Visits Bureau

Apart from government departments and GOs, the Chinese system establishes 'letter and visits bureaux' under the direction of the GOs of the central committee and the State Council respectively. Their main tasks involve the following two aspects: (a) dealing with individual complaints over the actions of central government and the Party organs through 'letters from the masses and visitors, with the aim of helping people solve problems and, (b) providing an information service for policy making by the leadership of the Party and government'.¹⁰² The 'letter and visits bureau' as an adjunct organ to the State Council and the Party central committee plays a significance role in bridging the gap between the government/Party and the citizens. However, it has no legal rights to investigate complaints independently against the state on behalf of the citizens. It could be suggested that China needs an immediate establishment of a commission similar to the UK's Parliamentary Ombudsman, or empowering the 'letter and visits bureau' through legal rights to investigate independently individual complaints against government departments or officials on behalf of citizens as it is crucial to China's administrative reform.

times weekly), No. 77. P 10. Xu Ruixin et al., *Zhongguo xiandai mishu gongzuo jichu* (The essentials of contemporary Chinese mishu profession). Beijing: gaodeng jiaoyu chubanshe.

¹⁰² He Ping et. al., (1999), *Ouxinlixue wei remin* (Serving the people wholeheartedly). *Minzhu yu fazhi* (Democracy and law). Vol. 290, p 18-20.

4.6. The Courts and Procurator

In China, the people's courts and people's procuratorates are the judicial branches of the government. The apexes of the judicial branch are the Supreme People's Courts and the Supreme People's Procuratorates, representing the main mechanism of quality control in public life.

4.6.1. Courts

The courts are the judicial organs of the state, which are divided into the Supreme People's Court and local people's courts at different levels, military courts and other special people's courts.¹⁰³ According to the Organic Law of the People's Courts of the People's Republic of China, the tasks of the people's courts are as follows:

- to try criminal and civil cases and, through judicial activities, to punish all criminals and settle civil disputes, so as to safeguard the system of dictatorship of the proletariat;¹⁰⁴
- to maintain the socialist legal system and political order;
- to protect socialist property owned by the whole people,¹⁰⁵ collective property owned by working people and the legitimate private property of citizens, and the rights of the person and their democratic and other rights;¹⁰⁶
- to ensure the smooth progress of the socialist revolution and socialist construction in the country.¹⁰⁷

¹⁰³ For details see *Constitution of the People's Republic of China*.(1982),article 123, 124 and 127.

¹⁰⁴ According to the 1982 Constitution (art.1), China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants.

¹⁰⁵ Based on the constitutional theory of the PRC, mineral resources, waters, forests, mountains, grasslands, unreclaimed land, beaches and other natural resources are owned by the state, that is, by the whole people, with the exception of the forests, mountains, grassland, unreclaimed land and beaches that are owned by collectives in accordance with the law.

¹⁰⁶ Organic Law of the People's Courts of the People's Republic of China. Article 3. Chinalaw No. 43.

¹⁰⁷ Organic Law of the People's Courts of the People's Republic of China. Revised according to the decision concerning the revision of the organic law of the people's courts of the people's Republic of China adopted at the Second Meeting of the 6th NPC on September 2, 1983. Article 3.

In theory, the people's courts are to exercise judicial power independently and are not subject to interference by administrative organs, public organisations or individuals. Constitutionally, they are subject to supervision by the NPC, to whom they are responsible and report on their work, which demonstrates the peculiarities of the Chinese politics. Over the past decade, the NPC's supervision through its deputies over judiciary has flourished. The fifth session of the plenary of the 8th NPC in March 1993 created a new record for veto and abstentions over the work report of the Supreme People's Court.¹⁰⁸ Among 2720 voters, supporters were 1839, dissenting votes were 515, abstentions were 331, and the rest did not vote.¹⁰⁹ Actually, the report was accepted subject to revision. It is worth mentioning here that in the past the work reports of the Supreme People's Court were always accepted without veto by NPC.

The Supreme People's Court is the highest judicial organ of the state whose functions are to supervise the administration of justice by the local people's courts at different levels and by the special people's courts. At the same time people's courts at higher levels supervise the administration of justice by those at lower levels.¹¹⁰ The President of the Supreme People's Court is elected by the NPC. The term of office of the President of the Supreme People's Court is five years, serving no more than two consecutive terms. Local people's courts at different levels are responsible to the organs of the state power which created them.¹¹¹

Judicial control of administrative action through courts was something that institutional writers and legislatures virtually ignored for decades in China after it became part of the working of the Chinese constitutional system. In April 1989, the *Administrative Proceeding Law of the People's Republic of China*¹¹² was promulgated, the event marked the establishment of the administrative proceedings system. This law is composed of eleven chapters and seventy-five articles, laying down the general

¹⁰⁸ In China, the government work report and work reports of the Supreme People's Court and the Supreme People's Procuratorate are always passed unanimously with full vote at the NPC.

¹⁰⁹ Ma Lichen and Lin Zhijun (1998), *op. cit.*, P 350.

¹¹⁰ The 1982 Constitution of the people's Republic of China. Article 127.

¹¹¹ The 1982 Constitution of the people's Republic of China. Article 128.

¹¹² *Administrative Proceeding Law of the People's Republic of China* was promulgated at the second plenary of the 7th NPC on 4 April 1989. It took effect on 1 October 1990. See Yin Songnian, et. al., *Xingzheng chufa, xingzheng fuyi, xingzheng susong ji gujia peichang shiwu quanshu* (A

principles of the courts in dealing with administrative cases, its jurisdiction, scope, litigants, evidence, trial and judge, execution, compensation, administrative proceeding concerning foreign affairs and supplementary articles. However, in practice, the citizens' fear or unwillingness to sue the administrative bodies may be detrimental to the development of court review over administrative actions.¹¹³ Thus, people's courts in China have little jurisdiction over decisions of the administration, central government administration in particular, such a role is just beginning to be recognised by lawyers working in the administrative fields.

4.6.2. Procuratorates¹¹⁴

The procuratorates are the state organs for legal supervision. The People's Republic of China establishes the Supreme People's Procuratorates and the local people's procuratorates at different levels, military procuratorates and other special people's procuratorates.¹¹⁵

The Supreme People's Procuratorate acts as the highest surveillance organ with responsibilities to direct the work of the local people's Procuratorates at different levels and of the special people's Procuratorates. In accordance with the law, people's procuratorates at higher levels direct the work of those at lower levels.¹¹⁶

To accord with constitution (art. 131), people's procuratorates exercise legal supervisory power independently. Administrative organs, public organisations or individuals are not allowed to interfere in their supervisions.

comprehensive book of administrative penalty, administrative review, administrative proceeding and the state compensation). China Fangzheng chubanshe, 1996. P 683-93, 903-922.

¹¹³ Courts review over administrative action is something that is just beginning to develop in recent China. Administrative bodies as defendants before courts are not widely accepted by most of citizens. For analysis see chapter 6 of this thesis.

¹¹⁴ An official translation in the 1982 Constitution of the People's Republic of China.

¹¹⁵ For functions of people's procuratorates see the 1982 Constitution of the People's Republic of China. Article 129, 130 and 131.

¹¹⁶ *Constitution of the People's Republic of China* (1982), article 133.

The term of the office of the Procurator-General of the Supreme People's Procuratorate is the same as that of the NPC, serving no more than two consecutive terms. People's procuratorates at all levels are to have a chief procurator, a number of deputy chief procurators and procurators. The chief procurator exercise unified leadership over the work of the procuratorates. In the case of the chief procurator disagreeing with the majority's opinions over a decision on an important issue, the matter may be reported to the standing committee of the people's congress at the corresponding level for final decision.¹¹⁷

In accordance with the organic law, people's procuratorates at all levels are to exercise the following functions and powers:

- to exercise procuratorial authority¹¹⁸ over cases of treason, cases involving acts to dismember the state and other major criminal cases severely impeding the unified enforcement of state policies, laws, decrees and administrative orders;
- to conduct investigations in criminal cases handled directly by themselves;
- to review cases investigated by public security organs and determine whether to approve arrest, to prosecute or to exempt from prosecution; exercise supervision over the investigatory activities of public security organs to determine whether they conform to the law;
- to initiate public prosecutions in criminal cases and support such prosecutions; exercise supervision over the judicial activities of people's courts to determine whether they conform to the law; and
- to exercise supervision over the execution of judgements and orders in criminal cases and over the activities of prisons, detention houses and organs in charge of reform through labour to determine whether such execution and activities conform to the law.¹¹⁹

¹¹⁷ Organic Law of the People's Procuratorates of the People's Republic of China. Amended at the second Meeting of the Standing Committee of the 6th NPC on September 2, 1993. Chinalaw No. 44. Article 3.

¹¹⁸ This means exclusive trial by the procurators over some important cases, including treason, acts to dismember the state and other major criminal cases.

4.6.3. Procedure

In addition, and most importantly, there is no single court of appeal in China. Cases at first instance in the people's court are tried by a collegial panel of judges or of judges and people's assessors. Simple civil cases, minor criminal cases and cases otherwise provided for by law may be tried by a single judge. Appealed or contested cases in the people's courts are handled by a collegial panel of judges where one of the judges will be appointed as the presiding judge of the collegial panel by the president of the court. When the president of the court participates in judicial proceedings, he acts as the presiding judge.

Civil and criminal appeals lie, depending on the nature and grounds of the appeal, to the next higher level in accordance with the procedure prescribed by law, and the people's procuratorates may request a retrial from the people's court at the next higher level in accordance with the procedure prescribed by law, or can correct an unlawful decision on the grounds of facts and law. Judgements and orders of second instance of intermediate courts, higher people's courts and the supreme people's court and judgements and orders of first instance of the supreme people's court are all judgements and orders of last instance, that is, legally effective judgements and orders. In order to guarantee quality control of the judiciary, the Supreme People's Court is empowered to review the case itself or to direct the lower-level people's court to conduct a retrial if some definite error in a legally effective judgement or order are found. Similarly, the Supreme Procuratorate has also the authority to lodge a protest in accordance with the procedure of judicial supervision if it finds some definite error in a legally effective judgement or order of a people's court at any level.

It is noteworthy that in the administration of justice, the people's courts adopt a system whereby the second instance is the last instance, in other words, it produces legally effective judgements and orders. This system theoretically assures the quality of administrative justice because "judgements and orders of the first instance of the local people's courts at various levels become legally effective judgements and orders if,

¹¹⁹ Organic Law of the People's Procuratorates of the People's Republic of China. Amended at the second Meeting of the Standing Committee of the 6th NPC on September 2, 1993. Chinalaw No. 44.

within the period for appeal (usually 15 days), none of the parties has appealed and the procuratorate has not protested".¹²⁰

4.7. Conclusions

As has been demonstrated, the NPC, the highest authority organ of the state, has attracted more attention both in academic and administrative circles. It has developed and evolved ever since its establishment in 1954 though political struggles resulted in inactivity, in particular, during the periods of 10-year Cultural Revolution. Under the Mao era, deputies of the NPC had few means to translate talk into action or policy-making influence, but this has shown signs of change both as a legislature and in supervision since the late 1970s.

The State Council, as the executive body of the highest organ of the state and the highest organ of the state administration, plays a critical role in policy implementation and service delivery to the public. Its role has been reinforced and further rationalised to maintain the quality of public administration of the Chinese bureaucracy in the face of greater decentralisation in economic activities and the distinction of the party/government powers.

The GO system plays a very important role in the Chinese administration relating to bureaucratic control and integration. It is difficult to imagine the Chinese administration without thinking of GOs though this has received insufficient scholarly attention in the existing literature. A leadership squad at each level of bureaucratic hierarchy is served and assisted by GO. All GOs are organisationally unified into a sub-system operating vertically from the top to the bottom and cutting horizontally across various hierarchies of the Chinese bureaucratic structure, thus serving as a crucial integrative mechanism.

Though the paucity of theoretical thinking and forceful procedures of judicial control over administrative action is well documented, yet the promulgation of *Administrative*

Article 5.

¹²⁰ *Organic Law of the People's Courts of the People's Republic of China*. Article 12.

Proceeding Law of the People's Republic of China in April 1989 has injected vigour into administrative justice. There are no related laws or government documents to back up the *Administrative Proceeding Law of the People's Republic of China* to be achieved in practice. The positive implication is that the people's courts have begun to realise their role in rectifying illegal administrative activities though their functions and activities need to be perfected in line with the requirements of a market economy. At present, there are a lot of sub-branches - administrative courts - within the people's courts at different levels in China.

It is evident that the third-generation leaders are beginning to use law to govern the state rather than Party policies. Lofty restructuring ambitions accompanying the *de facto* upgrading of governmental reorganisation reforms are in progress in the Chinese public sector reform. The next chapter will explain Chinese civil service reform responding to the economic reform after 1979.

Chapter 5

MODERN CHINESE CIVIL SERVICE REFORM

5.1. Introduction

Some peculiarities of Chinese government mechanisms have been discussed in the previous chapter. This chapter will introduce some issues relating to modern Chinese civil service reform for the purpose of providing readers with understanding of some key problems, for example, the lacklustre administrative supervision system, corruption involving high government officials, and cadre entrepreneurs in relation to Chinese administrative regimes. Many of the matters only outlined here will be detailed later on in chapter 6.

The present Chinese personnel system, the so-called ‘national cadre’¹ system, which was gradually formed under conditions of the planned economy, is facing greater and greater challenge as the socialist market economy is being built and maturing in China. The personnel reform initiated in early 1980s, proposed by Deng Xiaoping and his supporters, was carried forward in the report of the 13th National Congress of the CPC by classifying the existing cadre system into two categories: political civil service and career civil service. It culminated in the ‘Provisional Regulations for State Civil Servants’ which came into force in October 1993, and has reached its apogee in the 9th National People’s Congress by adjusting and restructuring the existing government ministries and offices from 40 to 29.

This chapter will first analyse the flaws of the previous Chinese personnel system, while introducing the necessity of institutional restructuring for the developing and maturing socialist market economy. Then it will discuss briefly the background of the civil service

system required by the economic reform. Finally I shall recommend ways to improve the current situation.

The information contained in this chapter comes from documents, both published openly and internally, from academic sources, and from interviews² conducted in Beijing and Xian in January and February 1998. During this period, I visited units in China, collecting some materials related to my research and interviewing people who gave me constructive ideas on Chinese political and administrative reform and how the Chinese civil service should be improved and developed.

5.2. The Present Chinese Personnel System

The Chinese personnel system, run by a gigantic and dispersed bureaucracy, was in fact a partisan hierarchical mechanism contributing to the centrally planned economy, which was executed and co-ordinated not by open competitively recruited civil servants but by ‘cadres’ recommended by the CPC organizations, which in China means the ‘nomenklatura’.³

Since 1978, after the third session of the 11th CPC Congress, China has carried out significant and far-reaching economic reform, creating and exploring the path to the socialist market economy. As Deng Xiaoping once said, in reference to economic reforms, ‘*No matter whether the cat is black or white, it is good so long as it catches mice*’.⁴ The ‘socialist market economy’ was first officially endorsed in China at the 14th National Congress of the CPC in October 1992. The 15th National Congress of the CPC

¹ See note 1 in chapter 4.

² A list of persons interviewed are presented at the end of this chapter.

³ The Chinese personnel system was executed and coordinated not by open competitive recruited civil servants but by “cadres” recommended by the Chinese Communist Party organisations which in China means the “nomenklature”. For “cadres”, see notes 1 of chapter 4. For details of ‘Nomenklatura’ see John P. Burns (1987), ‘China’s Nomenklatura’, *Problems of Communism* September-October, P36-51.

⁴ Quoted from Deng Xiaoping’s words. In the beginning of economic reform, there was a severe theoretical battle on the economic reform chosen for China on whether it adopted the ‘socialist planned economy’ or exported the ‘market economy’ from western countries to China. In order to stop the argument, Deng Xiaoping said that at a central committee conference. Later on, this became the dominating policy of the economic reform.

has accelerated the process of the socialist market economy. The recent 9th National People's Congress (NPC) has brought it even more sharply into focus by adjusting and restructuring the government organizations so as to meet the needs of the growing and gradually maturing socialist market economy. As the process of joining the membership of the World Trade Organization has been expedited, it will inevitably bring about changes in the conventions of the market economy in China. To compete, China has made readjustments and reform on many occasions in the past few years, and has made some progress, and gained some experience, but many problems remain unsolved owing to constraints imposed by historical conditions and this overall environment.⁵ The present Chinese personnel system is ill-suited to the growing socialist market economy which exposed this personnel system to severe contradictions between the government organisational structure and the socialist market economy. This personnel system can be characterized under the following headings:

- No distinction between the functions of the government and the enterprises;⁶
- Lack of a legal personnel management system;
- Organisational overlapping;⁷
- The life-time cadre career system.⁸

5.2.1. No Distinction between the Functions of the Government and that of the Enterprises

⁵ *An explanation of the government mechanism reform* delivered by Luo Gang at the 9th NPC in March 1998. People's Daily, Overseas Edition. March 7, 1998.

⁶ Owing to constraints imposed by the centrally planned economy, the management and operation of the state-owned enterprises were controlled by the government, which has become the key problem of state owned enterprise reform. Many suggestions and measures have been taken in recent years to separate the functions of the government and enterprises, but this problem still remains unsolved and impedes the process of the economic reform. This is evident from the facts that many state enterprises as now trapped into inefficiency in production. By contrast, diverse types of enterprises have begun to achieve efficiency in production. The government, at the 9th NPC in March 1998, gave a clear commitment to revitalize the state owned enterprises in the next three years with further emphasis on distinction between the functions of the government and enterprise and the establishment of enterprise ombudsman system.

⁷ *Building up socialism with the Chinese characteristics*. Revised and enlarged edition. P 140.

⁸ *Reforming the leadership system of the party and government* in Selected Works of Deng Xiaoping. Vol. 2. Remin Press, 1994, p 331.

For historical reasons, China is a unitary state ruled by the CPC,⁹ which carried out the system of a centrally planned economy. Under this system, the government was supposed to possess and dispose of not only manpower but also the means of production and raw materials so as to implement its policies and plans accurately throughout the country.¹⁰ Enterprises were only the positive carriers of the state duties, blindly completing the planned targets proposed by the state, ignoring the requirements of the market. Moreover, a highly centralized personnel system was established on these principles, by which the cadre selection system was also centralized with each departments having no power to appoint its own subordinate cadres.¹¹ Whether enterprises' production could be accepted by the market or not has largely been determined by government plan rather than by the conventions of the market. This in turn resulted in the government's direct involvement in production and management of enterprises, which gave rise to a paradox. As enterprises were expected to accomplish their duties in accordance with the government's will, they were not empowered to produce and manage their business in line with the requirements of the socialist market economy. Since the late 1970s, enterprise reform has sought to remove microeconomic decision-making from government departments and hand it over to enterprise managers, and to increase the sensitivity of enterprises to the market through a number of measures.¹²

- First, authorities sought to increase the autonomy of economic enterprises. This was further developed by the promulgation of the *Regulations on the Transformation of the Management Mechanisms of the State Owned Enterprises*, which gave the enterprises authority to manage production, determine prices, participate directly in

⁹ Upholding the leadership of the CPC is one of the key aspects of the 'four cardinal principles', which have been repeatedly emphasized by government not only in economic reform but also in political system reform. For more details, see Chang Chen-pang (1987), *On the "Four Cardinal Principles"*. Issues and Studies, February 1987.

¹⁰ Weiqiang Li, (1990), 'Reform in the Chinese Public Personnel System', *Public Personnel Management*. Vol. 19, No. 2 (163-173). P 163.

¹¹ Weiqiang Li, (1990), *op. cit.*, P 164.

¹² John P. Burns (1993), 'China's administrative reform for a market economy', *Public Administration and Development*. Vol. 13, (345-360). P 347.

the negotiation of foreign trade agreements and make investment decisions and personnel decisions, including decisions on wages.¹³

- Second, the government replaced the practice of state-owned enterprises remitting a fixed amount to the state with a system of taxation of enterprise profits, which was reflected in the changing composition of the state budgetary income.¹⁴ By 1992, China's 11,000 large-and medium-sized state-owned enterprises contributed 67 per cent of tax revenues.¹⁵
- Third, the government promulgated a new bankruptcy law which, for a time, permitted state-owned enterprises to be wound up (only, however, with the consent of the government department supervising the enterprise).¹⁶

Attempts to reinvigorate state-owned enterprises have been relatively unsuccessful. This is evident from the facts that many state-owned enterprises have been trapped in low efficiency in production accompanied by many lay-offs of workers. Their contribution to the economy declined from 1979 to 1991, for example, reducing their total industrial production from 77.6 per cent to 53 per cent.¹⁷ Because of this, government gave a clear commitment, at the 9th NPC in March 1998, to revitalize the state owned enterprises in the next three years. Endeavoring to separate the functions between the government and enterprise is one of the aims pursued by government in the new round of administrative reform.

China is now at the transitional period of dismantling the centrally planned economy on the one hand, but on the other hand it is striving to build a socialist market economy and deepening state enterprise reform, financial system reform and government institutional

¹³ Wu N. (1992), 'State-owned enterprises no longer state run', *Beijing Review*, 35:46, p 13-14; Dai Yannian (1993), 'Major Reform of Personnel Management System', *Beijing Review*, Sep. 6-12, 1993; and 'China Reforms Wage System', *Beijing Review*, Oct. 4-10, 1993. It is reported that Beijing will abolish the system of the state owned enterprises' administrative grades connecting with the ways of managing the national cadres, which has dominated the Chinese administration for several decades. See People's Daily, Overseas Edition, 20 January, 2000.

¹⁴ John P. Burns (1993), *op. cit.*, P 437.

¹⁵ Wu N (1992), *op. cit.*, 13-17.

¹⁶ Blejer M. et al. (1991), 'China: Economic Reform and Macroeconomic Management', *International Monetary Fund*. Washington, DC. P 5.

¹⁷ State Statistical Bureau (1992), *Statistical Yearbook of China*, Chinese Statistics Press, Beijing, p 408.

reform. These are to be accomplished by the new government in the coming reforms.¹⁸ Moreover, the government mechanism under a planned economic system has had difficulties facilitating the role of the market in the allocation of resources, and failed in making efficient decisions on investment. It has obstructed the development of the socialist market economy.

5.2.2. Lack of a Legal Personnel Management System

The current government institutions were established under conditions of an incomplete legal system, which gave rise to many flaws through chiefly resorting to administrative means in managing economic and social affairs. Although many problems should be solved intrinsically by legal methods or by institutional reforms, the government has reacted by setting up new government organs. Thus many tasks which should be handled by the enterprises have been concentrated in the government. This lack of proper legal regulation is reflected in the following ways:

- As regards the recruitment of cadres, there are no fixed procedures for filling jobs. Sometimes job vacancies are advertised, but frequently they are not. The actual hiring procedures have been controlled largely by those who do the hiring which in turn engendered a hotbed of ‘*guanxi*’¹⁹ and nepotism.²⁰ Moreover the Communist Party plays the most formidable role in the filling jobs in government by means of ‘*zhengshen*’,²¹ in practice to confirm that important positions go to those who are reliable in politics.
- As for the appointment of cadres, there is no regulation of terms of office, resignation and dismissal. The system of cadre retirement is imperfect as well, for there are no

¹⁸ Answering questions to correspondence by Premier Zhu Rongji and other four vice premiers of the State Council. See People’s Daily, 20 March 1998.

¹⁹ It means personal relation ‘you do something for me, I will do something for you in return.’ ‘*Guanxi*’ is built into the fabric of day-to-day activities covered every field in China.

²⁰ It refers to those whose parents have executive jobs in government where he or she can influence the hiring.

²¹ ‘*Zhengshen*’ means the way of examining the cadres’ political reliability in China. Those who want to join the civil service jobs must pass through ‘*zhengshen*’ conducted by the party organisations. One of my interviewees said that a civil servant in favour of the CPC is different from civil servants of western countries.

systematic and rational regulations applicable to all cases in dealing with cadre retirements.²²

- So far China has not established a complete system of personnel responsibilities, namely, examination, promotion, training, salaries and benefit. This is because these personnel responsibilities have been only expressed in the content of the *Provisional Regulation for the State Civil Servants*,²³ whilst the lack of legal procedures limits their implementation in practice.²⁴
- No personnel supervision system exists. Therefore, Li Peng, China's top legislator, urged deputies to the NPC and local people's congresses at all levels to strengthen supervision and assume a more significant role in the enforcement of laws and the process of governing the country according to law. This is because "supervisory work is a weak point in the work of the people's congress".²⁵

It is very important that current cadre management systems have not been legalized, and this is a severe problem. Moreover there is no legal procedure to check on cadres. It is disappointing to say that so far China has no cadre management law formulated by the NPC, and no basic law and regulations on cadre management. Although the State Council laid down all kinds of regulations on personnel management, most of these regulations appeared in the form of circulars²⁶ which were issued for certain kinds of matters relating to especial historic events, often changing along with the situations.

As a result, it is very difficult to curb 'guanxi' and nepotism in practice, young people with talent cannot be recruited into the civil service posts, and corruption prevails in China. For example, the former mayor of Beijing city Chen Xitong has been prosecuted

²² *Reforming the leadership system of the party and government* in Selected Works of Deng Xiao ping. Vol. 2, p 331.

²³ See *The Provisional Regulation for the State Civil Servants* which came to effect on 1 October 1993. Wei Qing (1994), *Gongwuyuan zhidu beilan* (The outline of the civil service system). Beijing: Bibliography Documents Press. p 315-330

²⁴ For example, low salaries discourage civil servants devoting themselves in work. The average salary for a civil servant is about 1,000 yuan RMB per month, whereas a secretary working in a joint venture company is always two or three times higher paid than civil servants.

²⁵ *Deputies called on to enhance law enforcement*. China Daily, Overseas Edition, March 13, 1999.

²⁶ For example, *Circular of the Central Committee of the Chinese Communist Party on Publishing the Interim Regulations on Selecting and Appointing Party and Government Officials*. Gazette of the State Council of the People's Republic of China. 1995 No.782-814. P 438. And Ministry of Personnel,

recently for corruption²⁷ and sentenced to 16 years imprisonment. I shall deal with this in great depth later on.

5.2.3. Overlapping Organizations

In the current cumbersome personnel management system, organizations overlap at all levels between the Communist Party organization departments and the parallel state personnel departments. Over 40 years, Chinese history showed that the Party's power went beyond Party affairs for matters of government as can be illustrated through China's '*Nomenklatura*'²⁸ system. Under this system, the Party committees exercise the power of appointment for cadres and the process for making the appropriate personnel changes. Theoretically, the objective of setting up Party organizations was to recruit new Party members and manage Party cadres. It is ironic that in China the Party organizational departments at all levels undoubtedly assume the true governmental personnel functions while the parallel state personnel department is only its rubber-stamp, although the Chinese Constitutional Law placed the NPC at the apex of the state structure, deeming the NPC 'the highest legislative authority', 'the highest organ of the state authority'.²⁹

Overlapping organisations are one of the typical characteristics of the personnel management system in China, which have brought about less efficiency and effectiveness while causing more administrative confusion. Inevitably this impedes the process of political reform in China.

5.2.4. Life-time Cadre Career System

Circular on Printing the Interim Provisions on Awarding State Functionaries. Gazette of the State Council of the People's Republic of China. 1995 No.782-814. P 937.

²⁷ People's Daily, March 20, 1998.

²⁸ John P. Burns (1987), *op. cit.*

The lifetime cadre career system has been challenged in recent years by developments based on the notion of cadre responsibility during the term of his/her office. Nonetheless, there still exist two kinds of lifetime cadre career systems in China: one is lifetime leadership; the other is lifetime cadre treatment. The former refers to one who becomes a leader guaranteed to be a leader for life; the latter means one who enjoys cadre treatment for life no matter if he is in his tenure of office or not.

Importantly, lifetime leadership is gradually being abolished with the reform of a personnel management system to bring in fixed-term tenure as is the practice of important governmental leaders and local government leaders holding office by fixed-term tenure. The change to a fixed-term tenure cadre system practice is through the increased use of short-term appointments which affect consequentially the traditional lifetime cadre career system. However owing to lack of sufficient official systems to guarantee this, lifetime leadership still prevails in practice. For example, when a mayor finishes his/her office, he/she is still regarded as a cadre and enjoys cadre treatments, moreover he/she can go to another city and start his/her office again.

The lifetime cadre enjoys job security, which guarantees a job for life. It is ridiculous that national cadres can reserve cadre status forever and can be only promoted not demoted, which gave rise to the increasing numbers of cadres. By 1992 there were over 34 million cadres, to put it more specifically, every 34 citizens has a cadre. It is further reported that at present there is one administrative staff among every 30 people. The largest part of financial expenditure was spent on administrative staff.³⁰ Government expenditures increased from 6.68 billion yuan RMB in 1980 to 87.58 billion yuan RMB in 1991 in real terms, more than a thirteen-fold increase.³¹ In order to get into cadre teams, people will try in every possible way to join cadres by means of '*guanxi*' and nepotism.

²⁹ The 1982 Constitution of the People's Republic of China. Article 57, 58 and 62. For relationship between the Party and government, see 4.2 "composition and the meetings of the NPC" in chapter 4 above.

³⁰ *People's Daily*, Overseas Edition, March 18, 1998.

³¹ *Shibao Zoukan*. February 27, 1994, p. 62.

From the experience of government management all over the world, providing job security necessitates security of tenure for civil servants. But the job security should be based strictly on open and fair competition in recruitment. Furthermore, job security should be classified differently according to the nature of the job; it should not equal to a job for life. Thus it is true to say that the lifetime cadre career system is a disaster, for it has rewarded laziness and discouraged diligence. So how to curb lifetime cadre career systems will be crucial as it affects the process of personnel system reform.

5.3. Development of Government Personnel Management in China³²

During the period of the Democratic Revolution, China had not erected government institutions distinct from that of the Party. Organisational departments at all levels of Party committees exercised unified leadership and management of 'cadres' except those in the army. After the founding of the People's Republic of China, government bodies at different levels were established in China. In November 1949, a personnel bureau of the Government Administrative Council was established directly under the leadership of the Government Administrative Council.³³ In that period, personnel organs were erected within the political-law commission, cultural commission, financial commission and internal affairs commission of the Central People's Government respectively. These organs undertook personnel jobs both inside and outside their powers, which brought about confusion relating to their responsibilities. Thus in November 1950, a Central Personnel Ministry was created by abolishing the personnel bureau and four personnel organs mentioned above.

In 1953, the Party Central Committee decided to implement a cadre management system connected with grades and departments under the direct management of the Party organisational departments at different levels. 'The organic law of the State Council' was formulated in accordance with this system at the first session of the NPC. In

³² Wei Qing (1994), *op. cit.*, p 3-5.

³³ The Government Administrative Council of the Central People's Government of the PRC was replaced in 1954 by the State Council.

September 1954, the Central Personnel Ministry was abolished, instead establishing the personnel bureau of the State Council.

Based on the principle of streamlining organizations set up by the second session of the second NPC, the personnel bureau of the State Council was abolished in July 1959, meanwhile the governmental organizational personnel bureau of the internal affairs ministry was set up.

During the Cultural Revolution (1966-1976), the internal affairs ministry was abolished, as was the personnel bureau of the internal affairs ministry. Related personnel jobs were transferred onto a central organisational ministry and administrative group of the State Council. In March 1978, China established the personnel bureau of the civil administrative department. In order to fit in with the transformation of the nation and the Party's work now concentrated on economic reform, the national personnel bureau of the State Council was established by adding the functions of the personnel bureau of the civil administrative department and the office for resettling cadres laid off from the armies.

In 1982, following the principle of abolition of the over-lapping organisations and merging organisations with the same functions laid down by the 5th NPC, the national personnel bureau, national labour general bureau, national cadre planned commission and scientific and technological cadre bureau of the State Council formally joined together to create the Labour-personnel Ministry.

In order to prepare for opening up to the rest of the world, the Ministry of Personnel was created by splitting the functions of Labour-Personnel Ministry in 1988.

Speaking generally, although personnel departments had undergone several adjustments and reorganizations accordingly from 1949 to 1982, all these were carried out under the integrating leadership of the Party committees at different levels which did not impinge on the existing apparatus. This is because there were no distinctions between the Party's organizations and the governmental organizations. On the contrary, the system of cadre

management connected with grades and departments remained untouched, which caused great confusion relating to managerial performance within the civil service.

5.4. Chinese Civil Service Reform

5.4.1. Contemporary China's Three Ideological Liberations³⁴

China's "second revolution"³⁵ - socialist modernization guided by Deng Xiaoping's theory - has been going on for over 20 years. It has experienced three ideological liberations concerning the complicated struggles surrounding the roads between 'socialism' and 'capitalism' in the process of economic reform in the years of 1978, 1992, and 1997. The significance of three ideological liberations is on dismantling the state apparatus based on a centrally planned economy and laying a theoretical foundation for the establishment of the 'socialist market economy'. All these play a major role in the developments of civil service system. I shall outline them, then discuss them in greater detail.

The first ideological liberation formally ended the "charismatic style of rule" which had confused the Chinese people by requiring that "we shall firmly defend whatever decisions were made by Chairman Mao; we will follow whatever instructions of Chairman Mao to the end". Those "two whatevers" was put forward by Hua Guofeng at a propaganda meeting on October 26, 1976.³⁶

The second ideological liberation ended the "planned economy worship", clearly stipulating the "socialist market economy" as the aim of economic system reform.³⁷

³⁴ Ma Lichen and Lin Zhijun (1998), *Jiaofeng* (China's Problems). Modern China Press.

³⁵ Deng Xiao ping (1985), *Reform is the second revolution of China* in Selected Works of Deng Xiao ping. Vol.3. Remin Press. p 113.

³⁶ Ma Lichen and Lin Zhijun (1998), *op. cit.*, p 22. For criticism of 'two whatevers' see, *Selected Works of Deng Xiao ping*. Vol. 2. P38-39.

³⁷ Ma Lichen and Lin Zhijun (1998), *op. cit.*, P 424.

The third ideological liberation dismantled the “ownership worship” which challenged the core of the traditional ownership system that “public ownership is the quintessence of socialism”.³⁸ That view has dominated China for almost half century.

China’s ongoing reform presents a series of ideological issues. To condemn them out of hand would be unwarranted since much depends on the down-to-earth practice and ideological struggles which were brought out in revising the constitution three times and the four major institutional adjustment campaigns in the year of 1982, 1988, 1993 and 1997³⁹ to unite the economic and political system transitions. The first revision of the constitution happened in 1988. The Constitution article 11 stipulated that the private economy is allowed to exist and develop to the extent permitted by law. The second revision was in 1993. The constitution endorsed the market economy instead of planned economy, and the household responsibility system instead of people’s commune. The third revision occurred in March 1999, when managing the state according to law was put into the constitution.

Western people may think it curious that Chinese people spent much time on arguing ideological issues rather than concentrating on political readjustment for the needs of economic system reform. The question remains, however, why did ideological struggles make such a deep impression on the Chinese people? Two distinct views of this question can be explored. First, public and private sector reform have taken place at the same time as the ideological crisis emerged, but these two processes are not identical although ideological arguments always preceded the economic and political system chosen for China. This was exemplified by the adoption of “the household responsibility system”⁴⁰ for the countryside reform in 1978, the “contract responsibility system”⁴¹ for the state owned enterprises reform in the late 1980s, and the separating the functions of the government from those of the enterprises. Second, the adjustment of the economic

³⁸ *ibid.*

³⁹ Problems of post-communism, July/August 1996, p.27.

⁴⁰ After 1978, as collective farming was abandoned, and as China adopted ‘the household responsibility system’, farm income soared. Between 1970 and 1978 China’s farm output grew by just 2.6% a year, according to the World Bank; between 1978 and 1984 it grew more than twice as fast, at 6% a year.

⁴¹ China’s policymakers have long recognized the need to reform the state-owned enterprises so as to revitalize them in the economic modernization. ‘Contract responsibility system’ was one of the means to revitalize the state owned enterprises.

structure will inevitably bring out the need for the restructuring of the political system by requiring public reform on deconcentration, separating the power of the Party and the government, and streamlining government organs in favour of a market economy.

The overarching themes of the three ideological liberations have brought great changes to both the economic and political systems. The acceptance of the “socialist market economy” and the redefinition of “public ownership” injected competition and energy into private and public sector reform. As Jiang Zemin stressed several times over, China is entering the “critical” stage of socialist modernization.⁴² The “critical” stage had the following implications:

- At the beginning of 21st century, competition will be more severe and the world situation will be more complicated. To compete, China needs to make a new breakthrough in economic restructuring and deepen political system reform to the best effect in economic modernization.
- The success of China’s economic modernization depends on whether China can offer a sound economic and political adjustment suitable to an expanding global market.
- Since the economic modernization began, however, ideological changes accompanying the needs of reform have expanded opportunities available to China for economic and political system reform.⁴³

The first ideological liberation

On October 7, 1976, the second day after smashing the “gang of four”, Hua Guofeng was appointed as the chairman of the central committee of the CPC and the central military committee of the CPC based on the six words Chairman Mao wrote to him before he died: “I place my trust in you”.⁴⁴ Then the whole country was, from top to bottom, overwhelmed with articles in newspapers and broadcasts praising and

⁴² Political report delivered by Jiang Zemin at the 15th National Congress of the CPC and speeches made by Jiang Zemin at the graduating ceremony of the provincial cadres of the central committee party school on may 29, 1997.

⁴³ Ma Lichen and Lin Zhijun (1998), *op. cit.*, Preface.

⁴⁴ Ma Lichen and Lin Zhijun (1998), *op. cit.*, p 6.

supporting Hua Guofeng as the chairman of the Party and the government. During the periods Hua held his office, there appeared a great gap between Hua and some old generation leaders, such as Ye Jianyin and Deng Xiaoping on some important issues. Ye Jianyin and Deng Xiaoping strongly favoured that, while criticizing the “gang of four” anti-party clique, the Cultural Revolution should be revised and Chairman Mao’s “leftist” mistakes should be rectified. Hua objected, instead he put forward the “two whatevers” above. That revealed Hua’s weak characteristics - worship and respect for traditions, a charismatic style of rule, and a dependent attitude without his own thought.

How to make an assessment of the Cultural Revolution after Mao’s era stirred heated arguments at the top of China’s rulers. On December 13, 1978, Deng Xiaoping made his speech entitled “emancipating the minds, seeking truth from facts, and united consistently forward”⁴⁵ which ended the Cultural Revolution, ending the outmoded convention of the charismatic style of rule. This created the new periods of socialist economic modernization.

It is well known that the third session of the 11th National Congress of the CPC on December 18-22, 1978, transformed China from “class struggle” as its main task to “economic modernisation” as its main aim. China’s political system reform originated from the emancipating minds of the third session of the 11th National Congress of the CPC. In line with the principles laid down by the 11th National Congress, on August 18, 1980, Deng Xiaoping made his famous speech named “Reforming the leadership system of the party and the government”⁴⁶ which evoked powerful reactions and won great support among the whole country. The Initiative was highly critical of the five defects existing in the then government mechanism: (a) bureaucratic ways of doing things, (b) over-concentration of power, (c) charismatic style of rule, (d) lifetime leadership and, (e) privileges.⁴⁷ However, the need for political system reform was not put on the Party agenda until 1986.⁴⁸ The grounds were that it was imperative to reform the economic system on the one hand, on the other hand the party itself had not reached unanimity on

⁴⁵ *Selected Works of Deng Xiao ping*. Vol. 2. P 140-153. Renmin Press. 1983.

⁴⁶ *Selected Works of Deng Xiao ping*. Vol. 2. P 320-340.

⁴⁷ *Selected Works of deng Xiao ping*. Vol. 2. P 327-334.

⁴⁸ Ma Lichen and Lin Zhijun (1998), *op. cit.*, p 154.

some important matters of political system reform. Nonetheless, the first ideological reform after all induced the arrival of political system reform as it broke through the ‘two whatevers’ and resulted in the government leadership system reform.

The second ideological liberation

After the suppression of the May/June student movements in 1989, China was shrouded with uncertainty, people were nervously watching to see what were the next steps to be taken for China. Ideological arguments on the choice of the economic system reform soared, and were hammered out in newspapers, in academic journals, and in politics, by means of asking its name: whether it is “socialism” or “capitalism”. One of the theoretic papers, about 40,000 words long, published successively in the People’s Daily from January 15 to 19, 1990, was entitled “Only socialism can save China”.⁴⁹ This article objected to the “market” economy with a strong insistence on supporting the “planned” economy as the essence of socialism. Fortunately it was in that year that eastern European socialist countries crashed down one after another from the “Berlin wall” collapse to the Soviet-Union. Dramatic incidents at home and abroad cast doubt on China’s economic reform. Few people dared to talk about reform and be open to the outside world in case their talk was not in accord with the views of the newspapers which supposed to represent the government’s views. The speed of economic developments slowed down.

In contrast, the article “Being the lead sheep of the reform and opening to the outside world”⁵⁰ by Huang Puping, was published in the *Jiefang Ribao* (Liberation Daily)⁵¹ in Shanghai on February 15, 1991. It highly praised the “commodity economy” although the author deliberately avoided using “market” economy, which was regarded by that time as the essence of capitalism. Even so, that article still made a stir throughout China.

⁴⁹ People’s Daily is the newspaper of the government and party organs, which is supposed to represent the party and government’s voices. Some important issues concerning the economy, policies and culture are always firstly published in the People’s Daily.

⁵⁰ It is the customary that Chinese people like to name lunar year according to animals. 12 animals were chosen to represent each year. That paper published in the lunar year of “sheep”, thus it used “sheep” as the title to symbolize new ideas and new determinations and take the lead in economic reform in the year of the “sheep”.

Thus critical articles poured out, arguing that socialism must have a “planned” economy, and that a “market” economy belongs to capitalism. This situation, outlandish as it sounded, was not unique, reflecting the true situation of China in that year although Deng Xiaoping pointed out ten times from 1979 to 1990 that socialism can adopt a market economy.⁵²

The acceptance of the “socialist market economy” in China has traversed a tortuous and hard road of escaping from being labelled “capitalism”. Any decisions made for economic system reform had to answer the question whether it was “capitalism” or “socialism”. The adoption of “the household responsibility system”, the establishment of “special economic zones”, the development of the private economy, and so forth have witnessed severe struggles on ideological issues.

The argument was interrupted by a second wave of ideological liberation that began in 1992, and by Deng Xiaoping’s much publicized tour of the southern “special economic zones”.⁵³ The trip signalled Deng’s determination to put the market economy into socialist economic modernization, speeding up economic system reform. Inspired by Deng’s southern talks, the concept of “market economy” for the first time appeared officially in the 14th party report delivered by Jiang Zemin on October 12, 1992.

Keeping up with the rapidly developing market economy, the pressure for restructuring government institutions soared. Although calls to reform the managerial system of the personnel had been frequently found in rhetoric since the early 1980s, the design of the

⁵¹ Liberation Daily is the newspaper of the Military Commission of the Central Committee of the CPC. Some articles are usually published here to indicate its importance.

⁵² The first time when Deng Xiaoping said that socialism can adopt a market economy was in 1979, when he met with American and Canadian visitors. The second time was in 1980 when he made a speech entitled ‘the present situation and tasks’. The third time was in 1982 when he talked with leaders of the state planning commission over the relationship between the ‘planned’ and ‘market’ economy. The fourth and the fifth were at the third plenary of the 12th National Congress of the CPC. The sixth was in 1985 when he met with representatives of the American enterprises. The seventh was in the preparation of the 13th National Congress of the CPC. The eighth was in 1988 when he emphasized the decentralization of the state powers. The ninth was in 1989 when he said the settle principles of the economic reform should be sustained. The tenth was in 1990. More details of Deng Xiaoping’s market economy theory, see Ma Lichen and Lin Zhijun (1998), *op. cit.*, p 181-83.

⁵³ *Selected Works of Deng Xiaoping*. Vol. 3. P 370-383. And Suisheng Zhao (1993), ‘Deng Xiaoping’s Southern Tour: Elite Politics in Post-Tiananmen China’, *Asian Survey*. Vol.XXXIII. No. 8, August 1993. (739-756).

new civil service system did not become clear until the second ideological liberation. In August 1993, the government formally adopted the *Provisional Regulation for the Civil Servants* (an example of this will be given later on), because the principles of cadre structure enunciated under the planned economy was ill suited to the needs of the market economy.

The third ideological liberation

Although China had made much progress in the theoretical realm since late 1970s, nevertheless “ideology” and “socialism” still enjoyed priority in designing the structure for economic and political system reform. “Public ownership” reform remained intact theoretically despite the fact that practical economic reforms had already changed its composition. Old problems in new clothing, asking whether it is “public” or “private” staged a comeback. Round these problems, “10,000 declarations” (*wan yan shu*) spread throughout Beijing from 1994 to 1997.⁵⁴ Their theme pointed to “public ownership” as the essence of socialism, and denounced those who favoured ownership reform.

For many years, people carefully avoided touching the sensitive area of reform of ownership, although the land reform of the countryside, and the state owned enterprises reform by introducing “the contract responsibility system” with the aim of separating the “ownership” of the state and the management and operation of the enterprises, had already changed the nature of ownership in practice. The realities of changing the ownership structures are one thing, but changing the legal formation is another thing. The theory of redefinition of public ownership did not become clear until the 15th National Congress of the CPC on September 12, 1997. As it was stated in the 15th party report delivered by Jiang Zemin, China needed to develop diverse forms of ownership with public ownership in the dominant position. Jiang Zemin re-expounded that “public ownership includes not only the state-and-collectively-owned sector, but also the state-and collectively-owned elements in the sector of mixed ownership”.⁵⁵ Any kind of ownership that meets the criterion of the “three favourables” (favourable to developing the productive forces in the socialist society, to consolidating China’s comprehensive

⁵⁴ Ma Lichen and Lin Zhijun (1998), *op. cit.*, p242-267.

⁵⁵ Party report delivered by Jiang Zemin at the 15th National Congress of the CPC on September 12, 1997.

national strength and to raising people's living standards)⁵⁶ could and should be utilized to serve socialism.

5.4.2. The Development of the Civil Service System

The period since 1984 has witnessed more radical reform in the Chinese personnel management system than at any other time in its history. Civil service legislation was initiated in 1984, inspired by Deng Xiaoping and his supporters who were determined to establish a more competent and efficient 'merit-based civil service system' and reform of the administrative system supplemented the economic system reform. In October 1987, the words 'civil service' firstly officially appeared in a report of the 13th CPC⁵⁷ congress presented by Zhao Ziyang for the reform of the government personnel structure very largely given over to establishing a civil service system for the replacement of the age-old management of cadres controlled by the CPC. Zhao Ziyang was highly critical of the low priority given to combating maladministration in using people within the civil service. Thus he pointed out sharply that the priority of current personnel reform was to establish the civil service system by classifying the civil service into two categories: political civil servants and career civil servants. The former, recommended by the party, handling political affairs during their terms of office and taking the critical role in the personnel management system, was the key feature of China's '*Nomenklatura*'.⁵⁸ They would be managed according to constitutional law and organizational law.

The latter, recruited through open competitive examinations in society, are destined to become a permanent framework of Chinese personnel reform as the pace and scale of economic reform accelerates in the growing and developing socialist market economy. They are subject to supervision by the public in terms of open examinations and governed by the relevant provisions of constitutional and organizational law.

⁵⁶ *ibid.*

⁵⁷ The report of the 13th CCP Congress represented by Zhao Ziyang in 1987.

⁵⁸ John P. Burns (1987), *op. cit.*

After the establishment of the Personnel Ministry in 1988, it has traversed a winding and tortuous road of drafting *Provisional Regulations for State Civil Servants* with more than its share of detours and wrong turns. It took several years to accomplish over twenty drafts⁵⁹ successively of provisional regulations for the state civil servants after repeated deliberations and consultations for comments by the policy-makers, scholars and personnel management experts, as well as overseas consultants. The final draft *Provisional Regulations on State Civil Servants* was released on August 14 1993 by the State Council, and came into effect on October 1, 1993. This event indeed represented a new era in the Chinese civil service reform with a stride towards the rationalisation of the bureaucracy. With the implementation of the provisional regulations on state civil servants, the government was determined to rectify the flaws of the current personnel system so as to implement the new civil service system completely within three years. The *Provisional Regulations on the State Civil Servants* are composed of eighteen chapters and eighty-eight articles, explicitly stipulating the various stages in the management of public servants, from the time they enter institutions to retirement. The regulations introduce the duties and rights of civil servants, job classification, recruitment, rewards, disciplines, promotion, training, avoidance, and supervision and management. In formulating its provisional regulations on civil servants, China paid great attention to absorbing useful scientific management expertise and methods used in other countries. For example, the application of the principles of publicity, competition and legal management weigh heavily in the new public service system.⁶⁰ This should have formed a law by the NPC in 1997 according to the legislative plan,⁶¹ but have not done so far.

5.4.3. A New Drive for Governmental Mechanism Reform

⁵⁹ Personal interviews in 1998.

⁶⁰ For discussion see Jean-Pierre Cabestan (1992), "Civil service reform in China: the draft 'Provisional Order Concerning Civil Servants'", *International Review of Administrative Sciences*, Vol.58, 421-436; and also Beijing Review, Sep. 6-12, 1993, p 4-5.

⁶¹ Personal interviews in 1998. One of my interviews is Ying Songnian who provided the information to me. He is the professor and director of the law department of National Administrative Institute, the secretary of China law and Administrative Commission, vice-president of China Administrative Management Commission and vice-president of China Supervision Commission, who joined to draft 'Provisional Regulations for State Civil Servants' which was put into effect in October 1, 1993.

The 9th NPC gave new details of ambitious plans to restructure the 40 existing ministries and offices from 40 to 29⁶² by removing half of the civil servants from their posts by the end of 1998. This restructuring manifesto may be seen as the culmination of the far-reaching reform in transforming the Chinese system of central government. The priority of the government-restructuring programme is to adjust and abolish departments directly in charge of economic management and reinforce departments handling macroeconomic control and those enforcing the law and supervising law enforcement.⁶³ The changes have some important implications both for the functions of the government and the tradition of the civil service.

To facilitate the administrative reform to be achieved in practice, the system of the state owned enterprises' ombudsman has been established in April 1998 under the meeting of the 9th NPC, with the aim of changing the basic function of the government in governing large-scale state owned enterprises. It is noteworthy that the state owned enterprises' ombudsman has been designed not as an extension of the NPC, but as a subordinate body to the State Council, to supervise the division of functions between the government and the enterprises. Being an adjunct organ to the State Council, the state owned enterprises' ombudsman has no legal status, which limits its function of supervising the government. Therefore, the state enterprises ombudsman system is not like the Western ombudsmen system and does not handle complaints from the public. The Chinese mechanism is woefully deficient in supervising government, such a role is just beginning to be recognized by scholars and legislatures working in the administrative field. The ground for this is that supervision over the government organs and their staff at various levels in China has been largely expressed in terms of ensuring the implementation of the Party's policy, law and regulations, and exposing illegal activities and neglect of duties.⁶⁴ China is now strengthening the NPC's supervisory role

⁶² Report presented by Luo Gan on *the program of the government institutional reform* at the 9th NPC on March 6, 1998, People's Daily March 7th, 1998. Overseas Edition.

⁶³ Report presented by Luo Gan (1998), *op. cit.*

⁶⁴ See the *Administrative Supervisory Law of the People's Republic of China*, which was adopted at the 25th plenary of the 8th NPC on May 9, 1997. Art. 1, 2 and 6. China Fangzhen Press, 1997. And also see Research Office of Central Commission for Discipline Inspection and Supervisory Department, *Jijian jiancha jiguan banan quanxiang chengxu he fangfa* (Jurisdiction, procedures and methods for the organs of discipline and supervision). China Fangzhen Press, 1996.

of government in the areas of economy and has formulated the *jueding* (regulations) to strengthen the supervising role of government in economy.⁶⁵

Nevertheless, the reform programme has impinged on the civil service and government departments, which are being restructured into more macro-oriented, social management and public service entities in charge of macroeconomic regulation and control and those in charge of supervising law enforcement. The programme is intended within three years⁶⁶ to establish a highly efficient, well-co-ordinated, and standardised administrative system, to improve further the system of the civil service to get the best fit for the requirements of socialist market economy. The institutional reorganisation of 1998 marked a step away from the state planning system. It introduced the idea of separating the sphere of the government from managing the day-to-day operation of state enterprises. This opened the way for the concept of public service, which encompassed the proper handling of administrative powers.

Under this new reform programme, nothing less is needed than a new model for the civil service which defines the relationship between the regulatory role of ministries and their commercial interests, together with the appropriate machinery to assure the government restructuring reform where needed so as to achieve efficient and more effective government. Institutional restructuring is no less than a revolution,⁶⁷ it involves greater changes for both institutions and people than were ever made before the reform, and it will be no easy task in practice to achieve the balance of ensuring that the function of the government is to formulate the general policy to guide the enterprises whilst ensuring that the enterprises operate their business in accordance with the market. Nonetheless China's reform and development has entered into a new period which furnishes favourable conditions for institutional reform.

It is supposed to take three years to complete streamlining staff, which is thought to be an arduous task of personnel reform. The government is making great practical efforts in

⁶⁵ See speech made by Li Peng at the closing ceremony of the fourteenth plenary of the 9th NPC on 1 March 2000. *People's Daily, Overseas Edition*, 2 March 2000.

⁶⁶ Zhu Rongji's answer to correspondents. *People's daily (Overseas Edition)*. March 20, 1998.

⁶⁷ Report presented by Luo Gan (1998), *op. cit.*

re-training and re-employing the staff since government functionaries are fairly well qualified and most have professional expertise. The government is to adopt the following methods: (a) re-training and re-employing cadres while they enjoy their original material benefits; (b) providing job-oriented training; (c) replenishing enterprises and optimizing the structure⁶⁸ to serve the government reorganizations. The re-trained and re-employed cadres can play a full role in industrial commercial and banking enterprise in light of their needs. Successful implementation of this restructuring of government organisations may result in the rationalization of government institutions, thus improving the civil service system to mitigate bureaucratic ills, corruption and unhealthy tendencies, further expand the legal system concerning administrative management mechanisms with Chinese characteristics, and in turn strengthen the power of the CPC.

5.5. Provisional Recommendations for Future Civil Service Reform in China

As has been mentioned above, the third-generation leaders of China declared an ambitious plan to readjust and restructure the existing government ministries and offices from 40 to 29. This was a tremendous and challenging task, which it was committed to accomplish by the end of 1998.⁶⁹ It was considered so important that the current organizational reform was a major task within the next three years and was being carried out under the new cabinet and with full support of the leaders in China. This institutional restructuring was focused mainly on the government departments under the State Council with three objectives as follows:

- Establishing a highly efficient, well-coordinated and standardized administrative system,
- Further improving the civil service system,

⁶⁸ Report presented by Luo Gan (1998), *op. cit.*

⁶⁹ Zhu Rongji's answer to correspondents. People's daily (Overseas Edition). March 20, 1998.

- Forming a contingent of qualified administrators and gradually building an administrative management with Chinese characteristics suitable for the system of a socialist market economy.⁷⁰

It is claimed that the restructuring campaign has succeeded in cutting off nearly half of the civil servants from their posts by 2000, the total number of civil servants has been reduced from 3.2 million to 1.6 million.⁷¹ But no further measures have been taken to back it up, instead more attention is given to emphasizing political education as in the case of three-fold education above.

The gigantic and dispersed bureaucracy with 4.2 million employees of the Chinese civil service itself is daunting. It is distinguished by five categories of organizations both at central and local levels run or funded by the government. Besides it, the CPC plays the most formidable role in filling jobs in government, the key leadership posts in particular, through China's 'Nomenkatura'⁷² system and the means of 'zhengshen'⁷³, in contrast to the fact that civil servants are renowned for their neutrality and non-partisan role in some Western countries. Moreover, employees of major state enterprises are also controlled by the government, although the government is striving to reform this by separating the government from the industry. All these factors require very difficult government institutional reform, which should be carried out in an active but prudent manner. It is necessary to explore new ways to return the power of production truly to enterprises and to carry out the government restructuring plan resolutely since it affects the process of deepening economic restructuring and promoting economic and social development.

In my opinion, it is necessary and imperative to install major steps for the government's structuring programme. These major steps should include at least the following aspects:

⁷⁰ *An explanation of the government mechanism reform* delivered by Luo Gang at the 9th NPC in March 1998. People's Daily, Overseas Edition. March 7, 1998.

⁷¹ People's Daily, Overseas Edition, 4 October 2000.

⁷² See note 3 above, and for more details see John P. Burns (1987), *op. cit.*

⁷³ It means the way of examining the cadres' political reliability in China. Those who want to join the civil service jobs must pass through 'zhengshen' conducted by the party organisations.

- Setting up a new conceptual framework for the current organizational readjustment and restructuring,
- Creating the organizational framework for implementing the restructuring plan resolutely in all the ministries and offices covered by the plan,
- Speeding up the establishment of legal and supervisory and social intermediary organisations,
- Evaluating results and making revisions as necessary in practice.

5.5.1. A New Conceptual Framework

At present, reform and development in China has entered a new period with new problems as it advances. The socialist market economy is being gradually built, international exchanges and cooperation in economy, technology and culture are being expanded on the one hand, but on the other hand, many state enterprises have been trapped in management and production difficulties, and laid-off workers are increasing rapidly. Taking Beijing as an example, laid-off workers were over 300,000 in number in 1998.⁷⁴ Furthermore China is going to enter the World Trade Organisation and that also means opportunities for China.

To keep pace with the new situation, government departments at all levels, enterprises and the whole society should establish a new concept of labour and employment so as to create a good environment and conditions for re-employment on projects designed by the government. Firstly, China should not be hidebound by the old concept of labour that the labour force is not a commodity under the centrally planned economy. Instead China should foster a new conceptual view that the labour force is a commodity under the socialist market economy and allowed to be on the market. Priority should be given to the establishment of a systematic and applicable “talent market”, as there have already been three national talent markets for enterprise business management in

⁷⁴ Provided by the interviews conducted in China between January 3rd to 23rd, 1998.

Jiangshu, Qingdao, and Helongjiang.⁷⁵ Secondly, China should establish regular and systematic open competitive examinations to recruit civil servants based on merit because this system gives people more freedom to choose their jobs thus satisfying not only their material life needs but also their psychological needs. It is reported that there was an open civil service recruitment examination on a large scale in 1988, with over 1 million people taking part in it, 80 thousand people having been recruited.⁷⁶ Thirdly, China must break through the dominant management philosophy on employment under the planned economic system that ‘everyone eating from the same big pot and by iron rice bowls’.⁷⁷ This major breakthrough on the old traditional ideas on employment, which guaranteed every one has a job for life, will be of benefit to opening up employment opportunities, to expanding employment channels and to developing the collective, individual and private economies so as to implement the restructuring programme resolutely. A comprehensive understanding of the proper ways of dealing with employment to solve the problem of laid-off workers and streamlined staffs is a tough problem China faces. In that case, the real difficulty will come in gaining people’s trust and confidence in the current government-restructuring programme. So it is important to establish consciousness that the new Chinese civil service is a career open to talent, using such information to attack the force of nepotism and ‘*guanxi*’.

5.5.2. Creating the Organizational Framework to Carry out the Government-Structuring Program

The new thrusts of the organizational reform launched in March 1998 at the first session of the 9th NPC, represent a tremendous change relating to institutions and the civil service management systems compared with the former three reforms,⁷⁸ which had not escaped from the pernicious routine of ‘streamlining-swelling-streamlining again-

⁷⁵ This refers to special market where a lot of units assemble together in order to recruit people with talents and specialities to strength their units. People’s Daily, Overseas Edition. January 2000.

⁷⁶ Wei Qing (1994), *op. cit.*, p 77.

⁷⁷ This is a popular saying which symbolises the job as an iron bowl and guarantees a job for life. Nobody can dismantle it.

⁷⁸ The first three government institutional restructuring campaigns were in the year 1982, 1988 and 1993, which did not impinge on the existing apparatus. For more details, see case studies in chapter 6; and

swelling again'.⁷⁹ They did not impinge on the existing apparatus; on the contrary, such efforts at reform as there were took the existing mechanism for granted and tried desperately to adopt the new jobs to it, which doomed it to fail. The current government organizational reform, it is claimed, strives to have a real effect on reducing civil service, and transforming the functions of the government from managing enterprises' day-to-day work to exercising macroeconomic control to manage and guide it, mainly using economic means and legal means, supplemented by the necessary administrative means.⁸⁰

The new cabinet of the State Council has been given the national responsibility for the government restructuring programme in all government organizations in China and has set out a three-fold scheme of functions, structures and the authorized size of government bodies.⁸¹ The programme is supposed to accomplish within three years cutting half of the member of civil servants to strengthen organizations at the grass roots.⁸²

One pressure to respond successfully to government readjustment and reorganization is to establish civil service management organizations including responsibilities like those of the UK's new Performance and Innovation Unit and a New Centre for Management and Policy Studies. According to the programme of the government restructuring, the Personnel Ministry is committed to take charge of the reform mission. It has responsibility for the development and progress of government reform including policy decisions, consultative advice, co-ordinated guidance and execution. The civil service management organization is a specialized organ, with implementing civil service reform as its aim and managing the civil service affairs as its tasks.

see also Liqing Liu (1999), *The Rise of Cadre Entrepreneurs in China - Elite Transformation?* International Institute of Administrative Sciences. Sunningdale, United Kingdom, 12-15 July 1999.

⁷⁹ Zhao Wei et. al., *Jigou gaige: yichang shenke de gemin* (Mechanism reform: A deep revolution). People's Daily, 18th March 1998.

⁸⁰ A report delivered by Luo Gang (1998), *op. cit.*

⁸¹ *People's Daily*, Overseas Edition, March 25, 1998.

⁸² Zhu Rongji's answer to correspondents. People's daily (Overseas Edition). March 20, 1998.

The establishment, functions, responsibilities and methods of civil service management organizations are quite different throughout the world. My provisional conclusion is that the civil service organizations in China should have three properties:

- Firstly, the establishment of Chinese civil service organization should be compatible with the government restructuring programme to get the best fit for each activity, of service to the public, sticking to standards, efficiency and value for money and responsibility suitable for the socialist market economy.
- Secondly, the establishment and management of the civil service organization should be strictly in accordance with law, as only in this way, can it gain the people's confidence in the government restructure plan.
- Thirdly, the civil service management organization is to be regarded as one of the organizational systems of a government department. It will form a diverse organization system between central and local government, thus serving the government restructuring programme.

So far as the civil service management organizations are concerned, they have two functions. Firstly, as regards the civil service system itself, management organizations are one of the impetuses for the effective working of the civil service system. They are based on two elements of the social system. One is the abstract standard system of norms including standard documents of law, regulations and all kinds of rules forming a system, which hints further at deeper ideology, thoughts, law morals and values. The other is the context of reality in which they are to implement these normative systems. This reality always appears in diverse forms of social organizations with different special functions as was the practice of government ministries, enterprises, parties, mass organizations and civil organizations. Among these two, the system of norms plays a guiding role, which can restrict the reality context of social organization systems, making this work in accordance with normative systems.

Thus the social systems use their human resource material to realize the requirements of the normative system. These two mutually depend on and support each other. Based on this viewpoint, the civil service system can be carried on only through management

organizations. Rationalized and legalized civil service management organization can promote civil service reform, thus eradicating corruption in the government and setting up ‘a clean and honest’ government. Without the management organizations, all the laws and regulations of the civil service will become an abstract law system-lifeless and illusory. Then the civil service system will be bogged down in crises, lose the base of implementation, and eventually thrown into confusion.

Secondly, from the point of view of the government, civil service organizations are a guarantee of scientific human resource management and of raising international competitiveness and averting economic risks as China is faced with the pressing task of strategically readjusting the economic structure. The civil service plays a vital role in deepening the reform of economic structure and promoting economic and social development. It manages social public affairs on behalf of the state and the government; it is responsible for ensuring that the policies of the government are carried out and it delivers the service to the public. So reasonable and scientific civil service management organizations can create efficiency and effectiveness in government and enhance its performance.

In a Chinese context, the civil service management organizations are controlled by the Party organizational departments and government personnel departments, as has been the driving management philosophy prevailing for over 40 years in China. In practice, that inevitably has produced the key principle of civil service management ‘the Party controls the cadres’ at every level of the government departments. This resulted in the Party controlling the civil service management principles. This situation, outlandish as it seems, is not unique, vividly portraying the civil service management system in China. Already, the programme of government mechanism reform has impacted upon the old conventions of civil service management principle, which has dominated Chinese personnel for over 40 years. The principle ‘the Party controls the cadres’ is gradually being dismantled as the Chinese third-generation leaders press to launch government reform and further improve the civil service system to meet the needs for the fast changing marketplace. As important, the principle of civil service management is changing to be increasingly dominated by new civil service principles towards the

development of law, democracy, science and system. Now China is at a transitional period of economic reform, defects of the Chinese civil service management system set-up have become conspicuous through poor bureaucratic structure, lack of control, low efficiency and overstaffing.⁸³ Thus, in any case, new Chinese civil service management organizations should follow the principles attuned to the requirements of the socialist market economy attributed to the principles of ‘open and fair competition’ and new management methods towards democratization, legalization, scientism, and systematization.

Government reform also called for establishment of administrative supervision. Across China, widespread corruption has bedevilled the government. Anti-corruption is still the main task for the Party in the year 2001.⁸⁴ A systematic conception of the role of redress is of great important to the regulation of the changing public sector. In line with restructuring central government, it is necessary and imperative for China to speed up the establishment of an effective system of redress and justice, such as administrative courts, supervision, ombudsmen, and public sector complaints systems as the existing rules relating to these systems are woefully deficient in China.

In this respect, there are some values in UK public sector reform that we can make use of. Administrative law will play an important role concerning the mechanisms of quality control in civil service reform; administrative supervision is responsible for illegal activities relating to civil service law. According to the suggestion of the central committee of the CPC, multi-party system cooperation and political consultation under the leadership of CPC will permanently exist and will be put into China’s constitution law for the first time. All these provide a legal foundation to promote the administrative supervision system in China, and further improve the democratic supervision system through the regulation of political consultation, democratic supervision, participation and discussion in government and political affairs.⁸⁵ Learning from experiences in Western countries, it is important for China to establish an ombudsmen system. This is

⁸³ Selected Works of Deng Xiaoping. Vol. 2. P 327. Renmin Press, 1994.

⁸⁴ It is claimed at the 4th plenary of Central Commission for Discipline Inspection. *People’s Daily*, January 2000.

⁸⁵ *People’s Daily*, Overseas Edition, March 4, 1998.

because ombudsmen will investigate complaints independently from individuals as regards maladministration by departments and authorities so as to dig where the administrative court and supervision can not trespass, find out system weaknesses and suggest improvement on civil service reform, thus wiping out the roots which resulted in corruption.

Staying with grievance remedying, it is important to make practical efforts to try in-house complaint systems in the public sector, as is the practice of the UK ‘Citizen’s Charter’⁸⁶ which emphasizes internal complaint systems to expose weakness and to confirm good internal systems. It is true to say that good external audit along with good internal systems help to spread good practice, benefit government reform, improve the quality of civil service, and thus gradually build an administrative management mechanism with Chinese characteristics.

Once the organizational framework is in place ready to develop, test and implement the government restructuring programme, it is necessary for China to explore new ways and rely on the multiplier effect of increasing widening circles of training and development so as to ensure that China has a civil service equipped and trained to meet the challenge of a gradually maturing socialist market economy and an increasingly fast changing world. In order to raise the quality of the civil service and train qualified civil servants, China should establish different grades and diverse kinds of civil service education and training centers based on the National Administrative College and local administrative colleges.

To accompany civil service reform, a Chinese senior civil servants training centre, a civil service system research bureau and a talent research bureau have been established under the direction of the Personal Ministry. Furthermore China should make great efforts to make people believe that the civil service is a career open to talent, that promotion will be on merit and performance, and that salary and welfare will be attracted by provision of legal protection and procedures incorporated in the regulation of the civil service system. The civil service in China now faces the most difficult

⁸⁶ For more details of the Citizen’s Charter, see chapters 7 and 9 of this thesis.

problems of removing half of the civil service, which will come across formidable bureaucratic opposition. In addition, the government restructuring programme, suggesting separating the regulatory role of ministries from their commercial interests, was far from clear. Until now, no further attempts have been made to ensure that the operation or management powers are really delegated to the enterprises' managers except the establishment of the state owned enterprises' ombudsman. That will affect the process of civil service reform. China should face the reality squarely that civil service reform will take a lot of hard work and some tough decisions on cultural and political values.

The drive towards civil service reform will continue. The government reform is irrevocably changing the nature of the Chinese civil service and structure of the civil service. As the scope of the state has grown in the 21st century, it is necessary to build efficient and more effective government to carry out the responsibilities of the government to meeting the challenge of continuous improvement in an increasingly fast-changing world and competitive global market.

5.6. Conclusions

This chapter discussed the outcomes of the civil service reform drive that has been primarily a response to economic reform since late 1970s in China. It provides readers with both theoretical analysis and public sector realities through government initiatives, ideological struggles and provisional recommendations. Indeed, government reform ideas and theory are one thing, as has been discussed above. Public sector reform realities may be a quite different matter, as there tends to be a great gap between lofty theory and down-to-earth practice. Therefore, the next chapter will address case studies of cadre entrepreneurs and corruption involving many more government officials, a major issue in Chinese administration.

Appendix: A list of persons interviewed.

I visited Beijing Library , China University of Politics and Law, Ministry of Personnel, China Training Centre for Senior Civil Servants, Ministry of Supervision, Legislative Committee of National People’s Congress, Central Discipline Inspection Commission, Da Tong law Office, Legislative Committee of Shaanxi People’s Congress, State Council, China Fangzhen Press Bureau, and so forth. The interviewers are:

Vice Minister of Personnel Ministry of China.

Mr Ying Songnian is the professor of public law and the director of the law department of National Administrative University, the secretary of China Law and Administrative Commission, vice-president of China Administrative Management Commission and vice-president of China Supervision Commission. He joined to draft “Provisional Regulations for State Civil Servants” which was put into effect in October 1, 1993.

Mr Ma Huai De is the professor of public law at China University of Politics and Law, and the editor of Administrative Law Research journal. He is also a lawyer, and has dealt with some of administrative litigation.

Mr Mu Zhenhan is the professor of law at Northwest University of Politics and Law, the specially-invited consultant of legislative committee of Shaanxi People’s Congress and the member of Shaanxi decision-made consultative committee.

Xu Demin is the professor of law, supervisor and director of LLM at Northwest University of Politics and Law. He is also the consultant of Shaanixi People’s Congress.

Mr Hu Chin is the editor and director of China Fangzhen Press Bureau at Central Discipline Inspection Commission and Ministry of Supervision of People’s Republic of China.

Ms Du Ying Lian is the director of communication department at Ministry of Supervision.

Mr Pian Janmin is the president of China Law Research Commission.

Mr Yi Yin Xian is the staff of National Administration University.

Mr Huang Qiang is the civil servant of Ministry Personnel.

Mrs Wu Wei is the civil servant of the General Office of the State Council.

More than twenty cadre entrepreneurs, for some reasons, who did not want me to list their names.

CHAPTER 6

CASE STUDIES

6.1. Introduction

The recent developments in the Chinese civil service reform have been discussed in the previous chapters in terms of government initiatives, ideological liberations and recommendations. This chapter moves to consider through case studies why the public sector might have found it difficult to adapt to changing circumstances.

There is a perceived recognition that China's political system has failed to adjust itself to adopting developing economic modernisation, which reveals loopholes in administrative management systems. Cadre entrepreneurs and widespread corruption cases involving higher officials loom very large in contemporary China. Therefore, this section chronicles and analyses these phenomena and their effects upon civil service reform.

6.2. Cadre Entrepreneurs: the New Developing Stratum?

The ongoing civil service reform that has taken place in the Chinese administration has been primarily a response to economic reform since late 1970s and the acceptance of the market economy and the redefinition of public ownership. The momentum of public sector reform is still undergoing fundamental, if not revolutionary, changes which threaten the position, powers, and the privileges of thousands of government officials who entered the sea of business (*xiahai* in Chinese), launching careers in the newly created 'administrative companies'. Administrative companies are business firms established by government officials and institutions, using their special powers and

connections to do business with their administration. These businessmen promote commerce in the gap between the plan and market, and operate their business in both private and public realms, profiting for themselves by means of their cadre backgrounds and strong official connections rather than through economic and legal means.

However, cadre entrepreneurs represent a new round of elite transformation apart from the four major government institutional adjustment campaigns mentioned in the previous chapter. The emergence of administrative companies in Chinese society has already attracted scholarly attention, threatening to form a newly developing stratum - cadre entrepreneurs. A certain pattern does, nevertheless, appear in the rapidity with which the official policy developed. It seems possible to distinguish three stages in the development of the administrative companies.

6.2.1. Three Stages of Business Mania

First an opening period of business fever in the years 1984-85, encouraged by the official policy “letting a few people be rich first,” beginning slowly, gradually acquired greater momentum. In 1985, many administrative companies were established to furnish work for retired cadres and their children and relatives. The total number of this kind of company reached 320,000 within a few years.¹ In 1986, the central committee of the Communist Party of China and the State Council launched examining and reinforcement campaigns and reduced the number of the firms to 15,000.²

Second, during a period of 1987-89, the development followed in rapid sequence of an official policy that encouraged “sideline earnings”. This acted as an incentive to all government organizations to set up administrative companies to adapt to the changing situation of the market-driven transitions and cutting government expenditures. All these “sideline earnings” are allowed to promote the welfare of the staff. Encouraged by

¹ Wang Guan ying (1996), *dangdai zhongguo fanfu changlian dianxin anli tonglan* (Typical cases Bulletin of Modern China Anti-corruption and Advocated Honest and Clean Government), China Supervision Press. p. 7.

² Wang Guan ying (1996), *op. cit.*, p. 7.

the official policy and under intense fiscal pressure, leaders of government bureaucracy had no choice but to change the way they operated the business. They embraced “public-private linkage” and developed an “alternative” way to enhance the living standards of their staff so as to ensure good benefits provided for them. The administrative companies of this kind rocketed to 370,000 in 1987. They were under the auspices of different ministries and commissions of the State Council; the general headquarters of the People’s Liberation Army and the different national mass organizations.³

During the second round of business fever, cadre entrepreneurs also began to enrich themselves by administrative powers and improperly appropriated sideline earnings. They took risks in breaking laws so as to monopolise the market, control raw materials and scarce resources. From their position in the society, cadre entrepreneurs have successfully exploited the discrepancy between the plan and the market, and have benefited from the various dual-track systems which emerged in China because China so far has failed to find the way to integrate the market with state planning. As a result, there are substantial compromises between the new market-based system and the old state planning system with the consequence of adopting various dual-track systems⁴ in practice.

Such a dual-track system offered a chance for officials to abuse their administrative powers through arbitrage. Inevitably, many cadre entrepreneurs extracted high profits by selling quotas of scarce resources, including re-leasing government land.⁵ This is because China’s market imperfection and institutional structures offer unequal opportunities for people to accumulate wealth. The administrative companies became widespread to such an extent that they inevitably aroused people’s great indignation. The central committee of the CPC and the State Council launched its second “clean up”

³ Wang Guan ying (1996), *op. cit.*, 7.

⁴ In terms of managerial system on materials and products, for example, it is increasingly common to find two kinds of managerial system: certain materials and products were controlled by the government, by which the state set their prices and distribute them according to mandatory schemes, while the rest of the materials and products are controlled by the market. Although the amount of goods controlled by the state has gradually decreased in recent years, there is still enough room for arbitrage. This is the same in college and universities, students are enrolled under different systems: some must pay tuition fees while others enjoy completely free, state supported education.

⁵ Personal interview with nearly 20 cadre entrepreneurs in China in 1998.

campaign and prohibited government officials and institutions from engaging in business in 1988.⁶

The third period of business fever happened in 1992 during which the development continued through Deng Xiaoping's southern tour to "special economic zones", stimulated by the acceptance of the "market economy"⁷ and catalysed by the redefinition of the "public ownership".⁸ But administrative companies developed secretly, meaning that cadre entrepreneurs have learned to take countermeasures (*duiche*)⁹ against government institutions banning them and the personnel from profit making. This is the root cause of saying "the higher authorities have policies while the lower levels have countermeasures."¹⁰ Administrative companies at this stage were no longer formally run by incumbent government officials, nor subordinated to government organs. However, they were still grouped as administrative companies by nature, on the ground of many cadre entrepreneurs still having close financial, administrative and personnel connections with their former government organs.

Although the central committee of the CPC and the State Council issued several decrees in 1993 ordering that all economic entities be isolated from government organizations and that all government officials disengage themselves from business making, still new forms of administrative companies at this stage soared to 900,000 by early 1993. The increasing number of administrative companies at this stage proved that all these decrees on banning officials from profit making had limited effects. Indeed, it is easy to separate the staff of government institutions from that of administrative companies. But it is difficult to cut off personal relationships (*guanxi*) which have long seemed to be an intrinsic and ingrained part of the Chinese culture. In practice, it is personal, not personnel connections, composed of the power bases of cadre entrepreneurs, which are important.

⁶ Wang Guan ying (1996), *op. cit.*, p. 7.

⁷ The market economy was firstly officially accepted in the 14th party report delivered by Jiang Zemin on October 12, 1992. For more details, see chapter 5.

⁸ The theory of redefinition of the public ownership confirmed in the 15th party report delivered by Jiang Zemin on October 12, 1997. For analysis, see chapter 5.

⁹ Wang Guan ying (1996), *op. cit.*, p. 19.

¹⁰ He Wei (1988), *Tentative views on separating the functions of government from enterprises*. Guangming ribao (Guangming Daily), September 10 1988.

6.2.2. Institutional Pressures for Self-Adjustment

The subsequent evolution of economic reforms, as they became more refined and complicated, is somewhat beclouded by ambiguities and gaps in the documents relating to the pragmatic economic strategies of what the late Deng Xiao ping called “crossing the river by feeling the stone”¹¹ which has become China’s ruling economic orthodoxy. Indeed, Chinese economic reform presents itself as the challenge of documenting both successful and unsuccessful features of the transition. Great changes have taken place in China that have vastly improved the lives of hundreds of millions of people on the one hand. But on the other hand, the Chinese government failed to seize the time to adjust the political system promptly for the needs of growing market-driven transitions, which enables cadre entrepreneurs to do business and to profit themselves in the loopholes of the government personnel management. Admittedly, the first three government institutional restructuring campaigns in the year 1982, 1988, and 1993 did not impinge on the existing apparatus; the aims of government reorganisation driving at streamlining and rationalizing unwieldy, overlapping and inefficient organisations were seen as merely lip service.

Nonetheless, there is some significance in ‘Provisional Regulations on the State Civil Service’ which came into effect on October 1993 by classifying the civil service into a political civil service and a career civil service.¹² Striving for ‘small government and big society’, this drive indeed represented a new era in the Chinese civil service reform with a stride towards the rationalization of the bureaucracy. As a result of the implementation of the provisional regulations, by early 1995, about 13 percent of the government agencies at the central level and 30.3 percent of those at the provincial level had either

¹¹ Since there are no set examples for China to follow on economic modernisation, the political debates of the economic system reform always attract attention throughout the whole country. The question whether it is “socialism” or “capitalism” has been regularly asked, whatever measures are taken or to be taken in practice. In order to explore ways and means to guide economic reform, and stop ideological debates, Deng Xiao-ping said these words. Later on “crossing the river by feeling for the stone” has become the ruling strategy of the economic reform. It is called ‘muolun’ in Chinese. See Ma Lichen and Lin Zhijun (1998), *Jiaofeng* (China’s problems), Modern China Press, in March 1998, p.377.

been abolished or had merged.¹³ Consequently, about two million government officials were either transferred to non-government posts or asked to take early retirement by increasing retirement pay.¹⁴

In 1996 the central committee of the CPC set a five-year timetable for training cadres according to the requirements of the civil service provisional regulations and modern public personnel management. This training included not only political ideology but also specialised knowledge and knowledge regeneration that determined job promotion.¹⁵ The training programme which stressed the specialised knowledge made some cadres feel upset because they were recruited as government officials on the basis of their political reliabilities. Moreover, restrictions on cadres' behaviour are increasing; the privileges and authority accorded to them are in practice decreasing. These pressures force government officials to make self-adjustments by either jumping into the business sea or moonlighting in both public and private sectors. This is owing to the pragmatic economic strategies of Deng Xiaoping, which led to diverse and changeable policies. Indeed, policy change can mean that what is legal one day becomes illegal the next.

A fourth large-scale government reorganisation was re-launched on March 6, 1998,¹⁶ which threatened government officials. It was an urgent and critical issue for many officials to survive these imminent changes. Some were afraid of being cut off and losing the status and perquisites associated with a cadre position, others were afraid of being transferred to undesirable positions. Thus, the reasons for cadre entrepreneurs having become an issue in political system reform are:

- The inside pressures of the ongoing institutional restructuring campaigns.
- The temptation of the rise of a new, rich social stratum mainly composed of private entrepreneurs accompanying economic reform.

¹² For analysis, see chapter 5.

¹³ People's Daily, October 17, 1995.

¹⁴ State Council Document [1995] No. 32, Circular of Increasing Retirement Pay on Retired staff of the Government Institutions.

¹⁵ The education and training program of national cadres for the year 1996-2000 of the central committee of the CPC. China Fangzhen Press, 1996.

¹⁶ For more details of the fourth government restructuring programme, see 5.4.3 'New drive on governmental mechanism reform' in chapter 5.

- Economic interests have gradually substituted for political priorities.
- The imperfect market produces fluctuations in price and policy under the dual-track system.

Consequently, the pragmatic economic strategies give opportunities to government officials to abuse their administrative powers. Two results stand out particularly. One result of it was the practice by which officials supplemented their income through establishing administrative companies. That was exemplified by the three “business fevers” stated above, which represented a new round of elite transformation in contemporary China. The other result was the pervasiveness of corruption. The blending of money and power to do business is a short cut to wealth in China, meaning that access to administrative power became a prerequisite to do business.

As commercialisation intensifies in present-day China, political priorities, such as politics first and the Party’s interests over anything else, have gradually given way to economic interests, which inevitably has a strong influence on the civil service. With the growth of cadre entrepreneurs, the administrative ethos changed also. Wealthy cadre entrepreneurs became successful men in present-day China, mingling closely in the elite circles of the civil servants and entrepreneurs. Officialdom has firstly been challenged by money. Money is replacing position in the office pecking order as the most important symbol of personal status. Personal status in the societies is no longer determined only by post holding in office. Officialdom or “power” by itself does not constitute social status except when it creates wealth, meaning dramatic changes have taken place in social norms and social values. The former public ethos of “serving the people wholeheartedly” as a dictum is now overshadowed by the rise of the desire for money.

Formally, the government officials were supposed to be the “first to bear hardships, the last to enjoy the comforts”,¹⁷ this has now been challenged by more and more cadres being the first to become “*dakuan*” (literally wealthy men/women). Few people are surprised that the cadre entrepreneurs live in very expensive houses and drive around in

¹⁷ *Constitution of the Communist Party of China*, article 3. ‘First to bear hardships, the last to enjoy the comforts’ is stipulated as one of the obligations, which every party member is required to do so.

luxury cars that, if bought from their official's salaries, would take several decades to acquire.¹⁸ Officialdom, which was supposed to be the model of virtue, is now a place where cadre entrepreneurs do power-money trading. The civil service was supposed to be a protector of law and the representative of government, but now thousands of its members are trying to profit themselves through their official positions.

On the one hand, the discrepancy between plan and market gave cadre entrepreneurs the chance to enrich themselves as stated above. But on the other hand, the conspicuous income disparity between government and private sectors has induced government officials to contemplate or seek alternative careers to survive outside and inside pressures. As entrepreneurs, they are not subject to government personnel cuts. As cadres, they do not have to worry about bankruptcy because their businesses are financially supported by the government. Consequently, the advantages of cadre entrepreneurs attracted millions of government officials to jump into the business sea and to do business with their administrative powers.

6.2.3. Institutional Problems and Administrative Companies

The rise of cadre entrepreneurs among bureaucrats is partly linked to Deng Xiaoping's pragmatic economic strategies. In turn, these have induced government officials to make use of their administrative powers to do business in the gap between the market and plan. However, this is sustained by the defects and the loopholes in the administrative management system, by a deteriorated public ethos, and by the conflict between the anachronisms of a rigid backward bureaucratic system and fast growing economic developments brought on by economic reform. More importantly, in the Chinese context, there is the serious problem that bureaucrats do not fully understand what performance they should provide to the public as public office holders, and the public does not know what service they are entitled to receive from the government. On the contrary, deep-rooted traditional Chinese "*guanxi*" of showing special connections with

¹⁸ One pound sterling equals to about 13 yuan renminbi at present. The official salaries, for example, mayors are over 1,500 yuan renminbi per month. Luxury cars usually cost 300,000-600,000 yuan renminbi.

officials in power, for example, listing the name of a person in power as sponsor or director while doing business, gave officials a blessing in abusing their administrative powers and loopholes in regulation to do business.

The rise of cadre entrepreneurs proved indisputably that hierarchical, centralised bureaucracies designed for the planned economy simply do not function well in the rapidly growing market-driven transitions. There are some defects in government mechanisms. The people who work in the government are not the only ones to blame.

My central point is that if the government institution is structured to encourage cadre entrepreneurs, almost any cadre can be an entrepreneur. Conversely, if the government institution is structured to encourage bureaucratic behaviour, almost any cadre can turn into a bureaucrat. Thus if the government organisation is structured to lead a group of officials to abuse their administrative powers, it is the government mechanism that should be blamed, not officials who work in it. It is my aim to criticise bureaucracies, not bureaucrats so as to urge the Chinese government not to be hidebound by the old ways of managing government focusing its attention on ideological education.¹⁹

Without sound civil service management systems, civil servants may be trapped in chaos that frustrates their creativity and saps their energy. What China is lacking is to establish new civil service systems to liberate the enormous energies of public servants, and to heighten their ability to serve the people. This requires a new approach as the existing rules relating to civil service management systems, for example, in relation to new systems or mechanisms that are responsive to their customers, offering high quality and extensive choices of service to meet the needs of the public, which are woefully deficient in China. Moreover, the political consciousness of bureaucrats and politicians

¹⁹ The three-fold themes of “learning, politics and honesty” as a new round of anti-corruption campaign were launched on January 13, 1999. In February 2000, President Jiang Zeming made a speech to mobilise the whole Party and the country to stress on the three-fold education. Now *People’s Daily*, the newspaper of the government and party organs, is permeated with three-fold education since February onwards. The government work report delivered by Premier Zhu Rongji at the third plenary session of the 9th NPC on 5 March 2000 emphasises the importance of three-fold ideological education in the process of the establishment of a highly efficient, well-coordinated and standardised administrative system. See *People’s Daily*, Overseas Edition, 17 March 2000.

is not developed enough to reform themselves to serve the people without considering their own interests.

Cadre entrepreneurs have demonstrated how administrative powers can be used to make profit; as profit-seeking entrepreneurs, these businessmen are acting to use administrative powers to make profit. As government officials, they have been heavily involved in business activities. This is because the structure is institutionally marred and it is easy for officials to enrich themselves abnormally in the gap between the market and the plan. First, dual-track managerial systems²⁰ on materials and products are far from the complete establishment of a market-driven system. Second, their salaries were low, well below what would be required to maintain a high official in a condition befitting the dignity of his position in the transitional periods.

Together, these factors ensured that government officials continued to contemplate or seek chances to enrich themselves by resort to administrative privileges. This is an opportunity for officials to profit. Furthermore, this is also a short cut to wealth. Corruption also stemmed from government officials engaging in business activities.

6.2.4. The Need for a Pragmatic Policy

It is widely perceived that Deng's economic reform strategy is more pragmatic, yet shows a complete lack of systematic reform adjusted to the changing situation, which inevitably leads to diverse and changeable strategies. These permitted cadre entrepreneurs to abuse their administrative powers to do business. Although cadre entrepreneurs are constantly banned from profit making, the task of "cleaning-up" administrative companies seldom goes beyond the sphere of Party-led mobilisations through ideological education. Yet as the episodes accumulate, it become clear that there is more at stake than concentrating merely on banning government officials from profit making. Political system reform demands immediate attention.

²⁰ See note 4 above.

The rise of the cadre entrepreneurs not only reveals a basic tension between economic developments and the political system, but also forces the Party leadership to deal with allocative problems raised by the presence of a market economy in both private and public sectors. In today's global market place, China cannot compete effectively if it loses the opportunities to reform the political system; the government institutions also need the flexibility to respond to a complex and rapidly growing market place.

First, the political system is still fundamentally the product of the state planning system, which is rooted in a widely held belief that "public ownership is the quintessence of socialism".²¹ The core of public ownership in the socialist economy is part of Chinese history. It also lies at the heart of the problem of economic system reform.

Second, economic reform has also changed the ethos of the civil service, which affects national public sector reform. Entrusting the Party with state activities is an antiquated apparatus, which is institutionally marred in the changing situation of the market place.

Third, as economic reform is entering its twentieth year, it is clear that the traditional political system with its emphasis on state planning is not suited to meeting the needs of its customers or for carrying out the responsibility of the government in the new market-driven economy.

Thus there is pressure to design a new political system to replace the traditional economic planning structure, and emphasising the primacy of the customers and the centrality of the tasks that need to be performed in the market economy. This means moving away from the model under which the Party dominated the state activities to one where the government takes responsibility for the state's conduct. Over-lapping structures of the Chinese political realm need reform urgently with a politician's boldness and intelligence.

The present China is becoming more and more commercialised, people start to run after tangible manifestations of wealth, such as limousines, luxury apartments, and lavish

²¹ For details, see 5.4.2. Contemporary China's three ideological liberation.

banquets, instead of believing the Communist Party's ethos of being "the first to bear hardships, the last to enjoy the comforts." Officials are not in a vacuum from society so they are ineluctably affected by the dramatic changes both in the ideology and tangible wealth brought on by the reform.

For some, the public ethos of serving the people wholeheartedly without considering their own interests might make a life of strict frugality supportable; for others, supplementing the resources by engaging in business or abuse of administrative powers filled the gap. In evaluating the success of public sector reform, nevertheless, we must keep in mind the financial discouragement with which the officials constantly contended. Indeed, the Chinese crisis of the public ethos in government has turned cadre entrepreneurs into a growth industry. It is hard to image today, but in traditional China, the word bureaucrat meant something positive. It connoted a noble, industrious and honest characters of governmental officials, for example, Jiao Yu luo, the director of a county, who devoted his life to the cause of serving the people²².

The pay system needs reform as well. The salary of government officials should be upgraded in line with the cost of living in order to reduce the tendency for officials to accept bribes as income supplements. "A high salary keeps officials from being corrupted" might serve as an effective measure to curb corruption and sustain the public ethos of "serving the people wholeheartedly." If the reward system for government officials is to be marketised, for example, by adopting a performance related pay system like the UK civil service reform, it will be beneficial to the governmental restructuring programme, thus encouraging government officials to serve the people wholeheartedly. It is reported recently that Beijing will formulate a new pay system for state owned enterprises according to the requirements of the market economy,²³ rather than treating enterprise leaders in a way similar to government officials, which distorted China's pay system for several decades. The implication is that China is marching forward on the path of a performance related pay system suitable for a market economy.

²² From Chinese textbooks for secondary school in the late 1970s. People aged about 40 years old know this very well.

²³ *Beijing will abolish the administrative grades pay system for state owned enterprises*. People's Daily. January 20, 2000.

To a certain extent, a low pay system without any increments connected with the market, induced officials to find ways to survive both the ongoing bureaucratic reorganisations and dramatic economic changes. For government officials without any other income, especially during the transitional periods, using their administrative powers to do business is the road to enrich themselves and survive in the pressure of both economic and institutional reforms. This is a very serious problem as China's economic modernisation is going on rapidly. For China, there is no choice but to reform the political system so as to create a situation to keep pace with the market economy.

6.2.5. Repercussions

Although the rise of cadre entrepreneurs is still at a very early stage, not having gone as far as publicly opening their own businesses distinct from administrative companies, it after all represents a new round of elite transformation. It is true to say that cadre entrepreneurs were extensive and inevitable under the market imperfection. The official policy gives legitimacy to administrative companies during the transitional periods. Some government officials consider they can legitimately establish administrative companies to supplement reduced administrative expenditure on the one hand, on the other hand, this can promote the welfare of the staff through "sideline earnings". This kind of thinking among government officials has begun to conflict with the aim of the Chinese government driving at building up "clean government" and eradicating corruption.

The practice that the government officials sit in the boards of directors of administrative companies while they are still holding important government office is rampant across government institutions. Consequently, cadre entrepreneurs attracted more "success" than private entrepreneurs did because their special position brought them into superiority over others to get more information on government policies and develop customer networks through government companies. Doing business with administrative

powers creates fundamentally unequal competition in the market place. Problems had risen as a result of this practice.

First, administrative companies are being run as government institutions, there is a lack of oversight on the disposition of profits and corruption has resulted, often to the detriment of the government officials as an organization.

Second, these companies exist in nearly all government institutions, the result has been competition for raw materials and markets that result in unequal opportunities which revealed structural inequality. Ostensibly structural inequality accompanied with unequal opportunities strongly implies that China lacks a conventional market mechanism. In the battle for profits, cadre entrepreneurs are better positioned to fight successfully because they control, or at least, have secured access to useful resources.

Third, the formation of cadre entrepreneurs is likely to exacerbate the existing unequal income distribution. These businessmen earn high incomes (often several hundreds times higher than those of an ordinary worker) and enjoy luxurious living conditions.

Thus in which directions and through which channels to guide the development of cadre entrepreneurs remains extremely urgent in today's China. Having experienced 'elite-driven transformation' in China, the backlash came emphatically: the 1989 student movement was massacred, and then Zhao Ziyang was forced to leave office. The scandals of corruption involving high officials led to a popular demand for large-scale reform of the political system.

6.3. The Party-led Anti-corruption Campaigns: Can the State Survive?

Corruption is rapidly expanding throughout the country from the top level of mayors down to the bottom level of county directors, which highlights the tensions in the relationship between "economic" development and rigid "political" structures. To what extent is this issue being challenged in China? Will the late Deng's economic strategy

become the country's ruling political reform orthodoxy? What are the real challenges facing the third-generation leaders in the expanding global economic developments? Can the state survive the Party-led anti-corruption campaigns? These questions will be expounded through corruption case studies. My intention is to criticise China's problematic political system and the traditional ways of managing the state focusing on ideological education. In present China, the government-restructuring programme should instead emphasise the principle of 'managing the state by law'.

6.3.1. 'One, Two Three, Four' Corruption Cases in Beijing

The corruption cases referred to are from the books of an "anti-corruption gazette",²⁴ concerning 74 mayors who were charged with crimes of corruption and are now serving sentences in prison since the late 1970s. The revelation of these cases is woven into the picture of the present China's bureaucrats. The opportunity for civil service bribery afforded by the administrative powers seems to have particularly attracted the top rank officials. Four high metropolitan officials involving in corruption exemplified this.²⁵

Following the news of the suicide of Wang Baosheng²⁶ in April 1995, another top metropolitan official of Beijing, Tie Yin was dismissed from the Party and examined in judicial proceedings for her corruption in the spring of 1996. She was the vice party

²⁴ Zhong Jian (1998), *Fantan gongbao: dalaoli de qishisi min shizhang* (Anti-corruption gazette: 74 mayors in prison), Economic Daily Press, Beijing, September 1998.

²⁵ Obviously, the Chinese crisis of confidence in government is challenging the conventions of the Party-led anti-corruption campaigns focusing on ideological education, which has turned my study about political system reform into a pressing issue. My attention is on how government should operate for the needs of the fast changing marketplace as has evidenced the failure of the Party-led anti-corruption campaigns. By the time I was working on this thesis, some more government officials involved in corruption, for example, Hu Changqing, the former vice-director of Jiangxi province, was sentenced to death for corruption. See *People's Daily, Overseas Edition*, 16 February, 2000. He is one of the highest government officials who received a death sentence in recent years. Qi Huogui, the youngest secretary of Hainan province, was also sentenced to death for corruption. Noticeably, his wife, Fu Rongying was also involved in corruption, and sentenced for 16 years, which demonstrates the Chinese 'guanxi' and nepotism, and the failure of the Party-led anti-corruption campaigns. See *Minzhu yu fazhi* (Democracy and law), Vol. 4, No. 285, 1999. P 42-44. More recently, Chen Kejie, the vice director of the standing committee of the NPC, was sentenced to death for his corruption and executed on 14 September 2000, see *People's Daily, Overseas Edition*, 15 September, 2000.

²⁶ Wang Baosheng was the former vice mayor of Beijing before 1995, and the standing member of Beijing committee. He committed suicide to escape punishment for his corruption.

secretary and the vice-chairman of the Beijing People's Congress. Huang Jicheng, the vice-chairman of the political consultative committee and the assistant to the mayor, was also dismissed owing to his corruption. Even more surprisingly, on April 27, 1995, Cheng Xi-tong, the mayor and secretary of Beijing municipality, was forced to resign for his culpable responsibility for Wang's illegal activities. That led to legal investigation procedures in Chen's case. On September 28 1995, the central committee of the CPC made the decision to dismiss Chen as a member of the political bureau and party central committee. In July 1998, Chen Xi-tong was accused of corruption and malfeasance, and sentenced to 16 years.²⁷ By then, four Beijing top officials of the municipal committee, government, people's congress and the political consultative committee had each received punishment, which ended the so-called "one, two, three, four" Beijing corruption cases.²⁸ The scandals of four top officials involved in corruption weakened the government's political stability, and led to a popular demand for political system reform to fit the needs of the growing market economy.

The purpose of referring to these cases is to review the ongoing anti-corruption campaigns in order to question whether the highly publicized anti-corruption campaigns led by the CPC are of any great importance in shaping overall ideology in the socialist market economy during the transitional periods. If they are not, the political system of entrusting the Party with anti-corruption tasks may be doubted. Ostensibly, China's economic reform has brought tremendous changes in the nature, structure and character of the public sector and that has a profound impact on the public ethos. But the government is unwilling to make any substantial changes to organizational restructuring, such as really separating functions between the Party and government, entrusting the NPC with real supervision powers, and contracting out civil service operation to executives, to keep pace with the economic developments.

On the contrary, the government is committed to the Party-led mobilization, stressing the three-fold themes of "learning, politics and honesty" in a new round of anti-

²⁷ Shi Zhong (1998), *Cheng Xi-tong fanzhui shilu (The crime records of Cheng Xi-tong)* Hong Qi Press, Beijing, p 218.

²⁸ Zhong Jian, *Fantan gongbao: dalaoli de qishisi min shizhang (Anti-corruption gazette: 74 mayors in prison)*, Economic Daily Press, Beijing, September 1998, p.627.

corruption campaign launched on January 13, 1999.²⁹ Entrusting the Party with the state's conduct is a fundamental characteristic of the Chinese system of the government. The ongoing Party-led anti-corruption campaigns are typically the corollary of the Chinese political system, and experience has proved incontrovertibly that they are not attuned to the fast growing market place. This is because stressing the Party's supremacy loses its attraction in the market economy and does not accord with the principle of "governing the state by law", which China is striving for. Consequently, the successive nation-wide anti-corruption campaigns have merely exposed large individual cases involved government officials, which has placed the Party mechanism and leadership as a whole in great jeopardy. However, it is hardly surprising, then, that until recently few questioned the government strategies on the economy and the successive anti-corruption campaigns. Yet China's current orthodoxy of both economy and anti-corruption campaigns must indeed be questioned. More specifically, without bold political system reform and breaking through historical patterns, corruption afforded by administrative powers will destroy not only the Party, but also the state. Eventually, it will affect the public ethos.

6.3.2. Chinese "*Guanxi*"³⁰ and Nepotism

Corruption has long seemed to be an intrinsic and ingrained part of the Chinese culture. Chinese "*guanxi*" and nepotism are deep rooted in the fabric of day-to-day economic, cultural, and governmental activities. It is accepted as a rule so basic that it requires no statement. In China where opportunities for common people to accumulate wealth are still limited, power and "*guanxi*" for officials are always a reliable short-cut avenue to wealth and, inevitably, a major source of corruption.

Ordinary people must try every means to get in touch with officials and offer respect, money and service in order to ensure promotion in officialdom or business. More

²⁹ People's Daily, Overseas Edition, January 13, 1999

³⁰ It means personal relation "you do something for me, I will do something for you in return". "*guanxi*" is built into the fabric of day-to-day activities covered every field in China. More details see Lucian W. Pye (1992), *op. cit.*.

powerful people try to build up their relations in order to strengthen their established positions and business interests. People with administrative privileges must protect their bribes in order to supplement their low salaries. Such a system of institutionalised exchanges of money and power may be classified as bribery, introduction fees, illegal use of administrative powers to make money for private gains, and embezzlement of public money. The threat is deepening the corruption, which damaged both the Party and the state.³¹ This is not alarmist talk; it is a truth repeatedly borne out by Chinese history. Consequently, corruption is likely to exacerbate the social contradictions between officials and the society, and thus resulted in people's abhorrence of governmental officials.

Although there were sanctions or punishments that regulated the abuse of administrative powers in respect of Party discipline and legal provisions, in practice nothing was done through administrative powers to restrict it. On the contrary, social customs helped to stimulate widespread corruption. This is because Chinese people feel excited and ill at ease when they receive good service from the government officials so that they try to find ways to show their thanks to officials by offering valuable gifts or money for what they have done for them, although in a modernised public administration, officials are supposed to carry out all these duties.³² From this point of view, the traditional practice of presenting gifts and money offers opportunities for officials to abuse their administrative powers. Presumably, if Chinese people understand what services can be received from the government, the rate of abusing administrative powers is likely to be lower because it creates little chance for governmental officials to do so. This needs politicians to deal with this in a more effective way, and setting service principles and standards, like the UK's experience in civil service reform, might serve as a good example. The matter will be discussed in great depth later on. In addition, a salient characteristic of Chinese "*guanxi*" and "nepotism" were also blamed for the pervasiveness of corruption.

³¹ Wang Guan ying (1996), *op. cit.*, p 10.

³² As has been explained in 6.2.2 above, there is a serious problem that in China bureaucrats do not fully understand what performance they should provide to the public as public holders, and the public does not know what services they are entitled to receive from the government.

This is probably true as proved by the case of Chen Xiaotong and a series cases of top leaders' secretaries involved in corruption. Chen Xiaotong,³³ the son of Chen Xitong, was a chief manager in charge of two companies and a four-star hotel in his late 20s, not because of his exceptional ability, but because of his father's influence. In the mid-1980s, he went to Hawaii with his friend to conduct economic market research. Soon after they came back, a highly expensive project was begun in the golden area of Beijing, which lasted for several years without completion by 1998.³⁴ On June 28, 1997, Chen Xiao-tong was charged with bribery and abuse of public funds and sentenced to 12 years by the Beijing first higher court.³⁵

Along with the Chinese "nepotism" relationship in corruption, top officials' secretaries involved in corruption stand out particularly with their special official connections and abuse of their position as was the case of Beijing's four high metropolitan officials' secretaries involving in corruption. This phenomenon has demonstrated how secretaries can use an imperfect administrative system to make profit. The case of Yien Zhenli offered a good example to illustrate this. Yien was the secretary of the Beijing vice Mayor Wang Baosheng. It is said that Yien often gave orders instead of Wang by means of his special position as a secretary to the mayor. Once he himself took a 20,000 *yuan* RMB cheque³⁶ from Hai Dian³⁷ financial bureau, and said to the staff who worked there that "the Beijing financial bureau will refund it for me". Unbelievably, this sum of money was returned to the Hai Dian financial bureau by the Beijing financial bureau as Yien expected.³⁸ Such an astonishing event exposed a loophole in the system of controlling public funds, and at the same time demonstrated the ways Chinese people admire 'power'. In order to flatter the officials, even their secretaries, people (but not all of them) would do whatever they asked them to do regardless of administrative regulation on public expenditure.

³³ He is the son of Chen Xitong who was the former mayor of Beijing, and was sentenced to 16 years by Beijing court in 1998 for his corruption.

³⁴ Zhong Jian, , Fantan gongbao: dalaoli de qishisi min shizhang ((Anti-corruption gazette: 74 mayors in prison), Economic Daily Press, Beijing, September 1998, p.23.

³⁵ Zhong Jian (1998), *op. cit.*, p 26.

³⁶ Zhong Jian (1998), *op. cit.* p 22.

³⁷ One of the districts in Beijing.

³⁸ Zhong Jian (1998), *op. cit.*, p 22.

Chen Jian, the secretary of Chen Xitong, was also sentenced to 15 years for corruption involving 409,000 *yuan* RMB.³⁹ Duan Ai-hua, the secretary of Tie Yin, was arrested for corruption and is now serving in jail.⁴⁰ Most importantly, opportunities lie in the set of personnel and social relationships where secretaries have been treated as a special stratum. No one is supposed to challenge the secretaries' sudden rise in position. People are afraid of offending top leaders' secretaries in case they might get into trouble in future.

For officials, this is their opportunity to profit. As regards bribes, they by and large continue to hold the view that this is a short cut to succeed in both officialdom and business. The risk of being caught and punished for bribery was outweighed by the great chance of success in business and get even more profit than they were actually bribed. The rewards made the risk worthwhile.

Although the institutional reorganisation of 1998⁴¹ is of great significance in the realm of public sector reform, regrettably, it did not touch the pressing problem that looms large as economic development is accelerating. That is how to deal with the relationship between economic development and political system reform. Furthermore, it was lacking in enforceable and effective supervision systems to audit officials. Although economic responsibility supervision over government officials was launched recently, the lack of enforceable measures limits its implementation in practice.⁴² Consequently, officials were seen to be diverting too many public funds into their own pockets and enriching themselves abnormally by exploiting the powers of their offices, making governmental reorganisation even more difficult. There is a popular saying in the society that nine out of ten government officials in China are corrupt. These words might be too exaggerated to describe the situation of the present China's bureaucrats. But practically

³⁹ Zhong Jian (1998), *op. cit.*, p 21.

⁴⁰ Zhong Jian (1998), *op. cit.*, p 21.

⁴¹ A fourth large-scale government reorganisation was re-launched on March 6, 1998, with the aim of establishing a "highly efficient, well-coordinated and standardised administrative system, improving, further the system of the civil service to get the best fit for the requirements of the social market economy". For more details see chapter 5.

⁴² See People's Daily, Overseas Edition, 28 January 2000. On 3 December 1998, the State Council published the regulation for the implementation of the responsibility system of strengthening the role of the Party and establishing clean government. See People's Daily, Overseas Edition, 4 December 1998.

they indicate that corruption is so ingrained that it is hard to see how it will be eradicated from government institutions.

6.3.3. Defaults in Personnel Systems

Among the most conspicuous sources of official corruption during transitional periods are power-money trading and venality, particularly in the top ranks, traceable in large measure to unrestricted administrative privileges. The personnel system has emphasised the recruitment of officials, while failing to establish an effective supervision system over officials, especially the top rank officials. Thus the question “who is going to check the first rank officials” is repeatedly voiced in practice.

It seems likely that the problematic personnel system is going to continue due to a combination of financial and administrative powers, although there are some rules or measures stipulated to separate them. Yet the practice has seen the reverse. Corruption relating to “*chai-zhen-yi-zhi-bi*”⁴³ revealed the failure of personnel systems accompanied by people’s desire for money, which gave rise to corruption in China.

Were top officials free from the temptation of money and a comfortable life, as they should be according to the ideas taught by the Party that top government officials should be the first to bear hardships, the last to enjoy comforts? The exposure of the so-called “one, two, three, four” corruption cases in Beijing has led to a complete eclipse of the traditional ways and means of countering corruption dominated by powerful ideological education under the leadership of the Party. Wang Baosheng was the standing vice mayor in charge of financial affairs in Beijing. However Chen Xitong favoured “*chai-zhen-yi-zhi-bi*” based on unchallenged decision making totally by individuals.⁴⁴ It is reported that Wang loaned a vast bulk of national funds to a foreign trader who in turn used this sum of money to invest in the project in China and controlled 70% of its shareholdings.⁴⁵ Wang of course got some benefits from these dealings.

⁴³ This means a combination of financial and administrative powers.

⁴⁴ Zhong Jian (1998), *op. cit.*, p 28.

⁴⁵ Zhong Jian (1998), *op. cit.*, p 29.

The case of Wang Baosheng proved the dictum that power is an avenue to corruption, absolute power is an avenue to absolute corruption, which calls for high vigilance by the Party. Moreover, unrestricted administrative power with a position guaranteed for life enabled officials to profit for themselves by means of administrative powers. Chen Xitong held office for 17 years from his appointment as vice mayor in 1979 to being forced to resign in July 1995.⁴⁶ He was one of the highest government officials who was prosecuted for corruption in the Party's 70 years history. So far, China has not formulated any systematic measures (such as legal procedures of surveillance over top officials) for expressing the government's determination for anti-corruption. Dissatisfaction with the imperfection of the measures for anti-corruption was repeatedly voiced in slogans "managing the state by law, not by Party discipline" both in academic and government circles without result.

Corruption is rampant across China, in part because of the defective administrative system connected with the old government mechanism. Most importantly, administrative powers without restriction have the highest chance to be corrupt. This is because there is no counterweight to challenge them. For administration with a systematic, applicable, supervisory system the rate of corruption is most likely lower because it is more difficult to avoid detection.

6.3.4. The Pros and Cons of Anti-corruption Campaigns in China and Preliminary Recommendations

In practice the side effects of economic reform have engendered the rise of administrative companies, the pervasiveness of corruption, and hundreds of thousands of laid-off workers whose lives are, at least to begin with, worse off. After years of following Deng's economic reform strategy, the economy now needs another big overhaul if China is expected to cope with the fast growing global market economy. But as the economy changes, so must its political and personnel systems. It is true to say that

⁴⁶ Zhong Jian (1998), *op. cit.*, p 3.

China is on the verge of a political reform, more complex than the turmoil of Mao's personality cult, and more far-reaching than Deng's economic reform. On the grounds that Mao Ze-tung's thoughts and Deng Xiao ping's pragmatic reform strategies are both top-down theories and a hindrance for the third generation leaders in managing the state, they must surpass Mao and Deng so as to form a new legal theory for managing the state. Otherwise it is impossible to keep pace with the fast changing global economic situation and China's new market economy.

For China's sake, the aim of political system reform is not simply to adopt Western politics of multi-party rotation in power and democratic election, as dissidents have favoured. This is because no other party has the capacity to substitute for the Communist Party, at least at this transitional period, although corruption has been on the rise in China's political arena.

We cannot expect the officials who benefit from the weakness and loopholes in bureaucratic system to reform themselves. Thus it will be important to bring about changes in the political structure and moral environment to enable the people to exert greater pressure on those corrupt officials through freedom of press, decentralisation of administrative powers, and greater transparency in government decision making.⁴⁷

Clearly, the political system needs immediate reform on the ground that hierarchical, centralised bureaucracies designed for the planned economy simply do not function well in the rapidly growing market-driven transitions. The contradictions between economic development and the backward political system inevitably will result in corruption.⁴⁸ Thus how to deal with the relation between economic development and the political system has become extremely important. The political system has undertaken limited reform of its economy. Jiang Zemin cautiously chose anti-corruption as a measure to launch his political system reform, and removed Chen Xi-tong from his office by means of corruption accusations. Those who have an insight into Chinese politics know clearly

⁴⁷ Pasuk Phongpaichit and Sungsidh Piriya-rangsan (1996), *Corruption: Democracy in Thailand*, Trasvin Publications Limited Partnership, P 189.

that the exposure of Chen Xi-tong's case might illustrate the achievements of anti-corruption campaigns, or might be explained as the consequence of the political struggles. The ground for this is that, in present-day China, it is impossible to wipe out corruption without launching political system reform emphasising decentralisation of administrative powers, greater transparency in government decision making and strengthening the supervision system. Nonetheless, objectively, anti-corruption "kills two birds with one stone" as is shown below though it cannot bring about great changes in the political system facilitating economic reform.

Firstly, Jiang Ze-min's position as the state president, the general secretary of the Party, and the commander of the army, air, and the navy, has been strengthened. At the same time, the exposure of Chen's case warned the local governors to keep agreements with the CPC central committee, although local governors delegated many powers in the economy from the central committee, with the development of economic reform. It is said that few officials involved in market-based transition are free from corruption, and a lot of officials abuse their administrative powers to enrich themselves.

Secondly, the massacre of the June-4 student demonstration has frequently been subject to world criticism. Although the CPC central committee is, for some sensitive political reasons, reluctant to rectify the June-4 incident officially, in practice officials who had connections with the June-4 movement were either removed from office or prosecuted for corruption, as proved by the cases of Yang Bai bing⁴⁹ and Cheng Xi-tong. Clearly, the aim of Jiang is to "dilute" the connections of the present leadership in relation to the Tiananmen Square incident so as to build up people's confidence in government. Chen Xi-tong and Yang Bai-bing were none other than the key figures who had culpable responsibilities for the June-4 incident.

⁴⁸ Jiang Ze-min put forward twelve relations at the fifth session of the 14th plenary of the CPC central committee. However he did not mention the relation between the economic development and political system which are crucial to the Chinese political system reform.

⁴⁹ Yang Bai bing was a general of the people's liberation army and the member of the political bureau of the 14th CPC central committee. He was one of the general commanders to suppress the June-4 student demonstration.

The problem remains: why in recent years have Party leaders, even some top metropolitan officials, constantly indulged in corruption? Why after the CPC central committee initiated several nationwide anti-corruption campaigns,⁵⁰ were there still some leaders, who defied the law and, in defiance of the Party's discipline, took a risk in breaking the law? Obviously, the structure of the political system in China provides government officials with opportunities for corruption. If the Chinese government is still interested in flaunting its victories in exposing big corruption cases, whilst neglecting the establishment of a sound and enforceable supervisory system over government officials, Party-led anti-corruption campaigns cannot get rid of corruption, being merely aspirational.

It is difficult, at present, to tell whether anti-corruption campaigns will continue. It is thought that anti-corruption campaigns will end at a suitable time, on the grounds that corruption is so ingrained that it exists in the fabric of the day-to-day economic, judicial, and government activities. Here are some figures to show its ingrained stubbornness. It was reported that the people's procurators at different levels of the country handled 108,828 major economic crimes of bribery and corruption in 1998 alone, among which 35,084 were placed on file for investigation and prosecution, which involved 40,162 people.⁵¹ Currently, China is getting tough on corruption in the judiciary. Procuratorial organisations are being urged to strengthen supervision over civil, criminal, and administrative legal proceedings to ensure fairness of its judiciary. Between January and July 1998, they had examined 495,467 criminal cases, the procuratorates deemed 1,454 of the cases were either misjudged or mishandled, and 1,255 had been corrected.⁵²

⁵⁰ *jiandinbuyi fanfubai* (Anti-corruption firmly and unshakably), the second session of the Central Discipline Inspection Committee 1993; *shengru chijiu fanfubai* (Anti-corruption continually and deeply), the third session of the Central Discipline Inspection Committee 1994; *nuli qude fanfubai xin chenjiu* (Striving for new effective results on anti-corruption), the fourth and fifth session of the Central Discipline Inspection Committee 1995; *zhashi shengru youxiao* (Solid deep and effective), the sixth session of the Central Discipline Inspection Committee in January 1996; *bawuo daju zhajiezhaili jianchibuxie fanfubai* (Seizing the direction to fight against the corruption continually), the seventh and eighth session of the Central Discipline Inspection Committee in October 1996. All these books published by China Fangzhen press respectively.

⁵¹ See People's Daily, Overseas Edition, 13 January 1999.

⁵² China Daily, August 26, 1998.

Thus eliminating corruption thoroughly will inevitably lead to a strong reaction by the government bureaucrats on the one hand. But on the other, the Party's leading and governing ability will decrease with more and more corruption cases involving officials being brought to light. People might lose confidence in the government. So there is a saying that "the state will be destroyed without anti-corruption, the Party will be ended with thorough anti-corruption",⁵³ unless the third generation leaders are determined to launch a new bold political system reform to keep pace with the growing desire for managing the state by law rather than by Party's discipline. The fight against corruption is not simply the Party's aim in ideological and political struggles, but the political system reform vital to the very existence of the Party and the state.

To a certain extent, the UK's Citizen's Charter⁵⁴ initiative offers a good example for China to follow. The grounds are to illustrate as follows:

First, the Citizen's Charter makes a citizen become more aware of his/her rights to receive the quality service from government by means of setting service principles, standards and targets. This is an effective way to stop officials taking advantages of people's ignorance in order to make private gains for themselves.

Second, the Citizen's Charter also makes officials fully understand their role as public office holders to deliver quality service to the public by strengthening a set of systems to facilitate the implementation of Charter's principles, standards and targets, such as Charter Mark Scheme,⁵⁵ internal complaints system⁵⁶ and People's Panel.⁵⁷ This will be discussed more fully in later chapters.

⁵³ Ho Pin, *zhonggong zhugao juechcheng 1996-97 (Who's the Boss-The Highest Rank of Decision Making in China)*, Published by Mirror Books, Hong Kong, 1997, P.41.

⁵⁴ *The Citizen's Charter: Raising the Standards*, Cm 1599 (1991), London H M S O.

⁵⁵ Public services that provide "an excellent service to the public" have been awarded "Charter Marks".

⁵⁶ There appears a wide range of structured complaints systems in the British public sector over the last decade or so. Most public bodies operate their own internal complaints systems.

⁵⁷ People's Panel was established by the incoming labour government in 1998 in the UK. This is composed of 5,000 randomly selected citizens and will be consulted on the delivery of quality services to the public. For more details of Charter Marks, internal complaints system, and People's Panel, see the following chapters relating to the UK civil service reform.

6.3.5. Rethinking the Anti-corruption Campaigns

The increasing number of corruption involving higher government officials is becoming more and more astonishing accompanied by the prosperity of the economy and culture brought on by the economic reform. The reasons for officials having made an issue of corruption are:

- the deep-rooted Chinese “*guanxi*” and nepotism,
- the unreasonably low official salaries,
- the limitations on legal supervisory provisions and procedures for policing corruption,
- the paradox of economic developments and a rigid backward state mechanism.

Therefore, priority should be given to the design of a new political system to replace the traditional planned economic structure, on emphasising the primacy of the customers and the centrality of the tasks that need to be performed in the market economy. This means moving away from the model of the Party dominating the state activities to one where the government takes responsibility for the state’s conduct.

Obviously, political and administrative reforms in China are far more backward than economic reform. Despite a proliferation of regulations and commissions against corruption, there are still many areas in which it is possible to circumvent legal restrictions. For instance, corruption has permitted by the vagueness of the boundaries such as the ambiguous distinctions between public and private roles, resources and realms of behaviour, which created the opportunity for corrupt officials to take countermeasures. Furthermore many procedures for investigating allegations of corruption within the bureaucracy are limited in scope. A large measure of discretion to pursue or not pursue such investigation is given to the CPC central committee, which emphasises the role of the CPC in China, whereas the NPC is only a “rubber stamp”.⁵⁸ The NPC is far from being in untrammelled command of the state,⁵⁹ for the CPC central

⁵⁸ For more details of the relationship between the Party and the government, law and the Party policy, see chapter 4.

⁵⁹ The Chinese mechanism is woefully deficient in supervising government through the NPC, such a role is just beginning to be recognised by scholars and legislatures working in the administrative field. It is

committee still exists as a significant centre of powers. This is a serious problem in China's political and administrative reform.

Using lessons drawn from the metropolitan corruption cases of Beijing, it is all the more necessary to give first priority to establishing a systematic, applicable, and legal supervision system suitable for the market-based transition. Administrative and political activities should be seen to be under public supervision, the media should be allowed to expose illegal activities involving top officials freely. The existing principle of "democratic centralism"⁶⁰ should be implemented fully in the government structures so as to eliminate individual influence on important matters, such as recruiting and promoting civil servants, contracting big projects, and the public funds distribution. The practice of implementing this principle is prone to emphasise "centralism" and neglect the "democracy" which gave rise to top officials abusing their administrative powers. Decentralisation of decision making is an important means to combat corruption at the top levels. In search of a more workable administrative structure, an unwillingness to make radical and repeated organisational changes has attracted particularly attention. An important criterion in eradicating corruption is to create favourable conditions for the conscientious exercise of administrative power, and to avoid situations that might lead a group of officials to misuse it.

Certainly it will be a remarkable and unique endeavour to increase administrative responsibility supplemented by the legal sanctions for abuse of administrative powers. On this respect, an ombudsman system offers a good example of how to assure the quality of the state administration. Without taking effective measures to rectify maladministration in bureaucracy, maladministration will inevitably become the source of corruption. From this point of view, corruption can be blamed for the consistent failure to establish an ombudsman system within the Chinese bureaucratic and political

noteworthy that China is now strengthening the NPC's supervisory role of government in the areas of economy and has formulated the regulation (*juding*) to strengthen the supervising role of government in economy. See speech made by Li Peng at the closing ceremony of the fourteenth plenary of the 9th NPC on 1 March 2000. People's Daily, Overseas Edition, 2 March 2000.

⁶⁰ The organisational principle of the party and the state in China, namely, centralism on the base of democracy and democracy under centralised guidance.

systems. Thus it is all the more important to establish an ombudsman system as a preventive measure to curb corruption.

Then it is also important to promote a legal supervisory system to audit government officials. Admittedly corruption charges and corruption cases have been seen as a conspicuous feature of the Chinese political scene for many years. China must lose no time in concentrating on political system reform. As for government institutional restructuring, the first step is to audit maladministration and take it seriously. Otherwise public maladministration will persist and continue to be damaging. The second step is to import the ombudsman system into the Chinese government mechanism. This is because determination of the Party without specific and clear measures can not solve the problems of the pervasiveness of corruption in China.

All in all, Party-led anti-corruption campaigns run counter to the statements and reiterations of the Party's ultimate objective of eliminating corruption. The fact "the more the party fights against corruption, the more severe corruption has been in the society" proved indisputably that the traditional methods and means of managing state by means of ideological education does not seem to be consistent with the increased changes in the economic system brought on by the economic modernisation launched by the late Deng Xiao-ping in 1979. It poses a serious question of dealing with the relationship between economic development and the political system.

My argument here is whether the ideological means of anti-corruption campaigns launched repeatedly by the CPC central committee can substitute for systematic legal preventive measures in maintaining hierarchical control. To be more precise, can the state survive the Party-led anti-corruption campaigns? If not, it is urgent to dismantle the traditional means of countering corruption on the ground that overemphasising the Party's supremacy does not function well in the market economy, and does not accord with the principle of "governing the state by law". Therefore, top priority should be given to promoting a legal apparatus to formulate anti-corruption law, moving towards more systematic control of corruption through legal procedures such as establishing an asset commission to check those officials with unusual wealth. Moreover, the channel of

public control will help ensure quality and efficiency in decision-making processes and administrative conduct, for example, bidding on public projects, vast bulk loans, and important civil service appointments. This is the trend to control corruption, as has been proved by many other countries like United States, Japan and some European countries. In the long run, however, the checks and balances of a full legal system and the development of a NPC system will prove a more effective means to control corruption.

6.4. Conclusions

Discussions of cadre entrepreneurs and corruption cases involving higher government officials have demonstrated that the government institutional restructuring should go one step further by emphasising multiple lines of responsibility and supervision of government officials. The ground for this is that the existing rules relating to responsibility and supervision, for example, in relation to legal supervision over government officials, are woefully deficient in China. In China's case, the new wave of the government restructuring campaigns is moving into a new phase of reform that is likely to see greater emphasis on the market economy and macro-economic management. Nonetheless, this also reflects the limitations of China's pragmatic approach that had already ignored some dimensions of changes significant in public sector reform. The extent to which China's restructuring principles and pragmatism will survive the current push towards market-based approaches will depend on the application of specific market conventions of equal competition, and new management frameworks for guiding and giving the coherence to reform at this stage.

It may be beneficial to import the British 'Next Steps', 'Citizen's Charter', and 'Modernising Government' into the Chinese civil service to facilitate the government restructuring programme by applying private sector principles like 'competition' and 'flexibility' to respond to the changing situation, insisting on 'accountable management' and enforceable supervision over government officials. These measures may promote the process of public sector reform so as to enhance the public ethos of 'serving the people wholeheartedly'.

For this reason, the following chapters will concentrate on UK public sector reform in recent years so as to lay a solid foundation to serve the aim of this study, that is comparative research on public sector reform between the UK and China.

Chapter 7

CONSUMER ORIENTATION: THE MAIN THRUST OF PUBLIC SECTOR REFORM

7.1. Introduction

Until now, I have examined the common understandings and peculiarities inherent in the Chinese institutions and administration from ancient times to modern times, and the ways in which Chinese government mechanisms are being managed and organised. Now I shall turn to consideration of the legal principles, conventions and the recent reforms of the British constitution and administration for the purpose of comparatively research on civil service reforms in the UK and China.

Throughout the world public attention has been drawn in various degrees to empowering consumers in the realm of public services. A consumer orientation concerning the public sector, new principles of personnel management, and public ethics have led to a growing demand for reappraisal of the role of the consumer in the process of reshaping the relationship between the state and the public. Simultaneously, there has been much criticism of consumerism in public sector reform, as lacking political rights, electoral systems, and new measures to facilitate the further democratisation of government institutions, including a general right of access to official information. Keeping pace with the wave of consumerism in public sector reform, many major governmental initiatives have been launched. These in turn brought about fundamental changes in the working practice of the administration in which they influence the organisational politics of emerging managerial regimes, with the object of putting the customer first to manage and transform their culture, and to implement and execute government initiatives for the public. However, the consumer orientation

remains a public concern, which has led to considerable debate and discussion in recent years.

Against this background, this chapter aims to provide readers with a critical perspective on consumer orientation. It seeks to do so by supplementing a brief historical analysis with relevant political, social and administrative perspectives. The reason is that analysing the evolution of citizenship through social and historical contexts can be more useful than by logic alone. What happened in practice is always seen through a certain period of history. Then, law is applied in a social context. The law is to be found in statutes and the court decisions, but it may be that whilst certain aspect of the context are clear, others are a matter of inference, that whilst the basic law is clear its scope and application in context are not. Law is concerned with elaboration of the practical art of government through rules. Its concern is prescriptive and analytical. It is at this point that I have to prepare the ground for an argument on citizenship by examining past history. First of all, it traces the notion of citizenship in brief. Then it examines the recent rush to overhaul consumer empowerment in terms of incorporating users' view in policy evaluation and a consumer orientation towards the quality of public service, which has gained momentum in reforming the public sector and is becoming one of the central themes of governmental restructuring commitments. Finally, this chapter concludes by suggesting that a consumer orientation in evaluating public services is a fundamental and integral part of measuring effectiveness and, without such a perspective, policy evaluation will have limited legitimacy.

7.2. The Citizenship Debate

7.2.1. The Evolution of Citizenship

The evolution of citizenship from civil to political to social rights is generally acknowledged to have experienced three phases of development, based on T.H. Marshall's¹ viewpoint. In Marshall's account, political and social rights constitute citizenship. He raises his argument by delineating the history of the preceding 250 years

in terms of a ‘drive’ towards an ideal of citizenship. That ‘drive’ for him is identified with ‘a status bestowed on those who are full members of a community.’² The right to a ‘status’ belongs to every citizen in society who possess equally rights and duties associated with the emergence of a competitive market economy. It is true that citizenship, even in its early forms, was a matter of a paramount principle of equality, which ‘gave to each man, as part of his individual status, the power to engage as an independent unit in the economic struggle’.³

The first phrase had seen the elaboration of civil rights linked with freedom of religion, property rights, and freedom of contract, roughly coinciding with the eighteenth century. As Marshall puts it in his essay:

“...The rights necessary for individual freedom - liberty of person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to defend and assert all one’s rights on terms of equality with others and by due process of law.”⁴

The foundation of civil rights in the eighteenth century was based on the establishment of the ‘rule of law’,⁵ the abolition of occupational restrictions, and the ‘change from servile to free labour’.⁶

A formative phase of political rights began in the early nineteenth century with the completion of ‘adopting manhood suffrage, shifting the basis of political rights from economic substance to personal status’,⁷ which was finally universalised in 1918. Most significantly, the introduction of universal adult suffrage cultivated the new outlook of political rights, including ‘the right to participate in the exercise of political power, as a

¹ T.H. Marshall (1963), *Citizenship and Social Class in Sociology at the crossroads*, London: Heinemann.

² T.H. Marshall (1963), *op. cit.*, p. 87.

³ T.H. Marshall (1963), *op. cit.*, p. 90.

⁴ T.H. Marshall (1963), *op. cit.*, p. 74.

⁵ T.H. Marshall (1963), *op. cit.*, p. 77.

⁶ T.H. Marshall (1963), *op. cit.*, p. 79.

⁷ T.H. Marshall (1963), *op. cit.*, p. 81.

member of a body invested with political authority or as an elector of the members of such a body.’⁸

Social rights originated from the ‘membership of local communities and functional associations’⁹ including health care, education and a basic income, which were fully recognised as part of the institution of citizenship in the twentieth century. Social rights were effectively lessened by the 1834 Poor Law, which treated social rights, including the claim for poor relief, as ‘an alternative to citizenship’ rather than ‘an integral part of the rights of the citizen’, the claimants ceased to be citizens in any true sense of the world.¹⁰ Until 1918 paupers were disenfranchised. With the further expansion of social rights, education became a key part of social rights - the personal right to education was imposed on parents of children with a public duty to exercise it.

In Marshall’s account, citizenship is closely related to equality - equal rights, duties and the status of citizenship. He claims that ‘Citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed.’¹¹ Yet social class is based on a system of inequality, developed side by side with the extension of citizenship. The evolution of citizenship was seen as prevailing over class difference. It, for Marshall, does not form an attack on the class system. Citizenship has gradually undermined the inequality of the class system, for it moderates the inequalities generated by the market. As he states in his essay, ‘social rights in their modern form imply an invasion of contract by status, the subordination of market price to social justice, the replacement of the free bargain by the declaration of rights.’¹²

In Marshall’s view, twentieth century citizenship has imposed ‘modifications’ on the capitalist class system. Nonetheless, capitalism and the welfare state are compatible. Social democracy effects an alliance between them: The principles of citizenship, in certain respect, marks out the ‘architect of legitimate social inequality’.¹³

⁸ T.H. Marshall (1963), *op. cit.*, p. 74.

⁹ T.H. Marshall (1963), *op. cit.*, p. 81.

¹⁰ T.H. Marshall (1963), *op. cit.*, p. 83.

¹¹ T.H. Marshall (1963), *op. cit.*, p. 87.

¹² T.H. Marshall (1963), *op. cit.*, p. 115.

¹³ T.H. Marshall (1963), *op. cit.*, p. 73.

The development of government in Britain in the later twentieth century involved the extension of what Marshall called citizenship rights from the civil and political to the social and economic spheres. Although this involves a series of manoeuvres, the theory and practice of citizenship in the UK are more far-reaching than might appear on the surface. Firstly, the Citizen's Charter¹⁴ redefines citizens as consumers and the quality of the service is justified by the recipient of services through emphasising the benefit of marketisation for the user as the reason for public sector reform. Secondly, the White Paper *Modernising Government* provides the means to balance the 'rights' and 'responsibilities' of citizenship by way of distinguishing people into consumers and citizens.

7.2.2. Redefining Citizens as Consumers

Citizenship in the UK since the late 1970s has been presented through the formulation of a new concept of citizen as a consumer, notably in the Citizen's Charter launched in 1991 as a ten-year programme to improve public service quality. The recipient of services is perceived as a paying customer, who as such is entitled to expect the quality of the services from the service providers; the provision of which has hitherto been justified by a conception of citizenship as entitlement based on need. Moreover, and most importantly, the citizen is defined as an economic actor, not the bearer of needs, to the extent that it imports private sector principles concerning quality as the touchstone of successful service delivery. The implication is that the consumer's legitimate expectation of quality in the context of contracts for services should be bound up with a constitutional right where those services are provided by the public service agencies. The adhesive that forms the link between citizen and consumer is the idea of freedom upon which the concept of citizenship has developed into a useful technique for the legitimisation of the government's strategy in regard to public services.

The assertion of the right to liberty as the fundamental right of the citizen, linked with the claim that liberty is best secured through participation in the process of exchange,

suggests that the marketable public service is itself an aspect of the idea of citizenship. It carries with it the aim of satisfying the wants or preferences of the citizen, and in this way to justify the quality of the service received by the user. The relationship between the state and citizen through so-called market public services is implicitly conceptualised in the Citizen's Charter programme in terms of a semi-contractual nexus. 'Services are provided by the state as a quid pro quo for the tax paid by the citizen'¹⁵ and this of course permits the ultimate controller - the citizen - to access the quality of public services.

There is a growing recognition that citizenship in a modern perception has been construed as protection from excessive state power such as through freedom of official information and the right to benefits provided by the state. Moreover, the customer's legitimate expectation of quality services must be facilitated by empowering individuals in relation to decisions about the kind or level of public services that should be provided. From this viewpoint, the Citizen's Charter includes few elements for an enhancement of citizenship although 'its significance lies in its redefinition of a citizen as an economic actor - a consumer'.¹⁶

According to Prime Minister John Major, and at the programme's inception, the Citizen's Charter was said to be 'about giving more power to the citizens'.¹⁷ But the programme, neglects the role of the citizen as an active participant,¹⁸ instead it makes public services accountable for their standards of services to individual users, not to citizens, which appears to have little to do with an enhancement of citizenship. It covers many specific measures to raise standards of public services spreading across central government, health care, local government and public utilities, but does not "offer any comprehensive philosophy or set of principles defining the substance of social policy or

¹⁴ The Citizen's Charter, *Raising the Standards*, Cm.1599, London: HMSO (1991).

¹⁵ Anne Barron & Colin Scott (1992), *op. cit.* P 543.

¹⁶ Anne Barron and Colin Scott (1992), "Legislation: The Citizen's Charter Programme". *The Modern Law Review*, 55:4 July 1992 P 526-46.

¹⁷ Cm.1599, 1991, p 2.

¹⁸ Public Service Committee, Third Report of the Citizen's Charter. Session 1996-97, HC 78-I, para. 26, p xix. And also see written evidence in Volume II of the Third Report of the Citizen's Charter. Session 1996-97, HC 78-II, p 64.

the citizen's relationship with the welfare state. It is essentially a management mechanism to make services more responsive to what are said to be users .”¹⁹

The Citizen's Charter has not raised any proposals for political rights such as those enforced through the legal system. Nor did the Charter announce any new measures to facilitate the further modernisation of government mechanisms, for example, a general right for citizens of access to official information²⁰ and involvement of the public decisions on the quality of public services. Moreover, the Charter ignored the increasing demand to introduce a “Bill of Rights capable of converting the civil and political ‘liberties’ of the Britain subject into positive rights of citizen”.²¹ Thus, empowerment of the citizen as consumer could have been merely aspirational, for it was of limited legal effect and with few applicable means to assure it.

7.2.3. Developments under the Labour Government

It was largely perceived that some of these problems resulting from the Citizen's Charter have been tackled by the Labour Government, whilst committed to retaining the principles of the Charter programme, the Labour Government embarked on a consultation programme addressed on how to improve public services. The consequent effect was to launch the new Charter programme under the title of ‘Service First’²² on 30 June 1998. ‘Service First’, as part of the broader programme of Better Government, it is claimed, aimed at giving people the service they want accompanying an important, concrete step in the new agenda for better Britain. This agenda includes setting up a new People's Panel composed of 5,000 randomly selected citizens to research public opinion towards improving the quality of services. A Freedom of Information (FOI) Act²³ has now been passed with the aim of giving citizens the legal right to information about the running of public services and of transforming the culture in which public service

¹⁹ Minutes of Evidence on Wednesday 6 November 1996, p 1. The Third Report of the Citizen's Charter from the Public Service Committee. Session 1996-97, HC 78-I.

²⁰ For details see the FOI Act 2000.

²¹ Anne Barron & Colin Scott (1992), *op. cit.*

²² Citizen's Charter Unit (1998), *Service First - The Charter Programme*, available at <http://www.servicefirst.gov.uk>.

operates, though this has been subject to heavy criticism. The criticism is that, when Government promises greater transparency and learning in policy making process involving ‘feedback from those who implement and deliver policies and services’,²⁴ it contradicts the FOI which seeks to exclude all policy advice given by civil servants to ministers.²⁵ The implication is that ‘there is a huge gap between what is claimed and the contents of the FOI Bill as it is presently framed’.²⁶

In order to help government transform and modernise public service towards putting people first, the Labour Government launched a new initiative ‘*Modernising Government*’²⁷ in March 1999, with a blueprint for ‘achieving better government - better policy making, better responsiveness to what people want, better public services’.²⁸ As is clearly stated in the preface by Jack Cunningham, Minister for the Cabinet Office, the aim of *Modernising Government* is not to benefit those who work in government, but for people - people as consumers, people as citizens. One of the unique contributions of the modernising manifesto relating to the notion of citizenship is to distinguish people as consumers on the one hand, and people as citizens at the other. This distinction provides the legal means to solve the existing ambiguous notion of citizenship attached to the Citizen’s Charter. Learning from ‘lessons of success and failure’²⁹ over 20 years of public sector reforms, the government seems clear that for the paramountcy of consumers the public sector needs to develop certain incidents of citizenship while delivering services. Encouraging citizen participation in the development of policy and service objectives appears to incorporate the essence of citizenship in a modern perception. A modern citizenship, to a certain extent, in the present UK, is best secured through the People’s Panel and FOI, through which citizens have entitlements to good services and involvement in the public decisions on the quality of public services. This offers a modern concept of citizen’s relationships with the state.

²³ For discussions see Terence Dainthith and Alan Page (1999), *The Executive in the Constitution: Structure, Autonomy, and Internal Control*, Oxford University Press, p 367-373.

²⁴ *Modernising Government*, Cm 4310, March 1999, p 17.

²⁵ For more details of criticism, see Douglas Lewis (2000), ‘Modernising Government: Management Theory or Constitutional Theory?’ *European Public Law*, Vol. 6, Issue 2, p 208-210.

²⁶ Douglas Lewis (2000), *op. cit.*, p 216.

²⁷ Cm. 4310, March 1999.

²⁸ Cm.4310, *op. cit.*, p 9.

²⁹ Cm. 4310, *op. cit.*, p. 17.

Moreover, it has also brought the notion of citizenship nearer to the changing balance between consumer rights and citizen's responsibilities. Indeed, balancing peoples' rights and their responsibilities is a difficult and sensitive task, which the modernising project has claimed to achieve through working in 'partnership between agencies in the public, private and voluntary sectors, and often involve users and staff too'.³⁰ Rights - being bound up with the need for consumers to have more information on goods and services - have been multiplied, and they are to be precise entitlements, which every citizen is entitled to expect from public services. A number of Charter principles³¹ guarantee consumer rights to be realised in practice. The responsibility of citizenship most obviously and immediately associated with the completion of the right is the responsibility to be fulfilled by citizens, including early intervention and support 'in strengthening children's readiness for school, and in preventing social exclusion and crime'.³² The modernising declaration is a case in point. It is recognised that public services are something for the public as a whole, and that the citizen is encouraged to participate in the development of policy and service objectives through responsive public services and long term policies in the public interest. To this extent, it must compel citizens to fulfil some responsibilities, because unlimited rights could be dangerous. Ostensibly, the initiative of *Modernising Government* poses the question whether there is a valid ground for the balance of 'citizenship' between the rights and responsibility to reflect the modern realities of modern politics. The answer is positive for it has succeeded in finding ways to integrate rights with responsibility, with the emphasis on making sure 'that policies, programmes and services across the board are devised and implemented in ways that best meet people's needs',³³ people as consumers. On the other hand it addresses responsibility imposed on people as citizens being encouraged to take part in the development of policy and service objectives, for example, it is claimed that all parents are given the opportunity to contribute to the consultation 'Excellence in School'.³⁴

³⁰ Cm 4310, *op. cit.*, p 30.

³¹ Since launching the Citizen's Charter programme in 1991, a number of Charter principles were set out; by 1996 these had been revised to set out new principles which every citizen was entitled to expect from public services. See Public Service Committee, The third Report of *The Citizen's Charter*, Session 1996-97, HC 78-I. p xii. And also see chapter 9.

³² Cm 4310, *op. cit.*, p 17.

³³ Cm. 4310, *op. cit.*, P. 11.

To achieve the changing balance of citizenship between rights and responsibilities, inclusiveness and integration is the keystone of operations for achieving the Government's strategy. *Modernising Government* proclaims three aims to ensure that government is both inclusive and integrated. The three aims are: 'Ensuring that policy-making is more joined up and strategic; making sure that public service users, not providers, are the focus, by matching services more closely to people's lives; delivering public services that are high quality and efficient'.³⁵ 'Joined-up' government is novel and of considerable significance for the evolution of citizenship in the modern complex society. The subsequent establishment of a "People's Panel" marks the new face of citizenship in a modern perception. The new feature of citizenship embraces both citizens' entitlements to good services and citizens' involvement in the development of policy and service objectives. In other words, citizenship rights, in their modern sense, are closely linked with both rights and responsibilities - the rights to benefits provided by the state, and a certain kind of responsibility to the state, the responsibility to protect social conditions, public health and the duty to be involved in the process of public sector reform.

It is increasingly recognised, at the beginning of the 21st century, that citizenship needs to be enriched, meaning that 'citizenship' in a modern perception cannot be merely satisfied by citizens' entitlement to good services, it needs to embrace citizens' involvement in policy and service decision process. The relationship between the state and citizens under the modernising programme is to be one of mutual obligations and duties, rather than one of free exchange, as happened in the private sector. Furthermore, as information technology has impacted in many ways on our lives, communications and learning, people are becoming more demanding, whether as consumers of goods and services in the market place, or as citizens affected by the policies and services which government provides.³⁶ To meet these demands, government must be willing constantly to modernise government towards effectiveness both responding directly to the needs of people - such as in health, education and social services and, acting for society as a whole such as protecting the environment and promoting public health.³⁷ It

³⁴ Cm 4310, *op. cit.*, p 19.

³⁵ Cm. 4310, *op. cit.*, p 6.

³⁶ Cm 4310, *op. cit.*, p 15.

³⁷ Cm 4310, *op. cit.*, p 10.

goes without saying that the duty to improve and protect oneself is therefore a social duty, and not merely a personal one, because the social health of a society and the prosperity of the country depend upon the involvement of its members. Thus enriching people's rights combined with a public duty is the first decisive step on the road to re-establishment of citizenship in the information age.

In this aspect, the new initiative of *Modernising Government* gave a deeper understanding of consumer aspiration, and facilitated the extension of Marshall's citizenship rights. It empowers citizens through fundamental rights to voice their involvement in the delivery of the public services, and also may give consumers the legal rights of access to government information. As consumers of the public services they are entitled to expect what they want and need from the government. As citizens reliant on public services they are required to perform a certain kind of responsibility, which imposed on citizens a public duty to exercise it, including the 'contract'-style documents, such as home-school partnership documents, claimant to be a genuine partnership between those providing services and those using them.

7.3. Consumer Empowerment

There is a growing recognition that consumer empowerment is gaining momentum in reforming the public sector, which is manifest in the recent trends towards obtaining feedback from users in policy evaluation and pursuit of quality services.³⁸ The Citizen's Charter, as is claimed, aims to make "public services answer better to the wishes of their users and to raise overall quality".³⁹ The increased importance ascribed to consumer empowerment is linked to the notion that quality of public service can be improved if service delivery is subjected to market forces, because market forces empower the citizen.⁴⁰

³⁸ Colin Knox and Denise McAlister (1995), "Policy Evaluation: Incorporating Users' View", *Public Administration*, Vol. 73 Autumn (413-436).

³⁹ Cm 1599, 1991, p 2.

⁴⁰ Anne Barron and Colin Scott (1992), *op. cit.*

In the UK, consumer empowerment has been deployed in the overall vision of public service reform articulated by the Major administrations in early 1990s, particularly the launching of the Citizen's Charter that led to its subsequent derivations. Pursuit of quality can be achieved, according to the Prime Minister John Major, by enabling the citizen to exercise choice, rather through an extension of state action:

“The Citizen's Charter is not a recipe for more state action; it is a testament of our belief in people's right to be informed and choose for themselves.”⁴¹

An important means by which the rights to information and choice are to be achieved is by empowering public service users that has been known as consumerism, the public service orientation and pursuit of quality.⁴² Pollitt has described consumerism as ranging from ‘cosmetic charm school approaches through improved provision of information to direct consumer participation and power sharing’.⁴³ This description involves both a political and professional commitment to redefine recipients of public users, which carries with it the implication that obtaining feedback from users is of great significance in measuring effectiveness of public services. Thus how best or in what circumstances to obtain feedback from users - the fashionable term for ‘consumers’ - plays a considerable role in policy evaluation.

7.3.1. Incorporating Users' View in Policy Evaluation⁴⁴

Incorporating users' view in policy evaluation is part and parcel of the common, though frequently unarticulated, understandings and objectives attaching to the public policy process. Put quite simply, it is the principle that public service providers - at all levels - should consult their users in final decisions about standards. “Regular and systematic

⁴¹ Cm 1599, 1991, P 2.

⁴² Pollitt, C. (1993a), *Managerialism and public services* (2nd edn.). Oxford: Blackwell.
____ (1993b), ‘Occasional excursions: a brief history of policy evaluation in the United Kingdom’, *Parliamentary Affairs* 46, 3, 353-62.

⁴³ Pollitt, C (1988), “Bringing consumers into performance measurement: concepts, consequences and constraints”, *Policy and Politics* 16, 2, (77-87), p 78.

⁴⁴ Colin Knox and Denise McAlister (1995), *op. cit.*, (413-436).

consultation with users”⁴⁵ is “a fundamental and integral part of measuring effectiveness and without such a perspective, policy evaluation will have limited legitimacy”.⁴⁶ The implication suggests that incorporating users’ view in policy evaluation leads not only to a more comprehensive package of changes in managing public services, but also reflects a decision-making process no longer determined by either politicians and/or public officials; users’ involvement demonstrates this assertion. A consumer-oriented approach aims “not merely to please the recipients of public service (difficult and worthy through that may be) but to empower them”.⁴⁷ Herein the public is seen as both consumers/users and citizens, which is in harmony with the mission of modernising government for people - people as consumers, people as citizens. This statement indicates that the user is entitled not only to good service, but also to respect, knowledge of and about decisions and, perhaps most importantly, the right to be heard and to be listened to.⁴⁸ A Freedom of Information Act gives to public service users the legal right to information about the running of public services, and the People’s Panel provides them with an opportunity to voice their views of the delivery of public services. In the end the public is to be seen as the ultimate controller of measuring effectiveness of performance. Indeed “the emphasis in the structuring of the management of public services has been increasingly placed, both by government and opposition, on strengthening the position of the public as a consumer or as citizen in public services”.⁴⁹ A consumerist sentiment has been expressed in both Major and Blair administrations in the UK relating to public sector reforms.

In this case, consumerism has become one of the central themes of public sector restructuring, being involved at any stage and level of the policy process including formulation, implementation and evaluation of policy that is challenging the traditional means of public service management and the delivery of services. Hence the meaning of consumerism remains a live issue. In one instance, consumerism has been described by

⁴⁵ Public Service Committee, The third Report of *The Citizen’s Charter*, Session 1996-97, HC 78-I. p xii.

⁴⁶ Colin Knox and Denise McAlister (1995), *op. cit.*, P 413.

⁴⁷ Pollit, C (1988), *op. cit.*, p 86.

⁴⁸ Clarke, M. and J. Steward (1987), “Public service orientation - developing the approach”, *Local Government Policy Making* 13, 4, 23-42.

⁴⁹ Jackson, P. M. and B. Palmer, (1992), “Developing performance monitoring in public sector organisations: a management guide”. University of Leicester: The management Centre. P 50.

Pollitt⁵⁰ and Wistow and Barnes⁵¹ as a continuum ranging from better customer care, providing more information for users, through to empowerment whereby consumers are involved in the management and delivery of services. The process of empowerment poses questions about the role of consumers in a democracy. The question remains: could such user empowerment be seen as expropriating the role of elected representatives and officials? Wistow and Barnes concluded in their community care study that users were more concerned with ‘the delivery of high quality, responsive services than to being directly involved in decisions about their overall management and delivery’.⁵² In practice, some case studies also suggest that users are more interested in responding to service provision than their management and delivery, the most obvious example being the low level of interest in parent-governor posts in education.⁵³

Undoubtedly, the Charter has made an enormous difference to the degree to which services bother to find out the views of their users, but they do not always make this a permanent part of their work.⁵⁴ Therefore, Norman Lewis argued in particular, for open procedures of consultation⁵⁵ as consumer empowerment lacks an adequate legal framework for consultation to sustain it in practice. And at the same time he advocated something along the lines of the US Administrative Procedure Act: it requires that public bodies should be required to publicise their plans, proposals and major initiatives and invite comments from the public at large.⁵⁶ The *Modernising Government* initiative has introduced some novel ideas to tackle the existing problems that public services are organised too much around the structure of the providers to look after their own interests rather than the users.⁵⁷ These novelties include the national focus group or ‘People’s Panel’, the establishment of new institutions such as the Centre for Management and Policy Studies, and more use of telephone access for services (NHS Direct and Employment Service Direct). These novelties are being implemented with the intention

⁵⁰ Pollitt, C. (1988), *op. cit.*

⁵¹ Wistow, G. and M. Barnes (1993), ‘User involvement in community care: origins, purpose and applications’. *Public Administration* 71, 1, 279-99.

⁵² Wistow, G. and M. Barnes (1993), *op. cit.*, p 297.

⁵³ For details see Brehony, K. J. (1992), ‘Active citizens: the case of school governors’, *International Studies in Sociology of Education* 2, 2, 199-217.

⁵⁴ Public Service Committee, The third Report of *The Citizen’s Charter*, Session 1996-97, HC 78-I. paras 27, p xix.

⁵⁵ Public Service Committee, The third Report of *The Citizen’s Charter*, Session 1996-97, HC 78-II. Written evidence, p 57-8.

⁵⁶ HC 78-I. p xx. And also see written evidence of HC 78-II, p 55.

of making sure that ‘policies, programmes and services across the board are devised and implemented in ways that best meet people’s needs, where necessary by working across institutional boundaries’,⁵⁸ as is the case of cross-cutting policy in practice - Sure Start.⁵⁹ It is too early to make a definitive assessment of the outcomes of these novelties that is just beginning. However, once fully implemented, the measures of consulting user’s views on public services will bring about innumerable benefits to public sector reform.

7.3.2. Consumer Orientation: Towards Quality

The recent public sector reform drive reflects the emphasis on improving quality of service, which has become another dimension of empowerment, although quality is ‘inherently hard to define or measure’.⁶⁰ There is a growing consensus that making an assessment of service lies in the end users for whom the service is provided, since the only real measure of quality of service is whether it delivers customer satisfaction. ‘Quality is...a customer’s perceptions of certain features of the service and the values placed on these features. Quality is, therefore, in the eye of the beholder’⁶¹ in which the service users have become the key informants.

Obviously, consumer orientation in public administration is largely found in the emphasis on the quality of public service, with ‘new commitments to quality assurance, quality control, the setting and attainment of standards and enthusiasms for initiatives such as ‘total quality management (TQM) systems’⁶² and ‘quality public services’,⁶³ which aim to ‘deliver efficient, high quality public services and will not tolerate mediocrity’.⁶⁴ The corollary of the explosion in the measurement of quality in public

⁵⁷ Cm 4310, *op. cit.*, March 1999, p 11.

⁵⁸ *Ibid.*, p 11.

⁵⁹ *Ibid.* p 17. In order to effect the different ways of tackling cross-cutting policies, the government claims to set up several units to back up this policies, for example, the establishment of Social Exclusion Unit, Women’s Unit, the Crime reduction programme, and so forth. For more details see Cm 4310, p 17-18.

⁶⁰ Audit Commission. 1992. *Citizen’s Charter performance indicators*. London: The Audit Commission. p 7.

⁶¹ Jackson, P. M. and B. Palmer (1992), *op. cit.* p 50.

⁶² John Clark & Janet Newman (1997), *The managerial state*, SAGE Publication Ltd. p. 119.

⁶³ Cm. 4310, March 1999, p. 7

⁶⁴ *Ibid.*

sector led to a series of political manoeuvres and practical measures for restructuring the public services. Indeed, ‘quality’ has attracted increasing attention in the search for greater organisational efficiency and in the attempt to provide quality service to consumers. ‘Quality’ by definition, has a broad and changing meaning, which is determined by different focuses and diverse quality goals, and eventually determines the public service delivery. John Clark illustrates three models of quality with his co-author:

‘Senior managers (not surprising) often favour managerial models, prioritising the development of uniform standards across a whole organisation (which acts as a control device) while professionals favour ‘expert’ views. Service delivery staff are more likely to favour consumerist models in which ‘responsiveness’ rather than standardisation is paramount (thus placing greater value on the skills and judgements of front line staff)’.⁶⁵

Ostensibly, quality is paramount on the managerial agenda for achieving greater organisational efficiency and the ‘sovereign consumer’ of public service. ‘Quality also remains a highly charged and unstable focus of attention through which a variety of social, organisational and occupational conflicts are played out.’⁶⁶

Defining quality is the first step of quality assurance, and this is generally to be achieved in the UK through setting and attainment of standard public services and targets, followed by a series of check and control measures to guarantee them. The Britain Government has created a number of levers to drive up standards in public services, including the Comprehensive Spending Review,⁶⁷ the new Public Service Agreements (PSAs),⁶⁸ a new approach to public expenditure planning and control,⁶⁹ the new mechanisms for managing delivery,⁷⁰ and four principles for performance management and inspection.⁷¹ Thus, conformity to standards/targets and satisfaction of the needs of consumer as public purchaser should normally be present simultaneously, quality public

⁶⁵ John Clark & Janet Newman (1997), *op. cit.*, p. 120.

⁶⁶ *Ibid.*, p. 120.

⁶⁷ Cm. 4310, March 1999, p. 36.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, p. 37.

⁷¹ *Ibid.*

services cannot be achieved if targets/standards of public services are flawed in formulation and irrational. Public service today is much more than public administration in the traditional sense - quality service determined by the ultimate controller, the 'consumer', is taking on a dominating position.

Clearly, consumerism with the implication of the coming of consumer protection in public administration embraces a particular conception of diversity. This diversity of individual needs had been flattened by the old regime of universal and standardised provision through traditional bureaucratic regimes as it is claimed, whilst consumerism with the new values of quality services is linked to the business ethos of 'serving the customer' which reasserts notions of diversity. The latter led to some important developments in public service structures, including the service principles, management, standards and assessments.

Putting the consumer back into the institutional restructuring and the practices of managing the state is no easy task. Restructuring the public services linked with consumer responsiveness raises a number of problems, such as ministerial responsibility, supervision, and management. How to solve these problems attracts particular attention, as they will affect the process of public sector reform. The government, as is claimed, is doing more to develop its commercial skills through public/private partnership to deliver public service so as to get the best deal for users.⁷² Now 'the private sector is able to bring a wide range of managerial, commercial and creative skills to the provision of public services, offering potentially huge benefits for the Government'.⁷³ Will the 'Private Finance Initiative'⁷⁴ (PFI) strengthen performance by making best use of private/public partnerships? This question will be discussed in greater depth later on, but it does, at all events, delineate an area of consumer focus for inclusion in the evaluation process of measuring effectiveness of public services. Quality assurance techniques, which have been used with the creation of internal markets within the civil service, local authorities and the NHS, demonstrate this

⁷² Cm 4310, *op. cit.*, p 36.

⁷³ The Forward to *Partnership for Prosperity - the Private Finance Initiative* (Treasury Taskforce on Private Finance, November 1997).

⁷⁴ *Ibid.*

assertion. Thus it is of greater importance to research the role of consumer protection in public sector reform.

7.3.3. Criticisms of Customer-driven Perspective

The creation of market public services focusing on consumer-driven philosophy in policy evaluation, significant though they have been for consumer protection, has still drawn increasing critical attention. Whether or not such models befit the organisation of public services lies at the heart of the argument. Knox and McAlister argued:

“Blind adherence to a ‘let’s find out what the punters think’ approach could not only ultimately undermine the credibility of evaluation as a process, but also invalidate the contribution of users as no more than a trite and token commentary on service provision, serving only to placate the requirements of evaluation funders.”⁷⁵

The ground for this is that the customer-driven philosophy is in danger of ignoring some of the practical and methodological realities in evaluation. For example, under what conditions or circumstances is it beneficial to involve users directly in a policy evaluation?⁷⁶ It goes without saying that the public sector can learn from the experience of the private sector on marketing its products but marketing cannot be simply conveyed from one sector to another. This is because marketisation in the public sector is operated on the basis of political decisions being set up by politicians for implementation through bureaucratic organisations rather than the private market, ensuring that equity and fairness can be maintained. In Walsh’s account, the approach to marketing in the public sector will lead to fragmentation of the organisation, with each unit and cost centre pursuing its own interests at the expense of the interests of the organisation as a whole.⁷⁷ The modernisation agenda takes this fragmentation seriously with the consequence of adopting various solutions to this problem, such as setting up special units including many departments involved in a particular policy, such as social exclusion, women, crime reduction, and drugs at central government level. Outside central government, the

⁷⁵ Colin Knox and Denise McAlister (1995), *op. cit.*, p 417.

⁷⁶ *Ibid.*

main solution is to foster partnerships among agencies including public-private partnerships encouraged by the Private Finance Initiative and closer collaboration between organisations.⁷⁸ If successful, the rich diversity of partnerships, together with joint-up policy-making process, could mark the new face of the British politics.

Is there beyond this, a customer role, a role for the empowerment of individual users to make choices? Burnes and Prior present these perceptions in their research.⁷⁹ Some arguments also focused on whether or not the necessary conditions for being a consumer exist in public services. These arguments are based on a recognition of the nature of the market model that consumer is sovereign. While in public service practice consumer sovereignty is limited by such factors as monopoly, very often the power of consumer is hollow, merely appreciated by politicians as political manoeuvre. In the public sector, the concept of sovereignty is itself called into question. Therefore, it is vital to find the appropriate balance between on the one hand consumer sovereignty in the public sector and on the other to maintain quality services through user involvement, including user councils, panels and user choice. So far as public service is concerned, some public services such as highways, sanitation and others, may only be consumed collectively, while there are inconsistencies between those who pay for public services and those who consume them socially and geographically.

Studies of market public services have also pointed to ‘abnormal incentives’, meaning that the practice of public sector reform deviates from its sole and single aim of putting people first. In turn these encourage organisations to attract business reflected in a growing concern with issues of setting business targets, various means of responsive service, the forms of competitive behaviour, rather than trying to attract customers by enlarging the entry to services. Thus, from this point of view, the management of organisations takes priority over public service.⁸⁰ They are provided with few restraints on the process of enforcing their own definitions of market and public service or how

⁷⁷ Kieron Walsh (1991), *op. cit.*, p 15.

⁷⁸ Cm 4310.*op. cit.*, P 36.

⁷⁹ Burnes M. & Prior D. (1995), ‘Spoil for choice? How consumer can disempower public service users?’ *Public Money and Management*, July-September, P. 53-59.

⁸⁰ For details see Norman Lewis (1994), ‘Reviewing Changes in Government: New Public Management and the Next Steps’, *Public Law* (105-216); and also Jane Broadbent and Richard Laughlin (1997),

they are to interact with each other. The aim of public sector reform in relation to empowering citizens and providing greater user choices may run counter to the normative framework of professional discretion. Creating sub-units, such as Next Steps agencies, NHS trusts, and locally managed schools, amounted to fundamental organisational restructuring. Details will be given in the following chapters. Nonetheless, consumer empowerment, supplemented by competition over public management incentives, occupied a central place in public sector reform.

7.4. Conclusions

Criticisms based on a customer perspective have several implications for the Chinese consumerism drive in restructuring public services. These involve criticising the traditional means of achieving the aim of ‘serving the people wholeheartedly’ through national ideological and political education. A series of large-scale Party-led national mobilisations does not work well in contemporary China because people lose confidence in political propaganda, instead people start to run after tangible manifestations of wealth, such as limousines, luxury apartments, and lavish banquets, the matter has been discussed in chapter 5 and 6. In a modern complex society, affirmation of ‘serving the people wholeheartedly’ without concrete and applicable measures, such as service standards and targets, to back it up remains appreciated only by politicians, on the ground that citizens are more interested in what service providers do and how⁸¹ to achieve the aim of serving the people, rather than illusory political empowerment. Moreover, consumer empowerment cannot merely be satisfied by political propaganda as this cannot save China and makes the consumerism drive hollow in practice. From this point of view, consumer empowerment must be supplemented by a more comprehensive package of consumers’ rights, the rights to be heard and to be listened to, as is the case of British-launched development of the People’s Panel and Freedom of Information Act. Finally, and most importantly, in the Chinese political agenda, the thrust of consumerism should be given to making public officials aware of their accountability to the public in delivering services and making citizens aware of

⁸¹ ‘Evaluating the “New Public Management” reforms in the UK: a constitutional possibility?’ *Public Administration*, Vol. 75. Autumn (487-507).

what they are entitled to get from government as these are woefully deficient. These issues will be discussed further in chapter 12.

Consumer orientation as the main thrust of public sector reform has been discussed in this chapter. Attitudes towards consumerism turned out to be quite varied in public sector reform. Indeed, there is a mixture of views as to whether conceptualising people as consumers works or not. A critical and informal appreciation of consumer orientation is provided by supplementing a historical analysis with relevant political, social, economic and administrative perspectives based on the evolution of citizenship, and consumer empowerment in terms of users' involvement in policy evaluation and the quality of service. In such an area quality service is much emphasised through a series of governmental initiatives and the realities of public sector reform.

The deeper question concerns a shift towards a consumerism that is more fundamentally manifest in the process of governmental restructuring campaigns as happened in the UK over recent years. This is part of the large question of the extent to which commercial approaches to management can be transferred to public service.⁸² In order to provide sufficient background for the latest move to overhaul administrative reforms in the UK, the following chapter details Next Steps and the changing civil service structure.

⁸¹ David Farnham & Sylvia Horton (1996), *op. cit.*, p. 34.

⁸² Pollitt, C. (1990), *Managerialism and the Public Services: The Anglo-American Experience*. Blackwell, Oxford.

Chapter 8

NEXT STEPS AND THE CHANGING CIVIL SERVICE STRUCTURE IN THE UK

8.1. Introduction

The major thrust of consumer orientation in the public sector reform has been discussed in the previous chapter. This chapter will address the changing civil service structure brought about by the Next Steps initiative.

For many years, the British civil service has had a high reputation for its standards of integrity, impartiality and loyal service to the government of the day both nationally and internationally. The civil service as such has no constitutional personality or responsibility separate from the government of the day. Indeed, the civil servant's anonymity is typically the corollary of ministerial responsibility though it is rapidly changing. The convention of individual ministerial responsibility to Parliament is the most essential characteristic of the civil service which is commonly acknowledged by most authoritative writers on British constitutional law and practice, including A W Bradley, K D Ewing, Stanley De Smith, Rodney Brazier, Jeffrey Jowell, Dawn Oliver, P P Craig and so forth.¹ The Cabinet is collectively responsible to Parliament in general and the House of Commons in particular. The blending of executive and legislature is a fundamental peculiarity of the British system of government.

¹ Stanley De Smith & Rodney Brazier (1994), *Constitutional and Administrative Law*, Seventh Edition, Penguin Books; Jeffrey Jowell and Dawn Oliver (2000), *The Changing Constitution*, Fourth Edition, Clarendon Press, Oxford, chapters 5 and 6; A. W. Bradley and K. D. Ewing (1997), *Constitutional and Administrative Law* (Twelfth Edition), Longman: London and New York.

This is the theory; the practice is different. The main features of the British Constitution today differentiate it from those of other countries. First, the British Constitution is not written in a basic document or group of documents.² It has evolved over the centuries with but few sudden or dramatic changes, and a high degree of historical continuity has been maintained as the constitution has been brought up to date. Subject to European Community Law, Parliament as a legislative body can enact any laws whatsoever on any subject whatever in the eyes of United Kingdom courts, according to the traditionally held view. Particularly in the working of the executive branch of government and its relationship with the legislature, the constitution is regulated to a large extent by rules that are called constitutional conventions.³ They are rules of political conduct or binding usage.⁴ Second, the absence of a cumbersome procedure for altering rules of constitutional importance, the omnicompetence of parliament, and the pliability of many constitutional conventions tend to make the British constitution flexible and easily adaptable. This can be evident from the view of Norman Lewis that ‘a constitutional revolution is taking place, but without an accompanying national debate’.⁵ Indeed, the United Kingdom has a unitary system of government and when the need for a change of direction or the override of previously announced policy is felt, political, institutional and ideological adoption is required to this changing situation rather than specific legislative authority or national debate.

In recent years, however, British ‘conventions of the constitution’⁶ that constitute much of the constitutional law of this country have been challenged by a series of important public sector reforms heralded by government initiatives and public sector realities, such as the Financial Management Initiative, the Next Steps programme, the Citizen’s Charter, Market Testing, Service First and Modernising Government. The reality of

² A. W. Bradley and K. D. Ewing (1997), *op. cit.*, Chapter 1.

³ For analysis see A. W. Bradley and K. D. Ewing (1997), *op. cit.*, chapter 1.

⁴ Stanley De Smith & Rodney Brazier (1994), *op. cit.*, chapters 2, 9, 10, and 13. Jeffrey Jowell and Dawn Oliver (1994), *op. cit.*, chapter 5 and 6.

⁵ Norman Lewis (1994), ‘Reviewing Change in Government: New Public Management and the Next Steps’, *Public Law*, P 105.

⁶ In A. V. Dicey’s account, the essential distinction of constitution is the ‘law of the constitution’ and the ‘conventions of the constitution’. The former is composed of rules enforced or recognised by the courts, which makes up a body of ‘laws’. The latter consists of customs, practices, maxims, or precepts which are not enforced or recognised by the courts, making up a body not of laws, but of constitutional or political ethics. The law of the constitution is connected with the conventions of the constitution. See A. V. Dicey, *Introduction to the study of the law of the constitution*, Liberty Fund Indianapolis 1982, P. 277.

public sector reforms has been searching for attempts at improving public sector performance through forms of deregulation, privatisation, contractualisation and marketisation. Among all these initiatives, Next Steps, launched in February 1988 by the Prime Minister's Efficiency Unit, is perhaps the most significant one, which has had a great impact on the organisational restructuring of government departments.

Therefore, this chapter will first examine the Next Steps programme in relation to the government mechanism's reorganisation. Then it continues by examining the Framework Documents stemming from the creation of the Next Steps agencies and their legal force. What would Framework Documents do? Would the Framework Documents create an effective way to resolve the problems of operation and accountability? Finally, I shall discuss the other forms of government by contract and what China can draw from the UK's experience of organisational restructuring.

8.2. Next Steps

8.2.1. Background

Like many other countries in the world, the 1980s were the beginning of a period of substantial development in the field of civil service restructuring marked by tough new policies⁷ in the UK. The result of this was the very *raison d'être* of the creation of the Next Steps agencies to deliver service to the public. In 1988, Next Steps was launched with a report from the Prime Minister's Efficiency Unit *Improving Management in Government: The Next Steps*. Indeed, the significance of the Next Steps has been described as 'the most ambitious attempt'⁸ at transforming the British system of central government since Fulton Report of 1968. This earmarked for major shake-ups the organisational arrangement of government departments from the entities of the traditional civil service hierarchy to a loose federal civil service accompanying the

⁷ G. Drewry & T. Butcher (1991), *The civil service today*, 2nd edition, p 164-6.

⁸ Treasury and the Civil Service Committee (1990), Eighth Report 1989/90, *Progress in the Next Steps initiative*, HC 481, London: HMSO. Also see Terence Daintith and Alan Page (1999), *op. cit.*, p 37-41.

evolution of the ‘new public management’⁹ (NPM to be discussed in chapter 9) imported from the ‘private business systems and techniques into public services’.¹⁰

A shake-up in government mechanisms can be implied from the Thatcher Government’s “determination to ‘de-privilege’ the civil service”.¹¹ On February 18, 1988, Mrs Thatcher took the lead in announcing a plan to reform the civil service by hiving-off 70,000 jobs to new executive agencies,¹² which created a new epoch of British government mechanism restructuring. In mid-1988, the first Next Steps agency was set up. From that time onwards, the momentum for restructuring the state has been a pervasive strand in British administration. Hardly any organisational arrangements have been left untouched by the waves of reforms from the civil service to the local organisations relating to public service delivery. By April 1998, over 138 agencies had been set up, employing up to 325,669 agency staff of which the total civil servants are 299,145. The largest is the Social Security Benefits Agency that has had delegated to it many of the functions of the department since its establishment in 1991.¹³ This development has deepened in its breadth, its tenacity and its impact across the central government as is the case of more candidates for agency status announced by ministers which can be shown in table 8.1. Although there is no longer scope for much further development of Next Steps, it was hugely effective on the structure of the civil service, now three-quarters of all civil servants operate in such agencies.¹⁴

Table 8. 1. Next Steps—Activities announced by Ministers as candidates for Agency Status as at 31 December 1998

⁹ J. Stewart & K. Walsh (1992), ‘Change in the Management of Public Services’, *Public Administration*, 70/4: 499-518. C. Hood (1991), ‘A public Management for all Seasons’, *Public Administration*, 69/1: 3-20.

¹⁰ David Farnham & Sylvia Horton (1996), *Managing the New Public Services*, MACMILLAN, P. 260.

¹¹ Gavin Drewry, ‘Revolution in Whitehall: The Next Steps and Beyond’, in Jaffrey Jowell & Dawn Oliver (1994), *The Changing Constitution*, Clarendon Press, Oxford, P. 156.

¹² Robert Baldwin (1988), ‘Next Steps: Ministerial Responsibility and Government by Agency’, *The Modern Law Review*, Vol. 51, September 1988, P 622-28.

¹³ Next Steps Report 1998, Cm. 4273, March 1999. London: The Stationary Office. P 326. Annex A.

¹⁴ *The Civil Service in the New Millennium*, Speech by Sir Richard Wilson, Head of the Home Civil Service, May 1999. This is available at http://www.cabinet-office.gov.uk/1999/senior/rw_speech.htm.

Confirmed Agency Candidates:

	Department	Staff
Criminal Records agency	Home Office	1,200
Crown Solicitor's Office	NIO	100
Agency Candidates Under Consideration		
	Department	Staff
Agricultural Colleges and Department Service	NICS	530
Appeal Service Agency	DSS	920
Army Equipment Support	Defence	1,205
Defence Aviation Repair agency	Defence	6,930
Defence Housing Executive	Defence	1,060
Defence Storage and Distribution (explosives)	Defence	*
Defence Storage and Distribution (non-explosives stores)	Defence	4,100
Defence Transport and Movements Organisation	Defence	440
Health Service Information Systems	NICS	110
Probation Service	Home Office	14,830
Procurement executive	Defence	5,905
RAF Support Management Group	Defence	2,005
Recruitment	NICS	45
Rent Office Service	DETR	1,055
Science service	NICS	645
Veterinary Service	NICS	565
Youth Treatment Service	Health	120
19 In Number		
Total Staff		41,765
Of which Total Civil Servants		38,195

Source: derived from Next Steps Report 1998, Cm. 4273. P327. Annex

* detailed business analysis has yet to be undertaken so staff numbers are not available from the MoD.

Obviously, the outcome of the Next Steps programme has important implications for the changing civil service structure in the UK.¹⁵ Since 1988, many executive functions of central government departments have been delegated to semi-independent agencies, headed by chief executives employed on short-term contracts. ‘Contract’ is gaining a dominant role in public service delivery. These developments have considerable constitutional significance for the future structure and functions of the civil service, ministerial responsibility, civil service management and supervision, all matters to be discussed in greater depth later on.

Before looking into the details of the ramifications and consequences of the Next Steps programme, I shall pause to consider some of the thinking relating to ‘management by objectives’ and the possibility of ‘hiving-off’ many departmental activities traced back to the Fulton Report in the belief that the emergence of the new organisational structures and management techniques have been closely associated with their social and historic contexts.

8.2.2. Next Steps and the Fulton Inheritance

The shape and dimensions of the governmental reorganisations were predominantly constructed through the Fulton Report of 1968. As Fry observed, the Fulton Committee of 1968 seemed to open the doors for change in an archaic civil service that had last been examined early in Queen Victoria’s reign.¹⁶

In fact, there are two aspects of the Fulton Report pertinent to the creation of the Next Steps programme discussed in today’s public sector reform: first the Report called for consideration that some areas of governmental activities should be hived-off to autonomous or relatively autonomous agencies; secondly, it advocated the introduction of improved standards of management in the civil service - accountable management.

¹⁵ Terence Daintith and Alan Page (1999), *op. cit.*, p 59-70.

¹⁶ Fry G. K. (1983), *Reforming the Civil Service, The Fulton Committee on the British Home Civil Service 1966-68*, Edinburgh: Edinburgh University Press, p. 249.

Fulton gave the definition of management as the responsibility for ‘organisation, directing staff, planning the progress of work, setting standards of attainment and measuring results, reviewing procedures and quantifying different courses of action’.¹⁷ It further explained that ‘accountable management means holding individuals and units responsible for performance measured as objectively as possible. Its achievement depends upon identifying or establishing accountable units within government departments - units where output can be measured against costs or other criteria, and where individuals can be held personally responsible for their performance.’¹⁸ The Fulton Report found that few civil servants recognised their role in those terms. Criticism was made of the government mechanisms that failed to distinguish executive operations, administrative tasks and policy functions. The Fulton Committee saw ‘no reason to believe that the dividing line between activities for which ministers are directly responsible and those for which they are not, is necessarily drawn in the right place today’.¹⁹

Therefore the Committee called for consideration that some governmental activities relating to executive operations be hived-off to further autonomous bodies, where their performance would be measured and assessed against predetermined objectives and criteria. As for policy functions, the recommendation was given for a separate structure, with policy and planning units reporting directly to the ministers, although it would be difficult to measure their efficiency. The Fulton report also made proposals for the civil service pay system as it suggested that ‘all civil servants should be organised in a single grading structure in which there are an appropriate number of different pay levels matching different levels of skill and responsibility’.²⁰

It is true to say that recommendations appeared in the Fulton Report which bore the stamp of ‘reinventing government’²¹ from the traditional hierarchical model of control and accountability to the model of administration. This new model contains a range of new control and accountability mechanisms imported from the private sector aimed at

¹⁷ Fulton, Lord (1968), *The civil service. Report of the Committee*, Cmnd. 3638, P. 50.

¹⁸ Fulton, Lord (1968), *op. cit.*, P. 150.

¹⁹ *Ibid.* p. 61.

²⁰ *Ibid.*

²¹ David Osborne & Ted Gaebler (1993), *Reinventing Government - How the entrepreneurial spirit is transforming the public sector*. Published by the Penguin Group.

achieving a cultural shift towards new style techniques, including ‘competition and contracting, performance pay and individual responsibility, performance targets, information and openness’.²² The Fulton Report did contribute a lot to the foundation of the governmental restructuring and the new public managerial techniques, which the Thatcher Government started to crystallise after the victory of 1979 General Election.

8.2.3. Retrospect on Public Sector Reform in the Years of the Conservative Governments

Rayner Scrutiny

Great changes have taken place in financial control since the period of the first Conservative Government. In 1979 Sir Derek (now Lord) Rayner was appointed by Mrs Thatcher to go through Whitehall scrutinising activities in every department aimed at improving efficiency and eliminating waste in government. The Efficiency Unit established by Lord Rayner has introduced changes of a fundamental and lasting impact. The Efficiency Unit subsequently became part of the Cabinet Office with the responsibility to oversee efficiency scrutiny of the operation of central government. The contribution of Lord Rayner was cost-cutting scrutiny, which embraced twofold claims: firstly, this involved examining a particular activity or policy and then making recommendations to achieve economies and increase efficiency and effectiveness; secondly, the Efficiency Unit used such scrutiny to promote more permanent changes in procedures and in the attitudes of the Civil Service itself.²³

Indeed, it was Rayner scrutiny that was successful in influencing central government to seek new ways of improving efficiency and effectiveness. These changes have concentrated on three areas of delegation: operational decisions, personnel management, and financial planning and control, though some changes have their origins in the proposal of the 1968 Fulton Report which had emphasised the need to make civil service management accountable.

²² Chris Willett (1996), *Public Sector Reform & The Citizen's Charter*, . P. 53-60.

The Financial Management Initiative (FMI)

FMI, as part of the general developments, did a great deal to promote administrative reform that seeks comprehensively to delegate authority and responsibility to lower levels of management. It is of fundamental significance that the FMI altered the way in which decisions are made about public expenditure, developed line management responsibility and delegated budgetary control. As part of the government's reply to the Treasury and the Civil Service Committee report,²⁴ a new Financial Management Initiative was launched in 1982, which brought about radical changes in the organisation and style of management across the whole range of central government departments. Its aims were specified in the White Paper (Cmnd 8616, September 1982):²⁵

'To promote in each department an organisation and system in which managers at all levels have:

- a. A clear view of their objectives, and means to assess and, wherever possible, measure outputs or performance in relation to those objectives;
- b. Well defined responsibility for making the best use of their resources, including a critical scrutiny of output and value for money; and
- c. The information (particularly about costs), the training and the access to expert advice that they need to exercising their responsibilities effectively.'²⁶

The FMI was twofold: first it was based on setting clear objectives, proposing allocating responsibility for making use of resources in achieving objectives; secondly, the FMI encouraged the scrutiny of adequate information and training to support these tasks. This, in effect, witnessed the beginning of a process by which private sector management principles relating to planning, costs and training emerged in the public sector. Its influential significance lay, perhaps, in the financial processes and the working culture of the government. However the traditional style of central

²³ Gavin Drewry, 'Revolution in Whitehall: The Next Steps and Beyond', in Jeffrey Jowell and Dawn Oliver (2000), *op. cit.*, P.162.

²⁴ Third Report, *Treasury and the Civil Service Committee, Efficiency and Effectiveness in the Civil Service* (1981-82), HC 236.

²⁵ Cmnd 8616 is the White Paper for launching the Financial Management Initiative.

²⁶ See also Government Observation on the Third Report from the Treasury and the Civil Service Committee, Session 1981-82, Cmnd. 8618, para. 13.

administration, addressing input measurements such as number of cases dealt with, number of clients, was left untouched. These were, inevitably, in conflict with the private sector criteria of managerial efficiency.

Differences between managing private and public organisations derive, ultimately, from their contexts and orientations.²⁷ The contexts of the private sector model of management is that it is market driven, whilst that of public services is that they are politically driven. Private sector orientation is towards meeting consumer demands, as means of making profits, whilst public sector orientation is towards satisfying political demands, as means of achieving political integration and social stability.²⁸ However, there is evidence of some convergence between managing private and public organisations since early 1980s, which has been described as the ‘new public management’ to be discussed in chapter 9. Although public managers are increasingly seen by political policy makers as the agents of resource efficiency, enterprise initiatives and ‘business’ effectiveness, their managerial role is still limited, however, by the fact that, as political officials, they are constrained by overall resource decisions and policy boundaries made by politicians.²⁹

Therefore, I agree with the statement by Gray and his co-author that the private sector criteria of managerial efficiency, on which FMI was based, were incompatible with public administration ideas of ministerial responsibility and the parliamentary scrutiny, whilst Treasury control and the Whitehall accountability system was not the same as that of management accountancy.³⁰ This can also be evident from the words of two non-civil service commentators on the Next Steps initiatives: “giving managers ‘the right to manage’ was the next challenge - how to make sure that budgets really were delegated. This would necessitate ‘letting go’ by top department officials and the Treasury.”³¹

²⁷ Ranson, S. and , J. (1994), *Management in the Public Domain*. London: Macmillan.

²⁸ For analysis see David Farnham and Sylvia Horton (1996), *op. cit.*, P 45, and also Kieron Walsh (1991), ‘Citizens and Consumers: Marketing and Public Sector management’, *Public Money & Management*, Summer (9-16).

²⁹ David Farnham and Sylvia Horton (1996), *op. cit.*, p 45.

³⁰ Gray, A. & Jenkins, B. (1986), ‘Accountable Management in British Government: Some Reflections on the Financial Management Initiative’, *Financial Accountability and Management*, 2 (3).

³¹ A. Davies & J. Willman (1991), *What Next? Agencies, Departments and the Civil Service*, p. 10.

The FMI was co-ordinated by the two central departments, the Treasury and the Management and Personnel Office (now a part of the Cabinet Office). Another important aspect of the reforms directed at financial control was the creation of the National Audit Office under the National Audit Act 1983 with responsibility for identifying unsatisfactory performance so as to stimulate managerial initiative. Power argued that public audit today not only reviews but also shapes or ‘constructs’ key aspects of public sector management through the development and imposition of its culture.³² From 1985, Performance Review Reports became common practice. The National Audit Office with responsibility for identifying unsatisfactory performance also prompted further developments in performance indicators. Pollitt stated that performance indicators were being used primarily as instruments of management control and a means of cost-cutting.³³

8.3. Next Steps: the Policy/Operations Split

There were some perceived deficiencies in the FMI. More efforts needed to be made to achieve the transformation from the traditional culture of administration of ‘promptness, accuracy, clearance time and avoidance of error in payment’³⁴ to the managerial one of addressing ‘policy division to match that applied to executive units and line activities’.³⁵ Following upon earlier reforms, in 1987, the notion of accountable management of public services was given high agenda status by the Conservative Government. The Prime Minister’s Efficiency Unit headed by Sir Robin Ibbs had undertaken an extensive scrutiny of the public service management with its term of reference as follows:

- to assess the progress achieved in managing the civil service;
- to identify what measures had been successful in changing attitudes and practice;
- to identify institutional, administrative, political and managerial obstacles to better management and efficiency that still remain; and

³² Power, M. (1994), *The Audit Explosion*, London: Demos. P.33-40.

³³ Pollitt, C. (1986), ‘Beyond the Management Model: The Case for Broadening Performance Assessment in Government and the Public Services’, *Financial Accountability and Management*, 2 (3).

³⁴ D. Farnham & S. Horton (1996), *op. cit.*, P. 161.

³⁵ *Ibid.*

- to report to the Prime Minister on what further measures should be taken.³⁶

The outcome of the scrutiny, building upon the experience, was the recommendation for creating the Next Steps agencies. In other words, to a great extent, the Next Steps initiative was in large part a reaction to the failure of the FMI.³⁷ At the heart of the Next Steps report was a formula for institutionalising division between the functions of ‘operations’ and ‘policy-making’ in government.

The Next Steps initiative was highly critical of the low priority given to managerial performance within the civil service and pointed out sharply that much of the work of the civil service concerned the delivery of services rather than policy formulation. The Treasury and Civil Service Committee of House of Commons (the TCSC) quoted the famous Fulton doctrine to separate the civil service’s interdependent tasks. These are:

- the analysis of policy issues;
- the formulation of policy and political direction;
- the implementation of policy; the delivery of services to the public and the management of resources.³⁸

An earlier recommendation to rectify the problems of the low priority given to managerial performance within the civil service was that “agencies should be established to carry out the executive functions of government within a policy and resources framework set by a department”.³⁹ The report proposed that the implementation of policy and the delivery of services to the public should be delegated to agencies so that as far as possible the delivery of services is separated from policy work and executed by agencies operating under business style regimes. It was established that about half of civil servants were engaged in providing services such as running the employment service, collecting taxes and contributions, paying sickness benefits and pensions and staffing prisons. Thus it came to the conclusion that “to the greatest extent practicable the executive functions of Government, as distinct from

³⁶ Efficiency Unit (1988), *Improving Management in Government: The Next Steps*, HMSO. Annex C.

³⁷ Zifcak, S. (1994), *New Managerialism: Administrative Reform in Whitehall and Canada*, Milton Keynes: Open University Press.

³⁸ Sir Peter Keep (1993), *Beyond Next Steps: a civil service for 21st century*, The Social Market Foundation.

policy advice should be carried out by units clearly designated within departments referred to as agencies”.⁴⁰

These agencies, headed not by ministers, but by chief executives, are managed generally within the civil service within agreed framework documents at arm’s length from day-to-day ministerial control, and their staff continue to be civil servants. Obviously, this made Next Steps agencies ‘part of government’ and distinct from ‘quangos’ which have “a role in the processes of government in the United Kingdom but they are not Government Departments or part of a Government Department”.⁴¹ The key difference between quangos (non-departmental bodies) and the Next Steps agencies (which are departmental bodies) has an important bearing on ministerial responsibility, to be discussed in chapter 11.

The creation of Next Steps agencies with the emphasis on the policy and operations split was an important new departure with potential for major changes in the civil service. This new departure has institutionally impinged on the civil service and government departments which are being reconstructed into more loosely coupled and discretely organised entities in which many smaller agencies, units and cores predominate. Its aim is to create durable improvements in management in government and to deliver service more efficiently and effectively within available resources for the benefit of customers, taxpayers and staff. Obviously, one of the most distinguishing features of Next Steps is the structural reform of creating executive agencies from the operational arms of government. This devolution of responsibility to units - executive agencies - was regarded as the key to more responsive and flexible organisations, a customer focus, and operational effectiveness.

The creation of Next Steps reflected growing disenchantment with the traditional civil service hierarchical arrangements. Again it proves no institution should be sacrosanct. Thus, it was important to establish the main ground rule: that in reality there is no such thing as a monolithic civil service, instead there is a vast variety of activities that must

³⁹ Efficiency Unit (1988), *op. cit.*, Para. 19.

⁴⁰ Efficiency Unit (1988), *op. cit.*

⁴¹ Cmnd. 7797. 1980. *Report on non-departmental public bodies*. London: HMSO. For details see Leo Pliatzky (1992), ‘Quangos and Agencies’, *Public Administration*. Vol. 70 (555-563).

be carried out using different skills and different management methods, such as competition and co-operation between a variety of public and private autonomous bodies. During the process of government restructuring, Framework Documents play a considerable role in justifying the distinction between policy and operations so as to achieve the aims of raising efficiency and effectiveness of the government administration.

8.3.1. Framework Documents

'Framework Documents' are 'contracts' governing the relations between Next Steps agencies and ministers, as described by the Treasury and Civil Service Committee in its Eighth Report under the name of 'Civil Service Management Reform: the Next Steps',⁴² though they are not contracts in a legal sense. This definition, however, demonstrates the fact that Next Steps agencies are governed by framework documents in the realms of the public sector, and is typical of applying the notion of 'contract' to the existing civil service functions.⁴³ The use of contract resulted from the aims of public sector reform striving for greater efficiency through greater flexibility in organisation so as to affect a cultural change in the management of public services. Therefore, one of the striking features of the Next Steps is to introduce the contract elements to manage and control public services.

Framework documents along with annual business plans and the five yearly corporate plans define agency goals and set performance targets in which agencies must operate. Each agency has a framework document, which states the job to be done, the line of responsibility and the extent of managerial independence. Framework documents have been made between the sponsoring departments and the agencies and the Treasury will often be a party. They aim to define the respective roles of the various players: the Treasury, departments and agencies, ministers and agency chief executives (ACE).

⁴² TCSC (1988), Eighth Report 1987/88, *Civil Service Management Reform: the Next Steps*. Treasury & Civil Service Committee, Vol. II, HC 494-II, London, HMSO.

⁴³ For discussions see Terence Daintith (1999), *op. cit.*, p 41-49.

Moreover the framework documents also establish the accountability/responsibilities of agency chief executives for meeting targets set by Ministers, and reporting annually to ministers and Parliament on the agency's performance. The documents set out in a semi-contractual way within the framework document the duties and responsibility on both sides of the relationship between ministers and chief executive. The degree of ministerial control will depend largely upon the specificity of the framework agreements, and this varies from area to area, some being more specific in the targets set than others do. ACE and agencies are also contracted to meet business plan specifications and have proportions of their performance-related pay determined by their success.

Different levels of contracts illustrate the type of service agreements, which agencies are to perform. The framework documents, which define agencies' operational framework, include five main elements according to Patricia Greer. They are:

- The aims and objectives of the agency;
- The nature of its relation with Parliament, ministers, the parent department (unless the agency is a separate department), other departments and other agencies;
- The agency's financial responsibilities;
- How performance is to be measured;
- The agency's delegated personnel responsibilities and the agency's role and flexibility for pay, training and industrial relations arrangements.⁴⁴

All this adds up to a major restructuring of the civil service. Clearly, the Next Steps agencies are defined not by statute, but through the framework document, resulting precisely from the recognition that a great deal of civil service should be delegated to agencies for operation, but ministers should remain ultimately accountable to Parliament for their performance. The emergence of 'contracts' in term of Framework Documents stemmed from the recommendations made by the Next Steps report 'on the structure and management needed for the better delivery of services both to the public and to the

⁴⁴ Patricia Greer (1994), *Transforming Central Government: The Next Steps initiative*, Open University Press. P 60.

Ministers’.⁴⁵ Indeed, the delegation of operational responsibilities to agencies has been intended to enable ministers and senior civil servants ‘to concentrate on their proper strategic role of setting the framework and looking ahead to plan development’.⁴⁶ Next Steps is creating a series of client/contractor relationships to replace the traditional hierarchical civil service systems of reporting and control. From this point of view, executive agencies are circumscribed by the framework documents, which define agencies’ operational frameworks. Therefore, the key theme is contractual by which the agency will be delegated operational activities from the centre at least to the extent of providing measurable services in turn for payment. The centre preserves the job of policy or strategic direction, while the operational or service delivery function is largely left to the agencies.

In Britain, “the framework documents which set out the relationship between the ‘Next Steps’ agencies and their responsible departments cannot have contractual status, in the sense of being legally binding, because the agencies do not have a legal personality separate from that of government departments”.⁴⁷ Conspicuously, ‘contract’ in terms of the framework document does not refer to a clear legal framework which can be applied directly, or by analogy, so as to realise individual rights and freedom of choice in the context of public services.⁴⁸ However, according to Harden, the contractual approach has a genuine potential for promoting constitutional values through institutional separation of functions, such as the separation of the roles of ‘purchaser’ and ‘providers’. This separation offers the opportunity not only to pursue economy, efficiency and effectiveness, but also to enhance both individual rights and the accountability of government for policy decisions. It can be achieved as part of a broader legal and constitutional framework for public services which, at present, does not exist in the British administration.⁴⁹

⁴⁵ Efficiency Unit (1988), *op. cit.*, p. 1.

⁴⁶ *Ibid.* p. 47.

⁴⁷ Ian Harden (1992), *op. cit.*, p viii.

⁴⁸ Ian Harden (1992), *op. cit.* p xi.

⁴⁹ Ian Harden (1992), *op., cit.*, chapter 4.

Michael Fogden, the Chief Executive of the Employment Service, compared the Framework Documents to a Bill of Rights for agencies.⁵⁰ However, like any Bill of Rights, do they give more operational rights to the chief agencies to manage their business within the Framework Documents? What would Framework documents produce? Would Framework Documents create clear managerial responsibility? The answer to these questions is bound closely with conventions of the constitution, those rules of political practice, which have played such an important part in the British system of the government. Some constitutional conventions are far more important than most of the statutory and common law rules connected with the British system of Government, for example, ministerial responsibility to Parliament, and the lack of a specific legal status of civil servants.

8.3.2. A Case Study

In practice, however, the distinction between ‘policy’, for which ministers are supposed to be held to responsibility, and ‘operational’ matters, for which civil servants seemed properly responsible, rendered the decision of responsibilities in politically sensitive areas partly unworkable. The case of prison service agency has demonstrated this assertion, on the grounds that ‘no one has ever been able to draw a dividing line between policy and operations with any degree of precision’.⁵¹ To a large extent Ministers could take advantage of this obscure distinction to side-step criticism on the floor of the House by washing their hands of responsibility for operational activities of agencies. These difficulties were brought sharply into focus following the difficulties in the Prison Service which led to the dismissal on October 16th 1995 of its chief executive, Mr Derek Lewis, by the Home Secretary, Mr Michael Howard. This followed the report of a review of security procedures in prisons, which was conducted by General Sir John Learmont after the escape of three prisoners from Parkhurst jail on the Isle of Wight. The report made some criticisms of Parkhurst and its security. Mr Lewis was dismissed. The controversy is that Home Secretary declined to accept responsibility for the agency failures.

⁵⁰ TCSC 1989-90, *Eighth report from the House of Commons Treasury and the Civil Service Committee, Progress in the Next Steps initiative*, HC 481, London: HMSO.

The dismissal of Mr. Derek Lewis as director-general of the prison service revealed “the supposed distinction between the ‘policy’ and operations’ responsibilities of the Home Secretary and prison Director General as ‘bogus’”⁵² and cast a dark shadow over prison reform, and “reduced the likelihood that any capable businessman will be foolish enough to jump over the fence to try” a job as a pioneer manager.⁵³ Moreover, sacking Mr Lewis brought into the question the role of the executive agencies. Specifically, Mr. Lewis’s departure did not assist in elucidating the division of responsibilities between ministers and the chief executives of Whitehall’s 109 executive agencies.⁵⁴

The events highlighted the difficulty of separating responsibility of ministers for ‘policy’ from that of chief executives for ‘operations’. Policy and operation divisions were said to be “reflected in the framework document that established the Prison Service as an Executive Agency”.⁵⁵ The Director General of the Service is responsible for day-to-day operation, the Home Office for policy - the distinction upon which Mr. Howard built his entire defence against calls for his resignation. Although the Home Secretary would not normally become involved in the day-to-day operations of the Prison Service, he would be expected to be consulted on “operational matters which could give rise to grave public or parliamentary concern”⁵⁶ according to the framework document which set up the Prison Service as an autonomous “Next Steps” agency in 1992.

In practice, this distinction hardly exists, a point Mr. Lewis made after his dismissal. He received some support. The support for this can be found in the Learmont report “which attacks excessive ministerial interference in the running of the prisons in unmistakable terms. In 83 working-days from October 1994 to January 1995, the Prison Service had to submit more than 1,000 documents to ministers, covering all the detailed minutiae of prison life”.⁵⁷ Derek Lewis, the sacked head of the prison service, was a scapegoat to

⁵¹ A. Tomkins (1998), *The Constitution after Scott*, p 45-9.

⁵² David Rise, Political Prisoners, 22 October 1992, *The Observer*

⁵³ A riot over prisons, *The Economist*, October 21st 1995.

⁵⁴ Next Steps Review, 1995.

⁵⁵ A. W. Bradley and K. D. Ewing (1997), *op. cit.*, p 316.

⁵⁶ HC 313-1, Session 1995-97, para. 86

⁵⁷ David Rose, Political Prisoners. *The Observer*, 22 October 1995.

assuage the political and personal pressures and humiliation caused by excessive ministerial interference.

The dismissal of Mr. Lewis has, *de facto*, raised a more serious failing in constitutional terms. Mr. Lewis was accountable⁵⁸ to Parliament only through Mr Howard. “Agency Chief Executives are still civil servants, they still act on behalf of, and under the authority of ministers, and are not directly accountable to Parliament”.⁵⁹ Given this arrangement, no legislation was needed for this measure, which determines that Framework Documents are not legally enforceable. That created a chance for Mr. Howard to use this to lean on Mr. Lewis, and ultimately to sack him. The dismissal of Mr Lewis illustrated that, the relationships of an agency within the department’s policy core, and the roles of the Home Secretary and the agency Chief Executive have clearly required carefully definition in the framework document. Though framework documents aim to provide clarity in the responsibilities between ministers and chief executives, the division between policy and operation still remain blurred, especially in political sensitive areas such as the prison agency. Once again Mr. Lewis’s departure proved the difficulty of separating the responsibility of ministers for ‘policy’ from that of chief executive for ‘operations’ in reality.

All these strongly indicate that, no matter what fundamental changes were brought about by the creation of the Next Steps agencies in the British system of government, the traditional notion of ministerial responsibility is firmly sustained by the Government. Indeed ‘agencies are covered in every aspect by the doctrine of ministerial responsibility’,⁶⁰ which implies that ‘traditional notion of ministerial responsibility remains sound’,⁶¹ and ‘the Minister is still responsible overall’.⁶² Carol Harlow argued that “it would seem, nonetheless, that the distinction is now ‘firmly entrenched’ and can be relied on by ministers entirely to deflect responsibility.”⁶³

⁵⁸ For discussion of responsibility and accountability reformulated, see chapter 11.

⁵⁹ HC 313-1, Session 1995-96, para 90.

⁶⁰ Carol Harlow (1999), ‘Accountability, New Public Management, and the Problems of the Child Support Agency’, *Journal of law and society*, Vol. 26, NO.2, June 1999, p. 152 (150-74).

⁶¹ TCSC (1993-94), Fifth report from the House of Commons Treasury and Civil Service Committee, *The role of the civil service*, HC 27. Vol.I, p. 203

⁶² TCSC (1992-93), Sixth report from the House of Commons Treasury and Civil Service Committee, *The role of the civil service: interim report*, HC 390, Vol.II. p. 561.

⁶³ Carol Harlow (1992), *op. cit.*

Norman Lamont, who had been a Treasury minister, held the same views and said that ‘when things go wrong, often it is the civil servants who are blamed when it is we politicians who make the decisions who should carry the blame’.⁶⁴ The extent to which the distinction between ‘policy’ and ‘operations’ has been achieved remains controversial over civil service restructuring, as was the case in the Benefit Agency and the Child Support Agency.⁶⁵ Framework Documents, which set out the relationships between the agencies and departments, to a certain extent, are good excuses for ministers to evade responsibilities when things go wrong owing to the Framework Documents having no contractual status in respect of being legal binding. Thus there is an increasing demand for a ‘public law contract’ with its own principles regarding formation, pricing, and dispute-resolution to justify the relationships between agencies and departments. Moreover, contracts in terms of Framework Documents must be open, such as the publication of Framework Documents.⁶⁶

The advocates of a ‘public law contract’ draw attention to the difficulty that there is no easy method of reforming government institutions, lacking a clear dichotomy between the functions of the ‘policy’ and ‘operations’ in the sense of being legally binding. It is of great importance to create new institutions and doctrines to guarantee the distinctions between policy and operations because it affects the process of the civil service reforms and touches the classic constitutional conventions of the ministerial responsibility.

8.4. The Appeal of Contractual Public Services and its Limitations

As has been discussed above, the creation of Next Steps agencies governed by framework documents in Britain’s political system has led to a substantial emergence of ‘contract’. The adoption of contracting distinguished the transformation of British public sector. In this process, the concept of contract is as much a metaphor and the

⁶⁴ Quoted from Geoffrey K. Fry (1997), ‘The Conservatives and the Civil Service: One Step Forward, Two Steps Back?’ *Public Administration* Vol. 75, 1997. P 698.

⁶⁵ For more details see Geoffrey K. Fry (1997), *op. cit.* Carol Harlow (1999). *op. cit.*, p. 152.

⁶⁶ For discussion see Ian Harden (1992), *The contracting state*. Open University.

basis for a new rhetoric as formal legal mechanism.⁶⁷ At the centre of the process of reinvention, the framework document has become a key aspect of setting out the contractual relations of the various parties involved in an agency arrangement, which has been discussed earlier. It is the ‘framework documents’, so called contracts governing the relations between Next Steps executive agencies and ministers,⁶⁸ in which government itself is conceived as being ‘a series of contracts’.⁶⁹

Implementation of contract coupled with the adoption of market discipline in the delivery of public services essentially represents a switch towards contemporary public administration. This drive departs from the traditional practice of controlling inputs during the early 1980s through topdown management and performance indicators, instead concern is largely given to an interest of outcomes in terms of ‘consumerism’ and ‘quality improvement’. All these concerns are manifested through a proliferation of writing on the emergence of ‘new public management’ (to be discussed in chapter 9) and contract relations, exemplified by ‘the contracting state’,⁷⁰ ‘the state under contract’,⁷¹ ‘government by contract’⁷² and so forth. But much of this literature fails to offer sound explanations of the reasons why contracts eventually intrude into the world of public administration. For this reason, explaining the emergence of contracts in historical, economic and political contexts briefly deserves to be addressed, in the belief that structural factors provide the main inducement to change the public sector.

The tensions between the role of the state as ‘a provider of welfare services and its role as a stabiliser of the economy’⁷³ have drawn great attention as the welfare state crisis has emerged. This crisis poses a serious problem to authorities in search of raising efficiency and effectiveness of public administration with imposed constraints on resources on the one hand, and at the other the government has to meet the new and increasingly political manifesto on consumer orientation. This consequently puts

⁶⁷ Nicholas Deakin & Kieron Walsh (1996), ‘The Enabling state: The role of the market and contracts’, *Public Administration* Vol. 74, Spring 1996 (33-48). P 33.

⁶⁸ TCSC (1988), Eighth Report 1987/88, *Civil Service Management Reform: the Next Steps*. Treasury & Civil Service Committee (1988), Vol. II, HC 494-II, London, HMSO.

⁶⁹ Mather & Graham (1991), *Government by contract*, London, Institute of Economic Affairs.

⁷⁰ Ian Harden (1992), *op. cit.*

⁷¹ J. Boston (1995), *The state under contract*. Bridget Williams Books Ltd.

⁷² Mather & Graham (1991), *op. cit.*, and Mark Freedland (1994), *op. cit.*, p 86.

⁷³ Kirkpatrick, I. & M. Martinez Lucio (1996), *op. cit.*, P 2.

pressure on government to seek ways to increase efficiency and reduce costs by means of changing the internal organisation of the state so as to make it more compatible with political demands and the requirements of economy.⁷⁴ This is because efficient and effective administration demands a well-structured government mechanism to meet the needs of the public and to respond to a fast changing information era and rapidly growing economic world.

In the UK, privatising public utilities or state-owned enterprises was seen as the most straightforward measure carried out widely in early 1980s as was the case of British Petroleum in 1979, Cable and Wireless in 1981, British Telecom in 1984, British Gas in 1986 and so forth. However the practice of privatisation showed that full privatisation was not always an immediate option solving the existing problems of government mechanism which has been proved both ‘politically and organisationally dysfunctional’.⁷⁵ Confronted with the pitfalls of pursuing a privatisation policy, government launched instead a series of administrative reforms concerned with promoting new management practices throughout the public sector. This included the introduction of tight fiscal control in local and central government, general management of the NHS and the extensive use of performance indicators.⁷⁶ All these reforms centred on a key aim, ensuring that public services should be managed in the interests of efficiency and economy.

Ian Kirkpatrick and his co-author argued that these administrative reforms might be ‘an essential pre-condition for the more systematic attempts to re-commodify public services through contracts and quasi-markets’.⁷⁷ These attempts embraced not only new management techniques required by the modern state, but also organisational restructuring through a formal division between purchasing of public services and delivery of public services, coupled with a formal ‘contractual framework’ to govern the relations involving a diversity of parties in the public sector.

⁷⁴ Cousins, C. (1987), *Controlling social welfare*, Brighton: Wheatsheaf. P 57-64.

⁷⁵ Paul Hoggett (1996), ‘New modes of control in the public service’, *Public Administration* Vol. 74, Spring 1996 (9-23). P 12.

⁷⁶ Carter, N., R. Klein & P. Day (1992), *How organisations measure success*, Routledge: London.

⁷⁷ Kirkpatrick, I. & M. Martinez Lucio (1996), *op. cit.*, P 3.

Changes have been radical insofar as they brought out the development of a more decentralised, non-bureaucratic, post-modern state in which government's role is one of steering, not rowing.⁷⁸ My central point here is that although the emergence of contract relations into public sector is a relatively new phenomenon, it is after all the effect of structural factors, existing in any modern state, which engenders demands for governmental institutional reforms and value for money grounds.

Nonetheless, the introduction of contracts as a broader programme of rearrangement of public services raises a number of issues, questioning the function of the political system. In contemporary Britain, two limitations on the use of 'contract' in public services stand out particularly though agencies in government are in the forefront of delivering the Citizen's Charter. 'Contract', as the means of the pursuit of specific political objective, has no connotations of individual rights and freedom of choice as well as lacking the functioning of the market system.

Moreover, the functions of the state's operational matters can be entrusted to a variety of the agencies within a managed market in which contracts play a key role. Contract has its roots in market mechanisms by which 'the supply of private services can be organised through the market',⁷⁹ and individuals can make the decision to choose service according to their demands. It carries with itself the noble concept of 'consumer sovereignty', whereas 'contracts' linking public services do not empower individuals to make decisions about the kind and level of public services that should be provided. It does not result in consumer sovereignty between the providers of public services and a public body although government constantly proclaims that the aim of public sector reform is to motivate providers to direct a competitive market so as to improve the quality of public services ensuring value for money.

⁷⁸ Details see Osborne D. & T. Gaebler, (1992), *op. cit.* Hoggett P. (1991), 'A new managerialism in the public sector?' *Policy and Politics* 19, 4, 243-56. Burrows R. & Loader B. (1994), *Towards a post-Fordist welfare state*, London: Routledge.

⁷⁹ Ian Harden (1992), *op. cit.*, P 6.

Paul Hoggett (1996) argued in particular that the most striking feature of producer markets⁸⁰ within the public sector is that ‘the state typically remains in the position of being the monopsony purchaser and therefore has the power to dictate many of the rules of the game, often according to a fluctuating political agenda concerned to buy legitimacy for the reforms which have been put in motion’.⁸¹ The implication of this argument is that markets linking the public sector are not compatible with the conventions of the private market, where rules for exchange are based on the market, rather than political commitment. The pursuit of self-interest is the essence of a market, where ‘demands for goods and services and their supplies are linked automatically, by flows of expenditure and the income through voluntary, contractual, channels’, whereas the role of government is to provide a framework for it to function rather than being a player in a market.⁸²

Therefore the peculiarities of market mechanisms within the public sector are that policy and direction are under control of the centre. The operational or service delivery functions are delegated to the agencies. In sharp contrast to the private sector is the current system under which central government not only sets limits on financial expenditure but also on how it is spent. All these elements suggest that the public market is dominated by the political pursuit, not like the market happens in the private realm. The differences between public sector and the private sector drawn by Stewart and Ranson support this perception.

Private models:

- Individual choice in the market.
- Demand and price.
- Closure for private action.
- The equity of the market.
- The search for market satisfaction.
- Customer sovereignty.
- Competition as the instrument of the market.

⁸⁰ Paul Hoggett classified market of British public sector into three forms, including ‘producer markets’, ‘consumer markets’, and ‘the promotion of competition without markets’. More details see Paul Hoggett (1996), *op. cit.* (9-32).

⁸¹ Paul Hoggett (1996), *op. cit.*, P 13.

- ‘Exit’ as the stimulus.

Public sector model:

- Collective choice in the polity.
- Need for resources.
- Openness for public action.
- The search for justice.
- Citizenship.
- Collective action as the instrument of the polity.
- Voice.⁸³

So far as the policy and market are concerned, ‘contracts deal poorly with ambiguity in the policy process’.⁸⁴ As many authors recognised that ‘contracts embody processes of variation, or are written so that they do not state precisely what is to be delivered, but allow the details to be negotiated at the time of delivery’.⁸⁵ Such a kind of contract does not escape from the model of traditional organisation, where the state still enjoys its manipulative powers over employment agreements.

8.5. Other Forms of Government by Contract

Alongside the framework documents, the development of “contracts” to manage operational activities to be carried out by the public sector as well as by the private sector also stirred intense interest within Whitehall. Control by contract is supplanting control by administrative hierarchy. Making better use of public-private partnership marks a new face of public service. As a consequence, ‘government by contract’⁸⁶ now sits most squarely on the shoulders of the Private Finance Initiative, in the belief that ‘the private sector is able to bring a wide range of managerial, commercial and creative

⁸² Ian Harden (1992), *op. cit.*, p 1.

⁸³ Stewart, J. and Ranson, S. (1988), ‘Management in the public domain’, *Public Money & Management*, 89, 112.

⁸⁴ Nicholas Deakin & Kieron Walsh (1996), *op. cit.*, p 37.

⁸⁵ *Ibid.* p 38.

⁸⁶ Mark Freedland (1994), ‘Government by Contract and Public Law’, *Public Law* (86-104); Ian Kirkpatrick and Miguel Martinez Lucio (1996), ‘Introduction: The Contract State and the Future of Public Management’, *Public Administration* Vol. 74, Spring 1996, (1-8); Simon Domberger and Christine Hall (1996), *op. cit.* (129-147); and Jonathan Boston (1995), *op. cit.*

skills to the provision of public services, offering potentially huge benefits for the Government.⁸⁷ The government, as is claimed, is doing more to develop its commercial skills, working in partnership with industry to get the best deal for users.⁸⁸ There is now a very important and uncompleted task of placing that area of government policy and practice in a public law frame.⁸⁹

The related theme in introducing Next Steps contracts in terms of framework documents throughout the civil service is the individual contracts attaching civil servant's pay to the performance of the agency. This type of contracts will not simply establish a particular pattern of responsibility, but will also weaken the image of the civil service through influencing the civil service pay system. Since 1988, the arrangements for negotiating pay and grading flexibility have evolved. All agencies are encouraged to review their pay and grading arrangements and to consider delegation where it will lead to value for money. More and more individual staff are contracted to accomplish agency aims. The range is from agency chief executives to senior agency staff to general executive staff. Agency chief executives are working in line with contracts which define agency goals and set performance targets and a proportion of their pay is dependent on them meeting those targets. Furthermore the chief executives are employed on fixed-term contracts by means of open competitive recruitment. The renewal of these short terms contracts is dependent on their performance. Some other senior agency staff are also employed on short-term contracts, coupled with their payment being directly linked to the achievement of agency targets as specified in the yearly business plans. If agencies meet these targets, they may receive a bonus as envisaged in the programme. Clearly, standardisation is also being progressively abandoned. In April 1991, departments and agencies were given more freedom to carry out their own recruitment processes.

In 1994, the government declared its intention to delegate the pay system further. In the Citizen's Charter: Second Report it was proposed that 'responsibility for devising pay

⁸⁷ *Partnerships for Prosperity - the Private Finance Initiative*. (Treasury Taskforce on Private Finance, November 1997). An extract from the forward to *Partnerships for Prosperity*.

⁸⁸ Cm 4310, *op. cit.*, p 36.

⁸⁹ Mark Freedland (1998), 'Public Law and Private Finance - Placing the Private Finance Initiative in a Public Law Frame', *Public Law*. (288-307) p 288.

arrangements, like other aspects of management, be delegated wherever possible to those who are responsible for managing the delivery of services'.⁹⁰ Consequently, in 1996 it replaced the existing national pay arrangements by a new system of 'responsibility for the pay and grading of staff below senior levels' delegated to all departments.⁹¹ Such developments deviated from the Fulton vision of a unified service. To this extent a federal structure of more autonomous units to provide services to the public is pervading the whole public sector.

The development of a contractual civil service raise a series of issues relating to the British political system. Next Steps, creating a precedent established by open competition for agency chief executive posts, is contrary to the notion of a career service, as is the practice of using so called fixed-term contracts. Moreover the departments from a common grading and pay structure, have experienced the emergence of varying terms and conditions of service, to the detriment of staff mobility. The Citizen's Charter heralded the introduction of performance related pay into the wider areas of the public sector - breaking down the uniformity of the public sector pay and employment conditions and the security of civil servants, ending the anonymity of public servants. So it took a significant step towards the breaking up of centralised civil service pay arrangement. "By 1 April 1994, 21 agencies, and the two revenue departments, altogether employing about 60% of the Home Civil Service, had taken delegated responsibility for their own pay-and pay-related conditions of service".⁹² Year on year the data reported by the Next Steps shows an upward trend in area of agencies.

Ostensibly, the tendency of British public sector restructuring is seen to depend on framework documents and on treating citizens as consumers. Ian Harden argued that the use of contract has been twofold: one is the pursuit of specific political objectives, which connotes individual rights and freedom of choice associated with the functioning of market system and consumer sovereignty. The other aspect of the contract approach is a genuine potential for promoting constitutional values through an institutional separation of functions, whereby the division between the roles of 'purchaser' and 'providers' offers the opportunity not only to pursue economy, efficiency and

⁹⁰ Cm 2540 (1994), *The Citizen's Charter Second Report*. P 117.

⁹¹ The Civil Service. Continuity and Change. HC 27-I 91993-94), p 26.

effectiveness, but also to enhance both individual rights and the accountability of government for policy.⁹³ Attention is therefore focused on two issues. One is closely bound up with the accountability matters dependent on the degree of separating the functions between ‘policy’ and ‘operations’ by means of framework documents. The other is how to evaluate the work of individual staff through individual staff contracts.

8.6. Conclusions

In this chapter, I have discussed the changing civil service structure of the British public administration, in which the Next Steps initiative plays a significant role in regulating the government mechanism’s reorganisation. In relation to public service delivery, framework documents are taking a dominant role in the arrangements of public services since 1988, though ‘contract can never produce the automatic market processes that in theory operate in the private sector’.⁹⁴ The creation of Next Steps agencies has eclipsed the hierarchical civil service running from the apex to the base, which has a great impact on the ways the public service is being managed. The result of this is the emergence of the new public management. Thus the issue of new public management is my principal concern in the next chapter.

All these provide several hints for the Chinese civil service reform. Firstly, striving for the policy/operation split cannot be simply satisfied by cutting the total number of civil servants and making declarations appreciated only by politicians. All this needs creating some concrete and applicable measures to sustain it in practice. From this standpoint, the British experience might offer a good example for China to follow as it creates a new way to separate the functions of policy from the operations, though it needs to be perfected in practice. Thus the traditional government departments have been split between the policy-making departments proper and much larger executive agencies or ‘Next Steps’ agencies responsible for the administration of services, which may facilitate the Chinese civil service reform towards policy /operations division in

⁹² The Next Steps Review (1994), Cm2750, p iii.

⁹³ Ian Harden (1992), *op. cit.*, p xi.

⁹⁴ Ian Harden (1992), *The Contracting State*. p 77.

practice. This is because the Chinese civil service reform has failed to find an effective way to separate policy and operations; the division is far from clear in practice.

Secondly, the notion of the civil service as a secure career no longer guarantees a job for life owing to the effect of using fixed-term contracts in the civil services. More people will be moving in and out of the civil service at all levels based on such contracts rather than traditional hierarchical conventions. As importantly, the nature of the civil service is changing to be increasingly dominated by contracts, which subsequently will affect the way the public service is to be managed. This will promote the Chinese civil service reform so as to break through the traditional civil service recruitment emphasising political reliability, whilst ignoring performance.

Chapter 9

THE NEW PUBLIC MANAGEMENT

9.1. Introduction

As has been discussed in the previous chapter, the Next Steps reforms and the Market Testing initiative which was launched in November 1991 are transforming the structure and the culture of the civil service. This transformation has had a massive impact upon the organisational arrangements of government departments and the traditions of the civil service and its constitutional role as a politically neutral instrument serving Parliament. It is irrevocably bringing about the new public management (NPM). In Britain, the trend towards smaller government and improved public sector performance was vigorously promoted in the late 1980s by endorsement of a programme of managerial reform within the civil service by creating autonomous executives for public service delivery. The effect was a complete transformation of the public sector, on a scale that has captured the pulse of public sector reform based on the ideas of 'public entrepreneurial management',¹ which are 'central and indispensable to better organisational performance',² through the development of appropriate cultures,³ measurement through the market and emphasising organisational outputs.

The foundation of the managerial style of public administration has, in Britain, stemmed from a strand of Conservative administration, which can be traced to the introduction of the Financial Management Initiative. However the most significant and influential measures for restructuring public service were initiated in the Next Steps programme of hiving off a variety of operational functions and staff into executive agencies. These

¹ David Osborne & Ted Gaebler (1993), *Reinventing government--How the entrepreneurial spirit is transforming the public sector*, A Plume Book. P 4.

² Christopher Hood (1991), 'A public management for all seasons?' *Public Administration* Vol. 69, spring 1991 (3-19). P 6.

³ Peters, T. & R. Waterman (1982), *In search of excellence*, New York: Harper and Row.

reforms led to the promulgation of the Citizen's Charter⁴ with the thrust of bringing about cultural changes in the public sector by means of empowering citizens. The Office of Public Service and Science (OPSS)⁵ was created as an institutional base responsible for the programme within Whitehall after the Conservative Government's election victory in 1992. Most importantly, the White Paper 'Competing for Quality' introduced the concept of market testing as a means of stimulating public service providers to direct competition. This process of institutional restructuring coupled with new ways of managing the public sector has now begun to dominate the bureaucratic reform agenda. It is apparent the Labour government has pursued contracts and market mechanism as zealously as the Conservative government after the election victory of 1997. This can be evident from a series of initiatives launched by the Tony Blair-led government, from 'Service First - The New Charter Programme',⁶ to 'Modernising Government'.⁷ These manifestos bring together a number of initiatives in 'new public management' including private-public partnerships, close collaboration between organisations, joined-up government, integrated service teams and much else besides.

Clearly, the NPM is emerging in public administration, and the pace of the change is accelerating, and its influence is far-reaching, but without specific legislative authority and a concomitant national debate. Thus, this chapter will firstly seek to explore the meaning of NPM. Secondly, it considers how NPM is employed in 'post-bureaucratic' organisational forms. Finally, I shall address the critique of the arrangements of NPM and the implications for China.

9.2. Meaning of New Public Management

A major overhaul of public management over the last decade is of great international significance in public administration. In essence, NPM not only incorporates the importation of private sector management systems and techniques into the public sector,

⁴ The Citizen's Charter, *Raising the Standard*. Cm1599, London HMSO (1991).

⁵ The title of OPSS was curtailed to the Office of Public Service (OPS) in summer 1995.

⁶ Citizen's Charter Unit, *Service First - The New Charter Programme* (1998), Available from the www at: http://www.Servicefirst.gov.uk/sfirst/bk1_sum.htm

⁷ Cm 4310, *Modernising Government*, March 1999, Cabinet Office.

but also requires developing a set of ideas and values applicable to organisational flexibility and more direct management control through changes in agency structures. Different commentators and advocates have different focuses in the doctrines of NPM. But the following aspects are manifest in most discussions of NPM, being represented by Aucoin, Hood, Farnham and Horton, and Dunleavy.⁸ These doctrines include:

- Separating 'policy' functions from 'operational' functions;
- Using contracts to delegate civil service functions, and wholly monetized incentives rather than the traditional structures of control in the public sector through a mix of ethos, status and culture and uniform fixed salaries;
- Removing core government functions to semi-autonomous units;⁹
- A move from process to outputs in controls and accountability mechanisms;¹⁰
- An emphasis on cost cutting;¹¹
- Developing active policies for changing the cultures of public organisations from ones dominated by traditional public service values to ones attuned to the market, business and entrepreneurial values of the 'new' public service model.¹²

The above doctrines are bound up with structural reorganisation, which plays a relatively great part in the introduction of the NPM, as was the case in the creation of the executive agencies or the National Health Service's internal market and some others. Structural restructuring will inevitably lead to innovation in public management to adapt to the changing circumstances. The public sector reacted quickly by adjusting itself to the devolved management with a reorientation towards a marketplace culture¹³ or a client culture.¹⁴ Therefore, managerial devolution is the backbone of the NPM,

⁸ Peter Aucoin (1990), 'Administrative reform in public management: Paradigms, principles, paradoxes and pendulums', *Governance*, Vol. 3 No.2, April 1990 (115-37); Dunleavy P. & Hood C. (1994), 'From old public administration to new public management', *Public money and management*, July-September; Massey A. (1993), 'Managing the public sector', Aldershot: Edward Elgar. David Farnham & Sylvia Horton (1996), *Managing the new public services*, Macmillan Press LTD; Hood C (1991), *op. cit.*

⁹ Barry J. O'Toole & Grant Jordan (1994), *Next Steps, Improving Management in Government?* Dartmouth.

¹⁰ Peter Aucoin (1990), *op. cit.*

¹¹ Patricia Greer (1994), *Transforming central government*, Open University Press. P 8.

¹² David Farnham & Sylvia Horton (1996), *op. cit.*, P 260.

¹³ Lawton A. & Rose A. (1991), *Organisation and management in the public sector*, Pitman, London.

¹⁴ Dawson A.G. (1991), *The art of practical management*, Tudor, London.

promoting the cultural shift from an administrative to a managerial culture¹⁵ from the late 1980s onwards. Devolved management means a radical break from the traditional administrative model, and is based on the following assumptions:

- Management is superior to administration;¹⁶
- The art of private sector management should be transposed to the public sector in the name of improving efficiency;¹⁷
- Good management is a way to resolving economic and social problems;¹⁸
- Management consists of a discrete body of knowledge, which is universally applicable and therefore portable.¹⁹

It goes without saying that the reforms towards devolved management, in the UK, were developed through rather pragmatic principles, on the grounds that ‘the United Kingdom is relatively unencumbered by legal niceties when the need is felt for a change of direction or the over-ride of previously announced policies’.²⁰

The emergence of NPM

The origins of NPM have been based in part on ‘New Right’ political ideas²¹ but roots can be traced back to the Fulton, Maud and Bains Reports published in the 1960s and early 1970s.²² Two different streams of ideas play a considerable role in the subsequent emergence of NPM, according to Hood’s account.²³ One was the ‘new institutional economics’ built on ideas of ‘contestability, user choice, transparency and close concentration on incentive structures’; the other was the latest of a set of successive

¹⁵ Thomson P. (1992), ‘Public sector management in a period of radical change: 1979-1992’, *Public Money and Management*, 12, 3, 1992.

¹⁶ Metcalfe L. & Richards D. (1990), *Improving management in government*, Sage, London.

¹⁷ Andrew Gray & Bill Jenkins (1995), ‘From public administration to public management: reassessing a revolution?’ *Public Administration* Vol. 73, Spring (75-99).

¹⁸ Metcalfe L. & Richards D. (1990), *op. cit.*

¹⁹ Hood C. (1991), *op. cit.*

²⁰ Norman Lewis (1994), ‘Reviewing changes in government: New public management and Next Steps’, *Public Law*, p 109.

²¹ Gavin Drewry, ‘Revolution in Whitehall: The Next Steps and Beyond’, Chapter 6 in Jeffrey Jowell & Dawn Oliver (2000), *The Changing Constitution*, Clarendon Press, Oxford, P154-174.

²² Fulton, Lord (1968), *The Civil Service, Report of the Committee*, Cm. 3638, London: HMSO; Maud Report (1967), *Report of Committee: The management of Local Government*, London: HMSO; Bains Report (1972), *The New Local Authorities: Management and Structure*, London: HMSO.

waves of business-type ‘managerialism’ in the public sector.²⁴ Examples include ideas of ‘professional management’ expertise as portable,²⁵ paramount over technical expertise, emphasising free management, and central and indispensable to better organisational performance. All these are facilitated by the development of appropriate cultures,²⁶ and the active measurement and adjustment of organisational outputs. NPM is a world issue which has attracted great attention not only in western countries like the UK, the USA and Canada, but also in China though there the new public management is only in its infancy.

In China’s case, primary concern has been given to the remapping of the role of the state itself, the redefinition of its boundaries before turning to the administrative, bureaucratic, managerial and professional features. Ambitious plans were declared in March 1998 for restructuring the 40 existing ministries and offices from 40 to 29 by removing half of the civil servants from their posts by the end of 1998. The aim is to adjust and abolish departments directly in charge of economic management and reinforce departments handling macroeconomic control and those enforcing the law and supervising law enforcement, the major purpose of reform.²⁷ A measure having been adopted so far was to establish the system of the state owned enterprises’ ombudsman in April 1998 to facilitate the policy and operational split in practice. The matter has been discussed in chapter 5.

In Britain, major changes to the way in which the civil service is regulated have taken place following the creation of Next Steps agencies, which have already been discussed in the previous chapter. The pattern of an agency structure is increasingly affecting the ways in which the public sector is being managed and challenging the traditional theories and practices of public administration concerned with a ‘hierarchical, neutral, technocratic, salaried, pensioned, and rule bound’²⁸ model of administrative structure. The changes brought about by Next Steps are tremendous and far-reaching and have irrevocably affected the new structures of the management of personnel in the civil

²³ Hood C. (1991), *op. cit.*

²⁴ Christopher Hood (1991), *op. cit.*, P 5; and also see David Osborne & Ted Gaebler (1993), *op. cit.*

²⁵ Martin, S. (1983), *Managing without managers*. Beverly Hills: Sage.

²⁶ Peters T. and R. Waterman (1982), *op. cit.*

²⁷ For more details, see chapter 5.

²⁸ Andrew Gray & Bill Jenkins (1995), *op. cit.*, P 77.

service.²⁹ The elements of all these requirements for NPM, as have been categorised above, were manifest in a White Paper on the civil service entitled ‘Continuity and Change’.³⁰

The document formulated the key principles on which the British civil service is based and to which the government is committed to sustain ‘integrity, political impartiality, objectivity, selection and promotion on merit and accountability through Ministers to Parliament’.³¹ However the essence of this document lies in the encouragement of public service to adapt to a changing world focused on management and performance, new staff procedures and an overall cut in total civil service size. There is no doubt that they represent ‘the practical face of the new public management and a critique of traditional public administration’.³² To put it another way, the new model of emphasising the amalgamation of strategic management, structural restructuring to create more responsive and accountable units, and the development of better personnel management systems is substituting for traditional public administration with ‘an interest in administrative engineering but a distaste for theory’.³³

9.3. Characteristics of the New Public Management

Throughout the world there is an ongoing search for a new approach to public sector management, for the ‘transformation’ or ‘reinvention’ of government.³⁴ In the UK the management of central government under the Next Steps initiative in progress was central to the success of the Conservative government. In the previously communist countries such as Eastern Europe and Soviet Union the organisation of basic services, health, housing and water, along with the privatisation of public enterprises, present huge problems. In China there has been an ‘economic revolution’ guided by Deng

²⁹ Hood C. (1991), *op. cit.*

___ (1995), ‘The “New Public Management” in the 1980s: variations on a theme’, *Accounting, Organisations and Society* 20, 2/3, (93-110).

___ Dunleavy, P. and Hood, C. (1994), *op. cit.*

³⁰ Cm 2627, 1994. *The Civil Service Continuity and Change*.

³¹ *Ibid.* P 1.

³² Andrew Gray and Bill Jenkins (1995), *op. cit.*, P 75.

³³ *Ibid.* P 77.

³⁴ Patricia Greer (1994), *op. cit.*, Osborne Gaebler (1992), *op. cit.*

Xiaoping's pragmatic economic reform policies with the intention to facilitate political system reform so as to create 'clean, honest government', which is leading to a re-examination of the role of the state in the economy. The consequence brought on by the economic reform is a repeated call for political system reform. Though they vary in degree, to a certain extent all these reforms conducted in different countries point to the same question, that is how to manage government in the fast changing information era. New approaches to the management of the public sector are inevitably emerging.

The most radical changes in the management of public services have involved two main strands: the introduction of managerial techniques from the private sector, and the development of market mechanisms within the public sector, coupled with the focuses on consumer empowerment and the assurance of the quality of public services.³⁵ Changes in public management have both a rhetorical and substantive component. 'Consumer orientation', 'business plan', 'market mechanisms', and 'competition' are entrenched in the language. All this has affected the features of new public management on which they appear to be constructed.

9.3.1. Autonomous Management

The particularly important features of Next Steps is applying features, such as 'accountable management' and 'delegated public service', to the practice of the civil service, which injects innovation into public management. Therefore, the first strand of the new public management attributed to Next Steps is the separation of 'operations' from 'policy' with the aims of raising efficiency and effectiveness of public services. These aims are defined by Pollitt³⁶ as following:

- Continuous increases in efficiency,
- The use of 'ever-more-sophisticated' technologies,
- A labour force disciplined to productivity,

³⁵ For details of consumer empowerment and the assurance of the quality of public services, see chapter 7.

³⁶ Pollitt C. (1993), *Managerialism and the public service: The Anglo-American Experience*, Oxford: Blackwell, Second Edition, 1993. P 2-3.

- Managers being given the right to manage.

This approach to the management of the public services has origins in the 1968 Fulton report, an issue that I have discussed in the previous chapter. However the radical changes towards new managerialism so as to gain more effective control of work practices took place under the Next Steps initiative. The literature on new public management is now quite extensive so that it is no need here to review all these literature themes. Instead few words will be given to the ‘post-Fordism’³⁷ in the ways which promoted the development of the public service management. The post-Fordist approach is:

‘To fragment the organisation and leave each constituent part or unit to deal with the detailed problems of resource allocation, methods of work, organisation charts and so on. At the top management would be left with strategic tasks only’.³⁸

Ostensibly, this approach searches for more efficient and effective ways of managing, which incorporate the essence of the new public management by means of separating operational matters from policy matters. In the regime of British public service management, the earlier moves to create semi-autonomous agencies in the form of non-departmental public bodies (NDPBs) were based upon statutes, or on occasion the prerogative, independently of Next Steps initiative, such as the Civil Aviation Authority, the Monopolies and Mergers Commission, the Gaming Board and the regulatory authorities created to oversee the privatised industries.³⁹ The empowering legislation for bodies will normally state in some details the composition and powers of such bodies. Remarkably, the position with respect to Next Steps agencies is different. The main peculiarity of Next Steps agencies differentiating them from those of non-department public bodies is by using of ‘contracts’ in term of framework documents.⁴⁰ Although the

³⁷ Stoker G. (1989), ‘Creating a local government for a Post-Fordist society: The Thatcherite project’, in J. Stewart & G. Stoker (eds), *The future of local government*, London: Macmillan.

³⁸ Harrison S., Hunter D. J., Marnock G., & Pollitt C. (1992), *Just managing: Power and culture in the National Health Service*, London: Macmillan. P 15.

³⁹ For details of ‘quangos’ see Leo Pliatzky (1992), ‘Quangos and Agencies’, *Public Administration*, Vol. 77 (555-563).

⁴⁰ For details see chapter 8 above.

use of ‘contract’ is now well ingrained into the culture of many areas of public service delivery, the idea has not before applied to civil service.

9.3.2. Market-based Public Service Management

The second strand of new public management is based upon indirect control or ‘steering from a distance’,⁴¹ with the stress on market-based public service management focused on consumerism and the quality of public services. The reason for the adoption of market mechanisms in public services is attributed to the inherent inefficiency and perceived rigidities in political and administrative allocation systems, which has led to major changes in the management and organisation of local government, the National Health Service (NHS), and the civil service in the last decade.

On this point, The Conservative Government’s Guide to Market Testing⁴² embodies the essence of much public service reform with its aim to ‘promote fair and open competition so that Departments and Agencies can achieve the best value for money for the customer, and for the taxpayer.’⁴³ The advantages of market testing are illustrated as follows:

- Competition helps ensure value for money;
- Focusing on performance outputs will produce clearer standards and improved quality of service;
- An explicit customer/supplier relationship;
- External and in-house bidders will be given the opportunity to be more innovative in their field;

⁴¹ Kikert, W. (1995), “Steering at a distance: a new paradigm of public governance in Dutch higher education”. *Governance* 8, 1, 135-57; and also see David Osborne & Ted Gaebler (1993), *op. cit.*

⁴² Efficiency Unit, Office of Public Service and Science (1993), *The Government’s Guide to Market Testing*, London: HMSO.

⁴³ The Citizen’s Charter. First Report 1992. Cm.2101.

- Monitoring of contracts and service level arrangements will focus on the outputs, objectives and targets required in improving the efficiency and effectiveness of targets.⁴⁴

Kieron Walsh⁴⁵ summarised the characteristics of the second strand of NPM as involving:

- Continual improvements in quality,
- Emphasis upon devolution and delegation,
- Appropriate information systems,
- Emphasis upon contracts and markets,
- Measuring performance,
- Increased emphasis on audit and inspection.

These two strands of NPM are well defined. The first strand, the post-Fordist, is based on the perception of the importation of private techniques and managerial skills to the public management. It help bureaucracy to be more responsive to ‘the rapidly changing, information-rich, knowledge-intensive society and the economy of the 1990s’.⁴⁶ The second strand is based on the primacy of market-based motivation—striving to become more flexible, more innovative, and more entrepreneurial. Market-based government initiatives served as a catalyst for the emergence of the new public management as a political force. At the core are the central strategies of overall policy making, governing the track of public sector reform, while at the periphery are service delivery matters, frequently with a new structure of short-term contracts, which moved away from the traditional bureaucracy in permanently established civil service positions. The ‘contracts’ and the creation of the quasi-market mechanisms are pursuing this model.

The traditional model of public service provision based on the principles of ‘hierarchy, planning, direct control, self-sufficiency, centralisation and professionalism’⁴⁷ has been overshadowed by the recent development of market-based public service management.

⁴⁴ Efficiency Unit, Office of Public Service and Science (1993), *op. cit.*, P. 1.

⁴⁵ Kieron Walsh (1995), *Public Services and Market Mechanisms*, Macmillan. P xiv.

⁴⁶ David Osborne & Ted Gaebler (1993), *op. cit.*, P 12.

However, this new model is characterised by high levels of monopoly. In most cases, market-oriented public services are, at best, quasi-markets,⁴⁸ operating within organisations and surrogates, as was the case of health authorities and social service departments where they are acting for final recipients of services.⁴⁹

Market-driven public services are seen as overcoming the dominance of the producers, adapting to the users' orientation through consumer complaint systems and publicised standards and results so as to promote competition between service providers. The test of the legitimacy of public services is the quality and acceptability of the public services in which the ultimate controller or 'consumer' plays a very important role, as I have discussed in chapter 7. Under competitive market pressures, providers will be unable to put their own interests before those of the public because citizens are empowered to control quality, rather than the bureaucracy.

As John Major has argued, the Citizen's Charter catalyses the development of the new public management. It sees 'public services through the eyes of those who use them. For too long the provider has dominated: now it is the turn of the user. The principles of the Citizen's Charter, simple but tough, are increasingly accepted. They give the citizen published standards and results; competition as a spur to quality improvement; responsiveness; and the value for money to get the best possible services within the resources that the nation can afford'.⁵⁰

This perception raises the issue of how to accommodate the use of market mechanisms within the management of the public service and affordable public resources, rather than to argue whether or not market mechanisms should be injected into the public management as is widely accepted in the political realm. To put it another way, how to make market mechanisms work without changing this character is the main concern for public sector reform.

⁴⁷ Kieron Walsh (1995), *op. cit.*, P 3. For analysis see chapter 8.

⁴⁸ Le Grand J. & Bartlett W. (1993), *Quasi-markets and social policy*, London: Macmillan.

⁴⁹ For analysis see Appleby J., Smith P., Ranade W., Little V., & R. Robinson (1994), "Monitoring managed competition", in R. Robinson J. Le Grand, *Evaluating the NHS reforms*, Newbury: Policy Journals; and also see Carol Harlow (1999), 'Accountability, New Public Management, and the Problems of the Child Support Agency'. *Journal of Law and Society*, Vol. 26, No. 2 (150-74).

9.3.3. The Citizen's Charter and its Contribution to the NPM

In Britain, constitutional and administrative reform forms a series of new political innovations in a number of guises. As has been discussed in chapter 7, the Citizen's Charter⁵¹ has brought a new theme of consumer empowerment and the quality of service is justified by the recipient of services through emphasising the benefit of marketisation for the user. This indicates quite clearly the relationship between the state and the citizen in modern society and has a bearing on modernising public management mechanism. Indeed, the Citizen's Charter initiative has been one of the most recent mechanisms designed for transforming the ways in which public service management operated. It is closely bound up with the Next Steps initiative by which the separation of policy-making structures from policy delivery systems has become the key theme of organisational restructuring. Allied to this has been the extensive use of 'contract' as the vehicle which underpins the delivery of public services and the development of quasi-market within the public sector,⁵² having already been discussed in chapter 8. Both together facilitate the improvement of quality services, which have been linked to Osborne's widely influential ideas of 'Reinventing Government'.⁵³

The development of the new public management in the UK involves the redefinition of citizens as consumers from the legal and political to the social and economic sphere. It is the Citizen's Charter that redefines citizens as consumers or customers, which gave rise to the consequence of a proliferation of charters including a Parent's Charter, a Patient's Charter, a Passenger's Charter, a Victim's Charter and so forth. All these individual charters have connotations of how institutions of government are rendered accountable to the citizen in delivering high quality services. The relationship between the state and the citizen raises the question of how to integrate consumer empowerment in delivering public services with the assessment of service quality, which challenge the management of public services in contemporary society.

⁵⁰ Prime Minister and Chancellor of the Duchy of Lancaster (1992), *The Citizen's Charter: First Report*, Cm 2101, see Foreword by the Prime Minister. London: Her Majesty's Stationery Office.

⁵¹ Cm 1599(1991), *op. cit.*

⁵² Ian Harden (1992), *op. cit.* And also see Freedland, M. (1994), "Government by Contract and Public Law", *Public Law*. (86-104)

⁵³ David Osborne & Ted Gaebler (1993), *op. cit.*

Indeed, the relationship between the state and its citizens is not a matter of free exchange as happens in the private market, but a matter of mutual commitments, obligations and duties.⁵⁴ The basis of the state's operational function lies in political decisions and implementation through bureaucratic organisations. The emergence of NPM has aimed to define clear functions between the policy-making departments proper and the Next Steps agencies. The relationship between the state and the citizen is apparent in the subsidiary emphasis in the new public management upon the active citizen,⁵⁵ such as having the legal right to be heard and to be listened to in the running of public services.

The Publication of the Citizen's Charter indicated an increased determination to give more power to citizens by changing the culture of public service delivery through setting out principles of public services. The six principles under the Citizen's Charter are:

- standards;
- information and openness;
- choice and consultation;
- courtesy and helpfulness;
- putting things right;
- value for money.

The Citizen's Charter conceived these principles as the primary elements of public service delivery. It should be made clear that the quality of public services is primarily implemented through a number of Charter principles⁵⁶ embodied in individual charters setting out service standards for achieving quality services. Among other things are service standards and grievance procedures.⁵⁷ Service standards and grievance procedures were also believed to promote quality service. During the first half of the charter programme, the government published the White Paper under the name 'The

⁵⁴ Kieron Walsh (1995), *op. cit.*, P 251-52. See also chapter 7.

⁵⁵ *Ibid*, p 251.

⁵⁶ For details of Charter principles and its revisions see Cm 1599, 1991; and Citizen's Charter Unit, *Service First - The New Charter Programme* (1998).

⁵⁷ Terence Daintith and Alan Page (1999), *op. cit.*, p 357-367.

Citizen's Charter - Five Years On'.⁵⁸ In summarising what has been achieved to improve public service during this period, it moves the quality of public service one step further by laying down six service standards for Central Government, applying to all Government departments and the Next Steps agencies from 1 April 1997. It requires that every central government department and agency will carry out the six new standards while they are delivering public services. These new service standards are:

- To answer letters quickly and clearly;
- To see people within 10 minutes of any appointment made;
- To provide clear and straightforward information about its services;
- To consult users regularly about the services it provides and report on the results;
- To have at least one complaints procedure for the service provided;
- To do everything that is reasonably possible to make its services available to everyone.⁵⁹

The Charter also requires these standards to be set in absolute terms, such as departments and agencies setting their own targets for answering correspondence, so as to improve central government's response to the public. Properly specified and monitored targets will continue to be a powerful tool, forcing departments and agencies to examine their processes to improve efficiency and effectiveness and to enable standards to be raised over time. If departments and agencies do not meet these standards, a full explanation will be provided.

Furthermore it declares five main themes for the future: more localisation; greater user consultation; greater user involvement; better information and higher standards throughout public services. It claims real and substantial improvement in delivering public service in the first half years of the charter programme so as to make government remain committed to better and more responsive public service.

Under the Charter (Cm 1599), the key is to set standards which the quality of public service should follow and then to work out how best to do it, applying a number of tests

⁵⁸ *The Citizen's Charter—Five years on.* Cm 3370.

⁵⁹ *Ibid.*

with the aim of encouraging excellence, giving an impetus to competition and enhancing the choice of users. With the determination to improve the quality of public service across the whole country, the Charter Marks Awards Schemes was launched to reward those who have done well to deliver excellent services and innovation in public service so as to urge others to learn from Charter Marks winners. There are 417 Charter Mark holders.⁶⁰ In addition, there are 24 Charter Quality Networks around UK⁶¹ which are composed of small groups of managers from public services and private utilities who meet to exchange ideas on customer service and quality issues.

In line with Citizen's Charter principles, departments and agencies are required to publish information about the delivery of Charter Standards, wherever possible in comparative form so that users can see how their local service measures up to the best. As a result, performance tables for schools, colleges, hospital and ambulance trusts, local authorities, police and fire services are published. Moreover a CD-ROM of performance information for schools, hospitals, local authority service, police and fire services will be available to schools, libraries and to individuals as well.⁶² Government departments and other public service are now more open in their dealings with the public. More than 53,000 previously closed records have been now released.⁶³ All these concrete measures have implications that the government is making efforts to reform the public sector focusing on the public service users, not the providers so as to deliver efficient, high quality public services.⁶⁴

In the following years of the charter programme, the government has been committed to improving the quality of public service in new ways across government as a whole. These commitments have been presented as consulting and involving users. New technology would open up the possibility of services being delivered in new and more convenient ways in which information technology could deliver better services for businesses and the citizen. In 1996, Government published a Green Paper on *Improving Government Services*, which established the Government's commitments for each of the

⁶⁰ *ibid.*

⁶¹ *Ibid.*

⁶² Cm 3370 (1998), *op. cit.*.

⁶³ Cm 3370 (1998), *op. cit.*

⁶⁴ Cm 4310 (1999), *Modernising Government*, p 6-7.

key public service sectors. The thrust of the main themes for the future has been to set up more than 10,000 local charters based on 42 national charters, covering services such as out-patient clinics, local authorities, schools and benefits offices, to improve services through consulting users by publishing a booklet 'Asking Your Users', to give more power to the citizen, such as encouraging secondary schools to have school partnership agreements so as to give parents a greater role in their children's schooling, and to give citizens the opportunity to see for themselves how their local services are performing by providing performance tables for schools, colleges, hospitals and ambulance trusts, local authorities, police and fire services.

It was made clear that 'high-quality, high-value public services are vital for competitiveness'.⁶⁵ Thus 'more privatisation; wider competition; and further contracting out'⁶⁶ are inevitable mechanisms which have evolved from the Charter. In early 1997 when the John Major Government was in its final months of responsibility for the Citizen's Charter Programme, the Public Service Committee published a report.⁶⁷ Stressing reporting on the progress of the charter programme that it had 'contributed over the last five years to improvements in the delivery, culture and responsiveness of many services to the public',⁶⁸ the Third Report also re-evaluated the effects of the programme with a critical eye. It exposed the limitations of the Citizen's Charter programme such as the lack of legal rights to support the Charter principles and procedures, the relationship between central control and localisation concerned with 'how far localisation and consultation with the users can be allowed to slacken central control', and whether a particular level or type of services can be promised and guaranteed as a right.⁶⁹ The Labour Government dealt with some of these problems by launching a series of initiatives, such as a new round of Charter Programme under the title of 'Service First',⁷⁰ 'Modernising Government',⁷¹ and a consultation paper on 'Review of the Public Sector Ombudsmen in England'.⁷² All this demonstrates that

⁶⁵ Cm 3370, *op. cit.*, p 1.

⁶⁶ Cm1599 (1991). p. 5.

⁶⁷ Third Report of Public Service Committee, H. C. Paper 78-I Session 1996-97.

⁶⁸ *Ibid.*, p. 25.

⁶⁹ *Ibid.* p. 92-95.

⁷⁰ Citizen's Charter Unit, *Service First--The new Charter programme 1998*.

⁷¹ Cm 4310, *op. cit.*

⁷² A consultation paper on 'Review of the Public Sector Ombudsmen in England' is available on the Cabinet Office website at: www.cabinet-office.gov.uk/central/2000/consultation.pdf.

consumerism has a positive place within the new management in terms of consumer's voice through consumer complaint systems (to be discussed later on) and the newly established People's Panel. In fact, government-led initiatives bring together 'a series of interlocking partnerships'⁷³ in new public management, for example, with the private sector, voluntary organisations, community groups and so forth, and governance put in train through Better Quality Services, and Invest to Save Budget.⁷⁴ Undoubtedly, the British Government is acting and will continue the process of 'delivering join-up, high quality services that respond to the needs of users'.⁷⁵

9.3.4. Modernising Government⁷⁶ and its New Drive for Public Management

The British modernising manifesto became noticed because of the novelties of public management, for example of public/private partnerships, and joined-up government. All this drive strongly indicates that the various agencies involved in delivering outputs in relation to crimes, drugs, housing and the environment should be joined up; agencies should work together to deliver services to the consumer, 'from the public's point of view, seamless'.⁷⁷ The new drive of public management is based on a number of initiatives, notable for 'integrated services teams'⁷⁸ and other cross-cutting-departmental budgets, such as Invest to Save Budget⁷⁹ on the recognition that 'a lack of coordination among multiple providers will impede efficiency'.⁸⁰ The Invest to Save Budget earmarked £230 million over the next three years for projects that involve two or more public bodies getting together to deliver public services through new ways of joint working.⁸¹ These initiatives have been supplemented by a number of new mechanisms for managing delivery to drive up standards in public services, coupled with four principles for performance management and inspection.⁸²

⁷³ Douglas Lewis (2000), *op. cit.*, p 201

⁷⁴ Cm 4310, p 40-41, and 31. Better Quality Service sets out the government's pragmatic approach and provides guidance on how to achieve it. For details of Save for Budget see below. Also see Douglas Lewis (2000), "Modernising Government: Management Theory or Constitutional Theory?" *European Public Law*, Vol. 6, Issue 2, p 212.

⁷⁵ *ibid.*, p 1.

⁷⁶ Cm 4310, *op. cit.*.

⁷⁷ Cm 4310, *op. cit.*, p 10.

⁷⁸ Cm 4310, *op. cit.*, p 23.

⁷⁹ Cm 4310, *op. cit.*, p 31.

⁸⁰ Douglas Lewis (2000), *op. cit.*, p 204.

⁸¹ Cm 4310, *op. cit.*, p 31.

⁸² Cm 4310, *op. cit.*, p 37.

The new mechanisms for managing delivery are manifested in the following aspects including:

- The Comprehensive Spending Review, setting out for the first time a co-ordinated set of objectives covering all public spending.⁸³
- Public Service Agreements, setting out for the first time firm targets for improving services over the next three years, and shifting the focus decisively from inputs to the outputs that matter.⁸⁴
- A New Cabinet Committee (PSX) monitoring progress on a regular basis with relevant Secretaries of the State.⁸⁵
- A New Public Service Productivity Panel bringing together public and private sector expertise to help Departments achieve the improvements necessary.⁸⁶
- An Annual report summarising progress for Parliament and the public.⁸⁷

All these, and five key modernisation commitments of policy-making, responsive public services, quality public services, information age government and public service, are bringing about a management revolution in public services without greater legal definition. The implication here is that ‘the pragmatism of the British constitutional experience looks likely to continue’.⁸⁸ The thrust of public management has been improved and modified by identifying the problems existing within the management of the public sector as ‘governments have not always looked closely enough at the links between spending and what the public is really getting in the way of results’.⁸⁹ It is said that ‘too little attention has gone into making sure that policies, programmes and services across the board are devised and implemented in ways that best meet people’s needs’⁹⁰ over the past 20 years. What is to the point is that attention should be given in the next stage to developing a more effective organisational infrastructure, for example of information. Therefore, it is important to recognise the limits within the management

⁸³ Cm 4310, *op. cit.*, p 36.

⁸⁴ Cm 4310, *op. cit.*, p 36 and 37.

⁸⁵ Cm 4310, *op. cit.*, p 37.

⁸⁶ Cm 4310, *op. cit.*, p 37.

⁸⁷ Cm 4310, *op. cit.*, p 37.

⁸⁸ Douglas Lewis (2000), *op. cit.*, p 206.

⁸⁹ Cm 4310. *Op. cit.*, P 35.

of public services so as to create an approach beneficial for government and management. Identifying the problems is a prerequisite for defeating them, which reaffirms the Government's intention to place far more emphasis on improving public management towards quality control in term of the People's Panel. Its aim is to ensure that 'all public bodies are properly and fully accountable to the public in delivering joined-up, high quality public services',⁹¹ and involving and meeting the needs of all different groups in society.⁹²

Clearly, the potential importance of this new package of managerial reforms reaffirms the paramountcy of consumers rather than service providers. The commitment to responsive public services is a case in point. The People' Panel provides an arena for people to have a voice about the delivery of public services. The new Public Service Productivity Panel⁹³ brings public and private sector expertise together to help Departments achieve improvements in public services, which opens the "way to new ideas, partnership and opportunities for devising and delivering what the public want."⁹⁴

The Government is also determined to encourage innovation and share good practice by way of working closely with the Public Audit Forum,⁹⁵ which represents all the national audit agencies, to find ways of delivering more modern and effective services to the public at both local and central level. Moreover, the Government claims to be getting rid of unnecessary or outdated statutory burdens on public services, which prevent them delivering a modern service. The government's proposed plan to remove burdens from public sector organisations is to extend the role of the Deregulation and Contracting Out Act 1994,⁹⁶ by which ministers are entrusted a general power to repeal by order statutory provisions imposing burdens on business. In February 2001, the *Regulatory Reform Bill* [Bill III] was published with the aim of removing some of the barriers to wider application of the deregulation order-making power under sections 1-4 of the

⁹⁰ Cm 4310. *op. cit.* P 11.

⁹¹ Cabinet Office, *A Consultation Paper: Review of the Public Sector Ombudsmen in England*. June 2000, available on the Cabinet Office website at: www.cabinet-office.gov.uk/central/2000/consultation.pdf.

⁹² Cm 4310. *Op. cit.*, p 7.

⁹³ Cm 4310, *op. cit.*, p 37.

⁹⁴ Cm 4310, *op. cit.*, p 9.

⁹⁵ Cm 4310, *op. cit.*, p 37.

⁹⁶ Cm 4310, *op. cit.*, p 38. Also see terence Daintith and Alan Page (1999), *op. cit.*, p 47-49.

Deregulation and Contracting Out Act 1994.⁹⁷ All these approaches to modernising government are just beginning to be taken in the realm of public sector reform, it is too early to make an assessment of the outcomes of the modernising government manifesto. However, there are some signs to demonstrate government's determination to reform the public sector by way of revising performance management arrangements and developing a more co-ordinated approach to management, such as 'one-stop shops'.⁹⁸

The extensive use of the new public management for the public services is at an early stage. It is not surprising that there are strengths and limits, for example for the prison and education services. In any case, this system will be perfected with constant repairing as time moves on. Britain is a case in point. The Labour Government has addressed it through a commitment to genuine partnership in policy making. To be more precise, the Labour Government has moved a step further by strengthening the process of policy-making, 'ensuring that policy making is more joined up and strategic'.⁹⁹ Joined up and strategic policy making are novel to facilitate the new public management and quality service. If fully implemented in practice, British public sector reform would enter a new stage focused on 'markets and prices, performance measurement, and a user-oriented service',¹⁰⁰ which incorporate the essence of new public management in practice.

Most importantly, the Government claims to develop a new and more creative approach to policy making and the ways of tackling cross-cutting policies by means of establishing a series of units to strengthen policy making processes. They are shown as follows:

- The Social Exclusion Unit.
- The Women's Unit.
- The Performance and Innovation Unit.
- The crime reduction programme.
- The UK Anti-drugs Co-ordinator.

⁹⁷ Regulatory Reform Bill [HI] is available at <http://www.parliament.the-stationery-office.co.uk/pa/cm200001/cmbills/051/en/01051--.htm>

⁹⁸ Cm 4310, *op. cit.*, P 30 and 33.

⁹⁹ Cm 4310. *Op. cit.* P 6.

¹⁰⁰ Andrew Gray & Bill Jenkins (1995), *op. cit.*, P 78.

- Customs & Excise/Inland Revenue.
- The Small Business Service.
- The Home Office, the Lord Chancellor's Department and the Crown Prosecution Service are now jointly planning and managing the criminal justice system as a whole.¹⁰¹

It has been noticed that having exposed failures in public management as has been mentioned above, the Labour Government claims to learn from lessons of success and failures of policy making process in other countries and promises greater transparency:

“Government should regard policy making as a continuous, learning process, not as a series of one-off initiatives. We will improve our use of evidence and research so that we understand better the problems we are trying to address. We must make more use of pilot schemes to encourage innovations and test whether they work. We will ensure that all policies and programmes are clearly specified and evaluated, and the lessons of success and failure are communicated and acted upon. Feedback from those who implement and deliver policies and services is essential too. We need to apply the disciplines of project management to the policy process.”¹⁰²

When the Citizen's Charter programme was first published in July 1991 it was regarded with suspicion. However most of the public reform practices and the actions of successive British Government initiatives clearly refuted this mistaken view. Wave after wave of government initiatives have centred on the programme, which has had a great impact on the new public management and quality public services, though there are some criticisms to be discussed below. Nevertheless, the Citizen's Charter Programme and its related programmes have been of fundamental influence in the ways which public sector is being managed, and 'demonstrates that even controls internal to executive itself can be quite effective'.¹⁰³

¹⁰¹ Cm 4310, *op. cit.*, P 18.

¹⁰² Cm 4310, *op. cit.*, p 17.

¹⁰³ Tony Prosser (1999), *Parliamentary controls and new forms of supervision of government in the United Kingdom*, Unpublished lecture. p 11.

9.4. Critique of the Arrangements and Implications for China

Any innovation in public management is closely bound up with what are called ‘post-bureaucratic’ or ‘entrepreneurial’¹⁰⁴ organisational forms, though the precise features of this paradigm for public bureaucracy are far from distinct. Nonetheless there is growing belief in the public sector that the new model characterised by such emphases as empowerment, customer service, quality and market mechanisms¹⁰⁵ is *de facto* emerging. The perceived fact is that many public institutions have been seen to ‘transform themselves from staid bureaucracies into innovative, flexible, responsive organisations’.¹⁰⁶ Many commentators believe that the emergence of new public management as a supplement to or even replacement for traditional public administration therefore begins with a political theory of the role of the state in modern life.¹⁰⁷ The significance of NPM lies in witnessing the shift from hierarchical organisations to ‘post-bureaucratic’¹⁰⁸ or ‘post-modern’¹⁰⁹ organisational forms.

The new ideal-type of entrepreneurial government has ten guiding principles, incorporating the following features as follows:

1. Separating policy decisions (steering) from service delivery (rowing) so that managers are freed up to choose such alternatives to in-house delivery as contracting out and partnerships.
2. Empowering citizens, clients and communities by enabling them to participate in government decision-making.
3. Promoting competition between those providing government services, including internal competition among administrative units.
4. Minimising rules so that government can be mission-driven.

¹⁰⁴ David Osborne & Ted Gaebler (1992), *op. cit.*

¹⁰⁵ Michael Barzeley with the collaboration of BABAK J. ARMAJANI. Berkeley and Los Angeles: University of California Press (1992), *Breaking Through Bureaucracy: A New Vision for Managing in Government*. Chapter 1.

¹⁰⁶ David Osborne & Ted Gaebler (1992), *op. cit.*, P xxii.

¹⁰⁷ Dunleavy, P. & B. O’Leary (1987), *Theories of the states: the problem of liberal democracy*, London: Macmillan. Andrew Gray & Bill Jenkins (1995), *op. cit.*, (75-99).

¹⁰⁸ Heydebrand W. (1989), “New organisational forms”, *Work and Occupation* 16, 1, 121-36.

¹⁰⁹ Clegg S. (1990), *Modern organisations: organisation studies in the most-modern world*, London: sage.

5. Measuring the performance of organisations and focus on results or outcomes rather than on inputs.
6. Treating clients as customers by such means as consumer surveys, customer councils, customer service training and quality guarantees.
7. Not just spending money but earning it as well by such means as user fees, enterprise funds, and entrepreneurial loan pools.
8. Not just offering services to meet needs, but preventing needs from arising by such means as recycling, fire prevention, anti-smoking campaigns, and preventative maintenance.
9. Decentralising government by moving from hierarchy to participation and teamwork and utilising techniques such as quality circles, labour management committees, and reward programs.
10. Minimising bureaucratic mechanisms and public programs by emphasising such market mechanisms as managing demand through user fees and creating market institutions to fill in the market.¹¹⁰

We would expect to find that these ten principles applying to the public sector reforms in different countries around the world, though in varying degrees. However it is the general trend that organisational restructuring campaigns are following the path of transforming from classical, rule-bound bureaucratic organisations into organisations that are creative, responsive and imbued with a new spirit of responsibility.¹¹¹ Clearly the emergence of radical forms of organisational decentralisation such as the Next Steps agencies in the UK appears to contradict Osborne's fourth principle. Paul Hoggett explains that 'operational decentralisation has proceeded against the background of government centralisation and has, if anything, served to reinforce the centralisation process'.¹¹²

The British devolved management system of public services is included in the traditional structure of parliamentary accountability, by which the values of the UK civil

¹¹⁰ David Osborne & Ted Gaebler (1992), *op. cit.*

¹¹¹ Robert B. Denhardt (1993), *The pursuit of significance: strategies for managerial success in public organisations*, Belmont, California: Wadsworth Publishing Co. 1993. P 283.

¹¹² Paul Hoggett (1996), 'New modes of control in the public services', *Public Administration* Vol. 74, Spring 1996 (9-32). P 19.

service exist within a wider framework of accountability relationships and political and moral responsibilities.¹¹³ This would suggest that UK performance management systems have been developed which largely contradict the paradigm of post bureaucratic organisation in the following aspects. Firstly, the UK system appears to have a proliferation of performance indicators, which seem to contradict the ‘mission-driven’ organisations. Osborne elucidates the advantages of ‘mission-driven’ government by means of exposing the disadvantages of the rule-driven organisations in the aspects of lacking efficiency, effectiveness, innovations, flexibility, and morality.¹¹⁴ The implication for China is that there must be a breakthrough in designing new public management system, to be more precise, establishing ‘mission-driven’ government mechanism suitable for the market economy rather the Party-led ideological education.

Secondly, the majority of public sector organisations in the UK today appear to be overwhelmed by forms of performance monitoring, which stifle the innovations of the executive organisations. Different types of performance management consequently cause restrictions on devolved management. Devolved management involves creating a delicate balance between performance requirements set at the top of the organisations and the more hands-off ways for service delivery process, so that people at the front line can inject their own creative contribution. Therefore, Sue Richards suggests that devolved management under the Next Steps initiative would move away from the old model, cutting out many of the layers of supervision, building in the trust of the managers down the line and ensuring that trust by concentrating on the front end of the management process.¹¹⁵

Thirdly, organisational restructuring attributed to public service reform has witnessed the emergence of new forms of proceduralism which, paradoxically, have been facilitated by the market mechanisms and quality control measures. Taylor and Hoggett argued that the contract specification and monitoring process provoke considerable transaction costs when conducted in an inter-organisational environment characterised by declining trust, on the basis of arms-length and legalistic rather than relational

¹¹³ Andrew Gray & Bill Jenkins (1995), *op. cit.*, P 77.

¹¹⁴ David Osborne & Ted Gaebler (1992), *op. cit.*, P 113-14.

¹¹⁵ Sue Richards (1989), ‘Managing people in the new civil service’, *Public Money and Management*, Autumn.

models of contracting.¹¹⁶ This contradicts the conventions of the real markets where consumers are the ultimate controller of quality services, whereas in the UK public service, layers upon layers of performance directives are established under the top-heavy, centralised structure which are reinforced by the parliament requirements. This parliamentary responsibility relationship led the top civil service to feel that they needed to have their hands on the detail in case of political flak, so weakening the managerial integrity of the system.

Moreover, there has been a perceived tendency that a variety of models of quality control characterised by different types of procedures are dominating over more developmental models of quality assurance in the British public services. 'Rather than seeking to build quality into the work culture it tries to build quality into inputs, systems and procedures'.¹¹⁷ The UK public service is felt to have the clearest expression of the total quality management (TQM) approach as was exemplified by the British Standards approach. Again there appears to be greater proceduralism typified by the quality audits in higher education and the introduction of TQM within the employment service.

In general, the devolved management system of the British public service was developed in terms of emphases on detailed performance specification, routine monitoring and proceduralisation, which controvert the 'mission-driven' organisations 'turning their employees free to pursue the organisation's mission with the most effective methods they can find'.¹¹⁸ Insofar as the UK public service reform goes, there is no obvious sign of a reduction in the formalisation of organisations; on the contrary, the reverse appears to be true. Therefore, 'current accountability processes in the civil service - up through the line of management, to the Minister, and through him or her to Parliament and ultimately the electorate - are often seen as detrimental to management'.¹¹⁹

¹¹⁶ Taylor M. & Hoggett P. (1994), "Quasi-markets and the transformation of the independent sector", in W. Bartlett, C. Propper, D. Wilson & J. Le Grand (eds.), *Quasi-markets in the welfare state*, Bristol SAUS, University of Bristol.

¹¹⁷ Paul Hoggett (1996), *op. cit.*, P 23.

¹¹⁸ David Osborne & Ted Gaebler (1993), *op. cit.*, P 113.

¹¹⁹ Sue Richards (1989), 'Managing people in the new civil service', *Public Money & Management*, Autumn 1989. P 30.

For the UK civil service, it is important to grasp the nettle and to realign and readapt the structures and accountability processes in different ways, which do not lose sight of the need to be answerable and responsive, but which also legitimate good management. All these will facilitate the government's intentions on reform and enable assessment of the public sector reform to see whether the government's reform initiatives were matched in practice, where emphases are given to what Kikert calls 'steering from a distance'.¹²⁰ It is important to re-establish new institutions for public sector reform striving at a consumer orientation, entrepreneurship management and to monitor public services. These are the claims for NPM made by its opponents, which have a constitutional implication for China's administrative reform.

Firstly, top priority should be given to separation between policy making and policy delivery to adapt to the 'mission-driven' management strategy, and to getting rid of the old ways of government which do not encourage innovation in public service management. The present China is still interested in emphasising ideological education in reshaping the civil service management, such as the three-fold themes of "learning, politics and honesty"; this matter has been discussed in chapter 6. On the contrary, creating new mechanisms such as 'civil service units' for surveillance of this division to be achieved in practice is largely ignored by both legislation and scholars. The establishment of the state owned enterprises' ombudsman system in 1998, the only measure having taken in surveillance of this division, is limited in its function of supervising the government owing to having no legal status as an adjunct organ to the State Council.

Secondly, the devolved management system should be devised around the needs of the people as consumers rather than the structure of the providers so as to achieve the aim of public sector reform of 'serving the people wholeheartedly'. This means that the dictum of 'serving the people wholeheartedly' can by no means be satisfied by three fold education and the Party as three representatives advocated by President Jiang Zemin,¹²¹ as has been borne out by the rise of corruption involving more and more government officials. Instead China must break away from dogmas that impede innovations in

¹²⁰ Kikert, W. (1995), *op. cit.*, 135-57.

¹²¹ For details see chapter 6 and 11.

delivering quality services to the people, and create a series of new measures to facilitate public sector reform. It is of great importance for China to establish an ombudsman system so that people will know how and where to complain and get a result when things go wrong.¹²² Moreover, the possibility of adopting internal complaints system from the UK's experience might be served as a good vehicle for meeting people's needs. In the Chinese context, empowering people by changing the culture of public service delivery needs particular attention, as China is extremely deficient in this aspect, which has been addressed in previous chapters relating to the Chinese civil service.

Thirdly, and most importantly, prominence should be given to the injection of private sector management systems and techniques into the public sector with the aim of creating more responsive and accountable public management. This is because the Chinese political system reform is far more backward than the economic system reform, whereby rigid, static, and rule-driven organisations stifle the innovations of public management to adapt to the fast changing market society, which has lowered the morale of civil servants. The side effects of this are the rise of corruption involving government officials and cadre entrepreneurs in the Chinese public realm, the issues I have fully discussed in chapters 5 and 6.

9.5. Conclusions

In many ways, the search for more effective public management has been of great significance in British public sector reform though there are some limits perceived by both government and the academic sphere. However, there is a trend that the management of the public service continually dominates the political agenda.

As has been demonstrated, specific standards play a considerable role in the development of the new public management in the UK public realm. This raises the issue whether precise standards imposed from the top reflect complex circumstances and encourage innovation among the executive agencies. There is no doubt that the new public management involves creating a balance between performance requirements set

¹²² More details see chapter 12.

at the top on the organisations and freedom for service delivery at the bottom, so as to encourage people on the front line to be creative according to the complex circumstances. If this is so then the government can separate itself from the setting of broad standards within which the service is operated, instead the government should concentrate on creating procedures for audit and inspection. 'Politics is replaced by management, which, in turn, is replaced by audit'.¹²³ This builds on the trust of the auditor and inspector, rather than somebody like influential politicians. The role of politicians, therefore, should be limited to the setting of the broad framework rather than day-to-day operations so as to promote mission-driven entrepreneurial leadership in order to 'steer rather than row'.¹²⁴

The UK's experience of injecting private sector management systems and techniques into the public sector has great strategic potential for the Chinese civil service reform. The grounds for this lie in its possibility of creating more responsive and accountable public management. This will provide an arena for the public to exercise voice about the delivery of public services, which will stop the public service providers putting their interests before those of the public.

The changing political agenda and the emergence of the new public management is a sign of a profound change in ways in which the public sector is being managed. This change expedites the formation of the public sector internal complaints systems. Ostensibly, the basic principles of the Charter programme provide the basis for the establishment of internal procedures for handling complaints. Hence, a number of interconnected themes run through the Charter initiative, namely, quality and standards, complaints procedures, and so forth, and 'have had potentially far-reaching effects on the public's perception about complaints and their resolution'.¹²⁵ Therefore, grievance and resolution is my principal concern in the following chapter.

¹²³ Ibid, p 250.

¹²⁴ Richard P. Nathan (1995), State University of New York (SUNY), Albany, 'Reinventing Government: What does it mean?' *Public Administration Review*, March/April 1995, Vol.55, No. 2, p 213.

¹²⁵ Diane Longley and Rhoda James (1999), *op. cit.*, P 33.

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Chapter 10

GRIEVANCE AND RESOLUTION

10.1. Introduction

As has been discussed in chapter 9, the emergence of the new public management has affected the ways in which the public sector is being managed. These changes need a rationale and effective administrative justice system to meet the needs of the citizen. A systematic conception of the role of administrative justice is of great importance to the changing public sector. An effective system of redress and justice is a state responsibility and an irreducible state responsibility,¹ 'which would enable the dealings between government and the governed to be conducted in an accountable and fair manner'.² The last two decades or so witnessed a considerable increase in demand for administrative justice in terms of judicial review, ombudsmen and internal complaints procedures for a purpose: that the actions and decisions of the public bodies and institutions are just in the modern and complex society.³ This is because 'administrative justice represents one of the most central and vexed issues in the field of public law today'.⁴

The result of this is that traditional democratic processes for delivering administrative justice, although supplemented and improved in recent years, demonstrate the inadequacies of meeting demands for machinery that can reflect effectively the fast changing public sector restructuring campaigns.⁵ Yet, despite this re-adjustment to the changing administration and the complexities of modern government, administrative justice, in many ways, has been undeveloped compared to that of other Western

¹ Norman Lewis and Patrick Birkinshaw (1993), *When Citizens Complain*. Open University Press. p 19.

² Diane Longley and Rhoda James (1999), *Administrative justice: Central Issues in UK and European Administrative Law*. Cavendish Publishing Limited. P 4.

³ Diane Longley and Rhoda James (1999), *op. cit.*, p 3.

⁴ Diane Longley and Rhoda James (1999), *op. cit.*, p 3.

European countries. It is only in over the last three decades that the courts have begun showing their muscle in the supervision of public activities and regulation. But their concerns mainly lie in the focus of private activity through enforcement of contracts and protection of property rights, whereas in the past they failed to provide a control on the legality or merits of government decisions. And this proves inadequate in administrative justice. As a result, there has been, and continues to be a remarkable growth in litigation seeking judicial review⁶ of the decisions of public authorities and this emphasises that preference should be given to the dealing with principles governing official action and individual rights rather than the technicalities of remedies.⁷

Diane Longley and Rhoda James argue that ‘administrative decisions should be made within a framework of principles rather than one of pragmatism’.⁸ This has profound implications for administrative law theory and practice. The lack of theoretical thinking and its detrimental effect on the development of public law is well documented.⁹ Lord Reid’s assertion further accounted for this paucity, and said that ‘we do not have a developed system of administrative law [in England] - perhaps because until fairly recently we did not need it.’¹⁰ However, a number of profound changes brought about by deregulation, privatisation, contracting out and the like stimulate the development of administrative redress and justice though they are only just beginning to be largely recognised. It is worth noting that the newly-launched consultation exercises on the organisation and operation of the public sector ombudsmen in England and Scotland will inevitably, if implemented in full, bring out radical changes to public complaints systems, which in turn will be of benefit to the public sector reforms. All this will facilitate the government’s commitment to modernising government on the “need to

⁵ Diane Longley and Rhoda James (1999), *op. cit.*, p 3.

⁶ For recent developments of judicial review in Scotland, see Tom Mullen, Kathy Pick and Tony Prosser (1995), *Judicial Review in Scotland*, Chichester: John Wiley & Sons, c1996; and Tom Mullen (1997), *Recent Developments in Judicial Review in Scotland*, *Judicial Review*, 2.

⁷ “...English law fastens, not upon principles but upon remedies,” *per* Lord Wilberforce in *Davy v. Spelthorne B. C.* [1984] A. C. 262 at p 276.

⁸ Diane Longley and Rhoda James (1999), *op. cit.*, p 5. And also see Nicholas Bamforth (1995), ‘Reform of Public Law: Pragmatism or Principles?’ *The Modern Law Review*, Vol. 58, September 1995. P 722.

⁹ Tony Prosser (1982), ‘Towards a critical public law’, *Journal of Law Society*, Vol. 9 No; Harden and Lewis (1986), *The Noble Lie: the Rule of Law and British Constitution*; Diane Longley and Rhoda James (1999), *op. cit.*, p 4-6.

¹⁰ Quoted from Nicholas Bamforth (1995), ‘Reform of Public Law: Pragmatism or Principle?’ *The Modern Law Review*, Vol.58, p 723. It is not suggested that the terms “administrative law” and “public law” are necessarily synonymous. *Ridge v Baldwin* [1964] AC 40, at 72; see, however, Lord Denning in *Breen v Amalgamated Engineering Union* [1971] 2 QB 175, at 189.

ease public access and improve efficiency in dealing with complaints across different sectors” so as to ensure that “all public bodies provide a first class service to all citizens”.¹¹

Against this background, this section will attempt to explain the particular ways in which administrative actions are supervised or controlled, in particular firstly focusing on the function of the parliamentary ombudsman. Then more emphasis will be given to introducing new forms of supervision of government - internal complaints system - through the Citizen’s Charter initiative and its related programme the Next Steps agencies. It is argued that new forms of supervision as a system would satisfy the need in the fast developing area of administrative justice for redress and grievance remedies. Finally, the role of courts and tribunals will be discussed in the belief that they play an important role concerning the quality control of administrative justice.

10.2. The Parliamentary Ombudsman

In the fields of British administrative justice, the ombudsmen system is of considerable significance relating to informal dispute resolution mechanisms, particularly in terms of the number of individual disputes,¹² which are settled or grievances resolved. The emergence of ombudsmen in the UK public sector was derived from Scandinavia in the 1960s and 1970s, with the Parliamentary Commissioner Act 1967, the National Health Service Reorganisation Act 1973, and the Local Government Act 1974. It was also introduced as a result of concerns about the ability of the institutions of central and local government to handle and to respond to grievances about their activities.¹³ Ombudsmen have two distinguishing features: constitutional independence and extensive powers of investigation.¹⁴

¹¹ Words extracted from Cabinet Office Minister Graham Stringer MP on “An Ombudsmen System for the 21st Century”, 15 June 2000, available on the Cabinet Office website at www.cabinet-office.gov.uk/central/2000/ombudsmenreview.pdf

¹² Mary Seneviratne (1994), *Ombudsmen in the Public Sector*. Open University Press. p 8. Diane Longley and Rhoda James (1999), *op. cit.*, P47.

¹³ Patrick Birkinshaw (1994), *Grievances, Remedies and the State*. p 188. London: Swell & Maxwell. Mary Seneviratne (1994), *op. cit.*, p 7. Diane Longley and Rhoda James (1999), *op. cit.*, p 47.

The system of ombudsmen does, currently in the UK, cover a wide range of variety from grievance handling to dispute resolution, including the public sector ombudsmen and the private sector ombudsmen. The latter are real alternatives to the courts, which are distinct from the public sector ombudsmen by two features: (a) they can look at the merits of cases, which come before them and, (b) they can make binding awards.¹⁵ By sharp contrast, complaints about the merits of decisions, or policy matters, cannot be investigated by the public ombudsmen, although the National Health Commissioner can investigate failure of services.¹⁶ In practice, the artificial distinction between the private and the public ombudsmen is of little importance as the Pension Ombudsman and the new Financial Service Ombudsman encompasses a kind of hybrid on the one hand. On the other hand, both of them were created by public law, but with jurisdiction over the private sector organisations.¹⁷

For the purposes of this thesis, I shall deal primarily with the public sector ombudsmen, the Parliamentary Commissioner for Administrative in particular (PCA), as opposed to the private variety. In the UK, the office of PCA was created by the Parliamentary Commissioner Act 1967. In 1994 the office of PCA was renamed as the “parliamentary ombudsman”,¹⁸ owing to the cumbersome legal title of the office and in order to increase public awareness of his office. Now “Parliamentary Ombudsman” has become common usage. Although it derived from the ombudsman in Scandinavian countries and New Zealand,¹⁹ the British model was devised to ‘supplement existing arrangements for Parliament to hold the executive to account and to provide MPs with an instrument to assist them in seeking redress for citizen’s grievances’.²⁰ The Parliamentary Ombudsman has a close link with the executive, the office being designed as an extension of Parliament, or as an adjunct to Parliament as opposed to an agency

¹⁴ Mary Seneviratne (1994), *op. cit.*, p 5.

¹⁵ Diane Longley and Rhoda James (1999), *op. cit.*, P 47.

¹⁶ Based on the Whyatt Report - Justice (1961), *The Citizens and the Administration: the Redress of Grievances*, (London Stevens) complaints should be divided into kinds: complaints about the merits of decisions and complaints about bad administration. Also see Mary Seneviratne (1994), *op. cit.*, p 7.

¹⁷ Diane Longley and Rhoda James (1999), *op. cit.*, P 47.

¹⁸ See *The Powers, Work and Jurisdiction of the Ombudsman*, First Report of the Select Committee on the PCA, 1993-94, HC 33-1.

¹⁹ On comparative aspects, see Hill, L. B, *The Modern Ombudsman*, 1976; Stacey, F, *Ombudsman Compared*, 1978; Norman Lewis and Partrick Birkinshaw (1993), *op. cit.* chapter 7.

²⁰ Cabinet Office, *Review of the Public Sector Ombudsmen in England*, 13 April 2000, available on the Cabinet Office website at www.cabinet-office.gov.uk/central/2000/ombudsmenreview.pdf para. 3.17.

independent of the political and administrative regimes like Scandinavia model,²¹ and it has no links with the judicial system.²²

Evidence from the evolution of the Parliamentary Ombudsman since its inception in 1967 indicates that the “system” was working well.²³ And the Select Committee expressed the view in its report published in December 1990 that the Parliamentary Commissioner scheme was now “part of the United Kingdom’s unwritten constitution”²⁴ so that its implication is that “the ombudsman system had been on the whole a success story”.²⁵ In practice, it is often easier to take a complaint to an ombudsman rather than go to court through judicial review. This is largely because “the ombudsman provides an authoritative means of ‘judging’ the behaviour of officials, thus helping to maintain standards of administration that are publicly acceptable”.²⁶ The number of completed investigations steadily increased from 231 in 1994, 254 in 1995, 272 in 1996, 343 in 1997, to 402 in 1997-98.²⁷ However, when compared with cases received via MPs, complaints dealt with by the Parliamentary Ombudsman have been relatively small. For example, “the PCA receives about 1,500 new cases each year. Cases are far more likely to be rejected than investigated - only 24% are investigated”,²⁸ which posed the question of how to stimulate ombudsmen in redressing grievances in the British administration.

Indeed, great changes have taken place in the public sector since the ombudsmen system was established thirty years ago, such as the emergence of a proliferation of methods of public service delivery from the creation of agency executives to a new and innovative partnership for the delivery of public service. New means of public service delivery

²¹ Mary Seneviratne (1994), *op. cit.*, p 3.

²² A. W. Bradley and K. D. Ewing (1997), *op. cit.*, p 757.

²³ HC 62-I. 1989-90. Minutes of Evidence 5 December 1989. Select Committee on the Parliamentary Commissioner for Administration. London: HMSO. QQ. 14-16.

²⁴ HC 129, 1990-91. First Report from the Select Committee on the Parliamentary Commissioner for Administration. London: HMSO. p xiii.

²⁵ Hansard 1991. House of Commons, col. 367-405, 1 May (Parliamentary and Health Service Commissioners). Parliamentary Commissioner for Administration 1992, HC 347. Session 1991-92. Annual Report for 1991. London: HMSO. And also see Diane Longley and Rhoda James (1999), *op. cit.*, p 47.

²⁶ A. W. Bradley and K. D. Ewing (1997), *op. cit.*, P 757.

²⁷ *Reports of the Office of the Parliamentary Commissioner for Administration and Health Service Commissioner*. Para. 2, in the *Government’s Expenditure Plans 1999-00 to 2001-02*. Cm 4221.

²⁸ A Report by the Cabinet Office, *Review of the Public Sector Ombudsmen in England*, April 2000, para. 3.27.

have inevitably affected the ways in which the public service is being managed. All this requires public sector ombudsmen to respond to the changing face of public service delivery. The questions are, whether the present arrangements for the separate ombudsmen organisation are in the best interests of the complainants, or whether they can be more integrated and cost-effective. Answers to these questions are attributed to concerns about the quality and operation of the ombudsmen in relation to accessing public grievance resolution. Recent consultation papers on *Review of the Public Sector Ombudsmen in England*²⁹ and *Modernising the complaints system in Scotland*³⁰ provide a forum for debate.

It is believed that consultation papers on ombudsmen in England and Scotland will provide fresh impetus for modernising government in delivering ‘responsive public services to meet the needs of citizens’.³¹ This is largely because the aim of the review was to consider the arrangements for the ombudsmen against the background of more integrated public services.³² The key recommendations arising from the review are manifest in a number of ways, including the creation of a new commission and the abolition of the MP filter. Issues relating to jurisdiction and powers of ombudsmen are not detailed in the belief that this needs legislation to deal with it in a more effective way after the new Commission is set up and its scope of jurisdiction is determined.

A new collegiate ombudsman structure

The main suggestion of the review was to unite the public sector ombudsmen (PCA, Health Service Commissioner and the Commission for Local Administration) into some form of single body, such as a ‘Commission for Public Administration’, in order to reduce the complexities and consequent difficulties for complainants. This proposition is consistent with modernisation themes of more integrated public services ‘with a strong customer focus’ and business-style management, such as a ‘one-stop shop’ for

²⁹ Cabinet Office, *Review of the Public Sector Ombudsmen in England: A Consultation Paper*, June 2000.

³⁰ Scottish Executive, *Modernising the complaints system: Consultation on Public Sector Ombudsman in Scotland*, October 2000. This document can be found on the Scottish Executive website <http://www.scotland.gov.uk/consultations/misc/mtcs/mtcs-00.asp>

³¹ Cm 4310, *op. cit.* p 13.

³² Cabinet Office, *Review of the Public Sector Ombudsmen in England*, 13 April 2000.

complainants about matters falling within the ombudsmen’s jurisdiction. It is claimed that a new collegiate model has advantages over the existing arrangements for ombudsmen organisation as follows.

- It would provide simpler access to the ombudsmen so as to make public bodies accountable to the public properly and fully, not only in delivering joined-up, high quality public services, but also in improving efficiency in dealing with complainants across difficult services.³³
- It would facilitate the investigation of complaints which currently fall under the jurisdiction of more than one ombudsmen.³⁴
- It would also achieve economy and efficiency gains.

It goes without saying that the ombudsmen should be reshaped to respond to joined-up government working in partnership and under innovative collaborative arrangements. The demand for creating a new collegiate ombudsman structure may strengthen accountability systems and be of benefit to public service management, as it will create new ways to facilitate new and innovative partnership for the delivery of public services. Once a new commission is established, it will bring about radical reform of the ombudsman system, which will improve the quality and operation of the ombudsman in dealing with citizens’ complaints.

The MP filter

Under the 1967 Act complaints relating to maladministration by departments and authorities must be submitted through a Member of Parliament (the MP filter). This long-established tradition of citizens using MPs when they wish to complain about central government departments and local governments has long been debated. This debate was brought sharply into focus following the consultation papers on public sector ombudsmen in England and Scotland in 2000. Whether the ‘MP filter’ facilitates the management of complaints which would be transparent to complainants, and whether the ‘MP filter’ should be sustained in an joined up government are all principal concerns of the review.

³³ *Review of the Public Sector Ombudsmen: A Consultation Paper*, June 2000, p 1 and para 2.8.

³⁴ *ibid.*

Indeed, MPs are not the only champions for aggrieved citizens. Modernising government and constitutional changes have brought about many means by which citizens can seek redress. User groups, voluntary sector organisations, increased use of judicial review, Human Rights and Freedom of Information legislation all provide, or will provide, means for aggrieved citizens to seek redress.³⁵

Jurisdiction and powers

At present, the parliamentary ombudsman is defined by function, of which the primary function is to investigate independently complaints through MPs from individuals relating to maladministration by departments and authorities. By legislation, the bodies subject to investigation by the PCA are listed in Schedules 2 and 4 to the Parliamentary Commission Act 1967 (as amended),³⁶ whereas bodies subject to exclusion of investigation are not listed (i.e. outside his jurisdiction). This is questioned by the Review. The suggestion is that instead of listing the bodies which are within jurisdiction, specification should be given to those bodies which are not within jurisdiction.³⁷ Whether the new set-ups would be effective in the era of joined up government should wait until legislation is brought forward. Nonetheless, the growth of ombudsmen in public sector has been a feature and is an indispensable element of justice in the contemporary states. The ground for this is that ombudsmen has been seen as one of many methods available for securing administrative justice,³⁸ for controlling public bodies, and for citizens seeking easy redress.

10.3. Internal Complaints Systems³⁹

Moving now from parliamentary ombudsmen control of administration, the role of internal complaints systems - the 'in-house' dispute resolution procedures - has

³⁵ *Review of the Public Sector Ombudsmen: A Consultation Paper*, June 2000, available on the Cabinet Office website at: www.cabinet-office.gov.uk/2000/consultation.pdf, para. 2.14.

³⁶ For details, see *Review of the Public Sector Ombudsmen: A Consultation Paper*, June 2000, Annex B. p 26-27.

³⁷ *Ibid.* para. 2.19.

³⁸ Mary Seneviratne (1994), *op. cit.*, p 5.

³⁹ Terence Daintith and Alan Page (1999), *The Executive in the Constitution: Structure, Autonomy, and Internal Control*, p 358-367.

considerably developed in recent years because the role of courts in public law matters is limited by two important factors. Theoretically, the very important one is that the courts are inferior to Parliament, and the Common law inferior as a form of law to parliamentary legislation to which the Crown has assented.⁴⁰ Moreover, the British “constitutional history has witnessed a rigid division between law and policy”.⁴¹ “On the one hand, the judiciary has a fierce independence; on the other law is not regarded as the greater interpreter of the pattern of the politics.”⁴² As a result, seeking redress of grievance against state institutions through non-judicial procedures is of great importance in contemporary society.⁴³ And the courts are too busy to handle all the other complaints.

It is apparent that there is a wide range of structured complaints systems in the public sector. It is important that most public bodies operate their own internal complaint systems. Internal grievance handling should remove the overwhelming body of sources of complaint. If the internal grievance remedy procedure works well, to that extent, external appeal might be less important, at least at the quantitative level, than might otherwise be expected. Lord Woolf indicates that “an increasing number of grievance procedures and ombudsmen now exist and that such procedures should normally be used before resort is had to an application for judicial review”.⁴⁴ The implication here is that such increasing internal procedures for administrative justice have been of great importance concerning public sector reform.

Staying with the remedies for grievances, it is probably true to say that what the complainants invariably need is good advice and a good domestic remedy. By endeavouring to address the connection between ‘access to justice’ and the quality of administration, the Citizen’s Charter as one of the most recent mechanisms designed for holding government more accountable could bring about increased efficiency in part assisted by effective grievance procedures.⁴⁵ Issues over the Citizen’s Charter and its related initiatives like Next Steps in relation to making public services more responsible

⁴⁰ K. Dyson (1980), *The State Tradition in Western Europe*. Oxford: Martin Robertson, P 41.

⁴¹ K. Dyson (1980), *op. cit.*, P 41.

⁴² K. Dyson (1980), *op. cit.* P 41.

⁴³ Patrick Birkinshaw (1994), *op. cit.*, P 1.

⁴⁴ Charles Blake (1997), ‘Access to Justice: the public law element’, *Public Law*, 1997, P 219.

⁴⁵ Norman Lewis and Patrick Birkinshaw (1993), *op. cit.*, P 27.

to their users and raising overall quality have already been discussed in previous chapters.

The Charter has been seen as providing an effective means of controlling the quality of public services in the following ways:

- setting up appropriate standards of performance in which the public may be involved;
- establishing systems of audit and monitoring such as the monitoring of grievances for quality control;
- formulating the provision of complaints procedures which provide knowledge about performance defects and overall improvement, coupled with the resolution to resolve individual grievances.

The Citizen's Charter thus offers a means for citizens to complain against the state through non-judicial procedures.⁴⁶ The growth of seeking redress of grievances against state institutions is certainly consistent with the trend of modernising government to adapt to the fast changing social and political situation. Government may privatise but it cannot abandon its responsibilities for appropriate regulation and grievance redress. Nor can it abandon its responsibilities for maintaining an appropriate justice system to meet the grievances of its citizens.⁴⁷ To put the matter bluntly, the significance of the Citizen's Charter lies in seeking an appropriate means to deliver "a new constitutional contract between government and people" with the intention of "lending support to the reforms wrought in public administration and services".⁴⁸

Identifying and setting effective procedures for handling complaints is essential. In 1993 a Citizen's Charter Complaints Task Force was set up to review complaints procedures with the aim to ensure that these operated within charter principles. The positive significance of the task force brought about a set of criteria and a checklist of an effective complaints system, which constituted the framework for review. As a result, a

⁴⁶ Patrick Birkinshaw (1994), *op. cit.*

⁴⁷ R. Rawlings, 'The Parliamentary Redress of Grievance' in C. Harlow (ed.) *Public Law and Politics* (London: Sweet & Maxwell, 1996); N. Lewis *et al.*, *Complaints Procedures in Local Government* (University of Sheffield, 1987); N. Lewis and P. Birkinshaw (1993), *op. cit.*, and Patrick Birkinshaw, *op. cit.*

⁴⁸ Diane Longley and Rhoda James (1999), *op. cit.*, P 27.

Good Practice Guide for complaints system was published in 1995. All central Government departments and agencies should have at least one complaints procedure/or procedures for public service delivery and encourage services to consult users.

In order to make it easier for people to complain about lapses in service and make suggestions about the way in which things can be improved all departments and agencies are required to put their complaints procedures on their home page on the World Wide Web.⁴⁹ The task force examined the methods adopted within both departments and agencies to resolve grievances by reviewing over 60 public complaints systems, as well as complaints handling literature and commissioned research into users' view. The Citizen's Charter Unit within the Cabinet Office oversees the programme. The task force recommended that "the Citizen's Charter Unit should take the lead in providing guidance on public service complaints procedures which reflected the Charter's principles of effective redress".⁵⁰

As for the public perception about complaints and their resolution, the Citizen's Charter is certainly perceived as having potentially far-reaching effects on procedures for resolution of grievances. It has been expected that all public bodies providing a service directly to the public should establish an internal review mechanism appropriate to their circumstances of existing complaint handling arrangements.

After a slow beginning, the influence of the Charter principles has spread over public administration due to the influence of the Next Steps programme and the emergence of new public management. From such a standpoint, the launching of the Citizen's Charter created a new way to improve public service management and accountability, dealing with the means of redress that are provided where contact between official government and those to whom powers are delegated or contracted out on the one hand, and the citizens on the other hand, generates grievances. Thus the Citizen's Charter has acted as the right direction towards what was heralded as "a new way of governing".⁵¹

⁴⁹ The source is from *The Citizen's Charter - Five Years On*. Cm 3370.

⁵⁰ Diane Longley and Rhoda James (1999), *op. cit.*, p 32.

⁵¹ Norman Lewis (1993), 'The Citizen's Charter and the Next Steps: a new way of governing', 64 *Political Quarterly* 3.

In 1997, the Public Service Committee published a report⁵² on five years of the Charter programme. While addressing the evaluation of the programme relating to outcomes for users and management, and better consultation with users as I have addressed earlier, the report also reiterated many of the comments made earlier by the complaints task force, including the need for more independent complaints procedures and great clarity on the redress. The report did find a number of serious shortcomings in defining the process, “not least consideration of the overlap of the functions with those of the ombudsmen”.⁵³ The implication is that internal redress and complaints systems need to be reinforced and supported by a number of changes in law and public administration, in order to provide citizens with effective redress through grievance systems.

In early 1997, whilst committed to retaining the principles of the Charter programme, the incoming Labour Government relaunched the Citizen’s Charter by issuing a consultation document as to how it could be improved, as has already been discussed in chapter 7. One of the issues addressed in the Government’s consultation was the redress for complaints that should be available under charters. The government gave a clear commitment supported by the launch of the People’s Panel to research public views on improving services and the adoption of legislation on freedom of information⁵⁴ to improve the access to information on the performance of public services.

The drive towards seeking redress of grievances against the state through internal complaints system will continue. All this requires the original Citizen’s Charter and its relaunched programme to back up the internal procedures for redress of complaints. The setting up of complaints procedures needs careful planning and monitoring in order to evolve efficiently, with a view to ensuring that the system stays in constant repair, moves with the times and has fewer and fewer gaps. Only in this way, can an ideal-type of dispute resolution machinery for dispute redress smoothly emerge.

10.4. Courts and Tribunals

⁵² The Third Report: The Citizen’s Charter. HC 78-I (1997).

⁵³ Diane Longley and Rhoda James (1999), *op. cit.*, p 33.

10.4.1. Courts

In recent decades, Britain has witnessed a significant expansion of recourse to judicial review,⁵⁵ although the actual number of judicial review cases may seem relatively small when compared to the hundreds and thousands of decisions taken daily by the administration and non-judicial means as have been discussed above. In line with the increase in judicial review, the courts have been seen with readiness to intervene in administrative decision making and in the development of the principles of review.⁵⁶ The courts, as the traditional institutions for the resolution of grievances, play an important role concerning the quality control mechanism of the system of justice against the state.⁵⁷

Alongside the idea of the separation of the powers between courts and executive, the constitutional role of the courts is found in keeping the executive within the limits of lawful authority and upholding the rights of the individual against misuse of executive power. The essential judicial function is carried out in reviewing the exercise of power by public authorities⁵⁸ within the limits of the particular statute as authorities invested with discretionary power by an Act of Parliament. To be more precise, most powers of the public authorities are statutory, and “they must not exercise their powers arbitrarily or so unreasonably that the exercise of the discretion is clearly unjustifiable”.⁵⁹ To determine whether the administrator acts within the boundaries set by laws, the courts are empowered to do so by intervening if a public authority acts unlawfully or abuses its

⁵⁴ See *Freedom of Information Act 2000*.

⁵⁵ For developments of judicial review see Terence Daintith & Alan Page (2000), *op. cit.*, P 335-337.

⁵⁶ See Colin Turpin (1999), *British Government and the Constitution: Text, Cases and Materials* (fourth edn.), Butterworths, P 567; and also see Longley and Rhoda James (1999), *op. cit.*, p 105.

⁵⁷ Norman Lewis and Patrick Birkinshaw (1993), *op. cit.*, P 9.

⁵⁸ These include ministers and their departments, local authorities, and non-departmental public bodies. In addition, the courts have extended the review jurisdiction to certain ‘self-regulating’ organisations constituted in the private sector to supervise a market, trade, profession or other activity. In particular, the following bodies have been brought within the scope of review, such as the Panel on Take-overs and Mergers, the Life Assurance and the Unit Trust Regulatory Organisation and Advertising Standards Authority. For more details see *R v Panel on Takeovers ex p Datafin* [1987] 2 WLR 699; and [1987] 2 QB 815, at 838. This case was hailed as a leading case, which opened the prospect of an expansion of judicial review in terms of those bodies. In *Datafin*, The Take-over Panel, supported by a periphery of statutory powers and duties, was considered to be exercising a public function. And also see Colin Turpin (1999), *op. cit.*, p 552.

⁵⁹ The principle of judicial review was explained by Kerr LJ in *R v London Transport Executive, ex p Greater London Council* [1983] QB 484, 490, and also see Colin Turpin (1999), *op. cit.*, p 47.

power. The courts, in interpreting the statute and ascertaining its objects and policy, can mark out the limits of power.⁶⁰

From such a standpoint, the courts may be the only outside scrutineer of administrative action, thus making the conduct of the court fundamentally important.⁶¹ But the expensive costs, actual or potential of advice and proceedings are beyond the reach of most citizens.⁶² Staying with courts in relation to citizens' complaints, and not primarily with the existing technical weakness or problems affecting judicial review, the courts are expensive having often been concerned to keep control of their own procedures and protect public bodies from unmeritorious or inconvenient litigation. Their functions are to adjudicate to render an authoritative judgement made by an impartial third party supporting one of the two disputants in accordance with rules.

Speaking generally, judicial review, as the machinery of ensuring administrative justice, has particular value in contesting an administrative decision, by which excess or abuse of public power may be restrained or remedied, but there are important issues relating to access to the courts. These are bound up with the questions of standing, amenability and procedure.⁶³

Standing in English Law

A new test for standing (or *locus standi*) to make an application for judicial review was introduced by a change in the Rules of the Supreme Court in 1977. The relevant provisions are now s. 31 (3) of the Supreme Court Act 1998, and the Civil Procedure Rules 1998 (SI 1998 No 3132, Sch 1: RSC Ord 53, r 3(7)). The test is mandatory: the court shall not grant leave unless 'the applicant has sufficient interest in the matter to which the application relates'. It has been noted that there are no statutory formulae setting out criteria for determining what is a sufficient interest, although in more recent years several cases have liberalised standing and a number of criteria have been set

⁶⁰ Colin Turpin (1999), *op. cit.*, p 47.

⁶¹ Diane Longley and Rhoda James (1999), *op. cit.*, p 106.

⁶² See Mary Seneviratne (1994), *op. cit.*, p 9. And also Norman Lewis and Patrick Birkinshaw (1993), *op. cit.*, p 203.

⁶³ See Diane Longley and Rhoda James (1999), *op. cit.*, p 106-114; Carol Harlow and Richard Rawling (1997), *Law and Administration*, Butterworths, p 541-50; and Colin Turpin (1999), *op. cit.*, p 560-567.

out.⁶⁴ Nevertheless, it is important to note that the courts play a significant role in the determination of standing for judicial review.

Procedure

In Britain, the Superior Courts are able to review the legality of acts and decisions of administrative agencies, inferior courts and tribunals. Until the late 1970s, judicial procedures for the different orders and other remedies against the administration were highly complex. In 1977, a new procedure for the ‘application for judicial review’ was introduced and is now found in Civil Procedure Rules, part 54 and s 31 of the Supreme Act 1981. This procedure can be employed for claiming not only the prerogative orders of quashing orders, mandatory orders and prohibiting orders, but also for remedies of injunction, declaration and damages. Moreover, the application for judicial review has also been subjected to a number of practice directions and administrative modification since 1981; the obvious example is that applications are heard by a list of judges with expertise in administrative law.⁶⁵

A fundamental control over the procedure for application of judicial review in England is the requirement that ‘leave’ be obtained from the High Court, usually before a single judge, before progressing for a full hearing, the intention being to safeguard the administration against unmeritorious challenges. Furthermore, obtaining ‘leave’ must be made promptly or, in any event, within three months of the decision, although the court for good reason may extend this period. But sometimes a decision filed even within three months may still be held to be out of time if the court considers it has not been brought sufficiently promptly.⁶⁶ The requirement for permission when seeking judicial review has attracted some arguments, one argument being that ‘the leave requirement

⁶⁴ For more details see Longley Diane and Rhoda James (1999), *op. cit.*, 129-162; Terence Daintith and Alan Page (1999), *op. cit.*, p 330 and 335; and also A.W. Bradley and K.D. Ewing (1997), *op. cit.*, p 768-849. A case where relevancy and improper purpose were grounds for review in a politically contentious context is *Ex p World Development Movement Limited*, where the court took account of the importance of the public interests aspects of the cases. This case appears to take the judgements in *Greenpeace* a stage further in giving explicit recognition to the *public interest element* of such cases. See *R v Secretary of State for the Foreign Office ex p World Development Movement* (Pergau Dam case) [1995] 1 All ER 611; [1996] 1 WLR 386; and also *R v Inspectorate of Pollution ex p Greenpeace* (No 2) [1994] 2 All ER 329.

⁶⁵ Carol Harlow and Richard Rawling (1997), *op. cit.*, P 563; and Diane Longley and Rhoda James (1999), *op. cit.*, p 106.

⁶⁶ *R v Swale BC ex p Royal Society for the Protection of Birds* [1991] 1 PLR 6, and also see Diane Longley and Rhoda James (1999), *op. cit.*, p 108.

forces judges into case load management, deflecting them from sole consideration of the legal merits of the case'.⁶⁷ This argument drops a hint that obtaining 'permission' makes it difficult to challenge public bodies in judicial review, and makes access to redress of grievances inconsistent.

Remedies

The judicial remedies, including quashing, prohibiting, and mandatory orders, declaration and injunction, are of constitutional significance when challenging *ultra vires* actions or decisions. Without the judicial remedies applicable to *ultra vires* actions and decisions, claims for administrative justice would be clouded. Quashing, prohibiting and mandatory orders - as the prerogative remedies - are specific to public law. By contrast, originated and developed from private law litigation, declaration and injunction are applied to public law in recent years.⁶⁸

10.4.2. Tribunals

Apart from courts, a system of tribunals is designed to provide speedier, cheaper, specialised and less complex procedures for dealing with disputes. Like courts, tribunals handle the disputes between competing claims. Being external to public administration, providing an independent assessment of decisions of public bodies is construed as one of the essential features of tribunals. But these administrative appeal bodies only cover a small portion of the total field of administrative action, and there is no general administrative appeal tribunal.⁶⁹ Therefore, Lewis and Birkinshaw advocate reforms to tribunal system; one of the reforms referring to the establishment of an Administrative Appeal Tribunal in the UK.⁷⁰

The Council On Tribunals was set up under the Tribunals and Inquiries Act 1958. This Act re-enacted in 1971 and again in 1992 to keep under review the constitution and

⁶⁷ Diane Longley & Rhoda James (1999), *op. cit.*, p 107; and also see Gordon, R, (1995), 'The Law Commission and judicial review: managing the tensions between case management and public interests challenges', *Public Law*, p 11.

⁶⁸ Diane Longley & Rhoda James (1999), *op. cit.*, p 113.

⁶⁹ Mary Seneviratne (1994), *op. cit.*, p 10. For more details see *Tribunals for Users One System, One Service*, Report of the Review of Tribunals by Sir Andrew Leggatt, March 2001. Available at <http://www.tribunals-review.org.uk/legatthtm/leg-00.htm>.

working of over 2,000 different tribunals listed in the Schedule to the Act and to report on any matters referred to it by government.⁷¹ It has been noted that The Council on Tribunals is an advisory body, which does not have responsibility for drafting procedural rules for tribunals, but in the position to be consulted before any new procedural rules for tribunals are implemented. Further, it is consulted by government departments from time to time regarding tribunal matters.

The main difference between ombudsmen and tribunals is that tribunals adjudicate on the merits of specific decisions made by an administrator, whereas the ombudsman operates in a relatively informal and confidential manner, in a private setting and concerned with maladministration. In fact it is not as simple as it seems to make the straightforward distinction between reviewing on merits and finding defective administration. Since ombudsmen systems have been set up in the world, most governments have worked on the rough and ready distinction of courts and/or tribunals dealing with law and in the latter case ‘merits’, while ombudsmen merely investigate failure of administration without reference to the merits of the decision.

10.5. Conclusions

This chapter has three main themes. It subjects current institutions to scrutiny in the light of the British constitutional ideals, including public sector ombudsmen system, the internal complaints system and the judicial review. It considers how ombudsmen, internal complaints system, and judicial review are used in holding government accountable to the citizen, and how these procedures are available to the individuals seeking redress. Prominence has given to the account of recent developments including, for example, the Charter ideology and its related initiatives of modernising the complaints system in England and Scotland. There is increasing recognition of establishing a modern complaints system which is open, accountable, easily accessible to anyone and has the trust of the public administration.

⁷⁰ Norman Lewis and Patrick Birkinshaw (1993), *op. cit.* P 88-110.

⁷¹ Diane Longley & Rhoda James (1999), *op. cit.*, p 97.

The system of administrative justice has pointed to the key theme of political responsibility. In this system, accountability is twofold: the strategic or policy level for public services lies in the hands of ministerial responsibility, and the operational ones are delegated to the sphere of the managers, which involves the core issue of ministerial responsibility. Whether the classic doctrine of ministerial responsibility matches the agency structure in a modern state will be discussed in the following chapter.

Chapter 11

CONSTITUTIONAL ISSUES

11.1. Introduction

The main thrust of constitutional and administrative reform appears in a number of ways, namely, a consumer orientation, institutional reorganisations, and new public management, which have been discussed in the previous chapters. All this is bound up with the core issue of responsibility systems, by which I mean the ways in which ministerial responsibility may be applied. Britain is traditionally perceived as having a system of ministerial responsibility for everything done or left undone by a ministerial department, while civil servants bear no responsibility to Parliament apart from that of their minister.

This perception has not only dominated the British political system but also affected the behaviour by which politicians deal with the internal workings of the government. However in recent years, the dominant convention of ministerial responsibility¹ has been questioned by both theoretical and empirical challenges, which led to a repeated demand for 'reassessments of ministerial responsibility'² at the time when the Next Steps agencies were mooted.³ To condemn agencies out of hand as contradicting ministerial responsibility would be unwarranted since much depends on the mechanisms devised to yoke the agencies to the machinery of government.

¹ See, for instance, Norman Lewis and Diane Longley (1996), 'Ministerial Responsibility: The Next Steps', *Public Law* 1996. P 490-507; Sir Richard Scott (1996), 'Ministerial Accountability', *Public Law* 1996, Autumn, p 411-426; Diana Woodhouse (1997), 'Ministerial Responsibility: Something Old, Something New', *Public Law*, Summer, p 262-282; Vernon Bogdanor (1997), 'Ministerial Accountability', *Parliamentary Affairs* Vol. 50, No. 1, January 1997.

² Colin Turpin, 'Ministerial Responsibility' in Jeffrey Jowell and Dawn Oliver (2000), *op. cit.*, chapter 5. P 137.

³ Efficient Unit (1988), *Improving Management in Government: The Next Steps*.

In this chapter, I seek to analyse how these challenges require a rearrangement of accountability settings for adaptation to the ‘changing constitution’,⁴ aiming at arguing whether the existing accountability mechanisms can be matched to agency structures in a contemporary state with great enthusiasm for non-hierarchical modes of organising. In doing so, I shall first examine how the basic doctrine of ministerial responsibility rested upon the ‘parliamentary power of holding ministers to account’.⁵ Second, I shall analyse whether ministerial responsibility is sustainable in the future as the ruling convention by questioning the role of chief executives in the agencies. My aim is to see what light the creation of Next Steps Executive Agencies has cast on ministerial responsibility and whether there is any possibility in future of holding the executives directly to account to the public as the ruling convention. This is because the solution to these questions is crucial to political system reform.

11.2. Principles of Ministerial Responsibility

11.2.1. The Classic Doctrine of Ministerial Responsibility

The classical doctrine of ministerial responsibility to Parliament is based on the two themes that ministers are responsible to Parliament and that civil servants bear no responsibility to Parliament apart from that of their ministers. It is a convention that ministers must be members of one or other House of Parliament. Such membership has an important part to play in holding ministers to account to “Parliament for the policies, decisions, and actions of their departments and agencies”⁶ in terms of answers to written or oral parliamentary questions. In theory having failed to give satisfactory answers to Parliament will lead to ministerial resignations.⁷

11.2.2. Components of Ministerial Responsibility

⁴ Jeffrey Jowell and Dawn Oliver (2000), *op. cit.*

⁵ Colin Turpin (1994), *op. cit.*, P 137.

⁶ *Ministerial Code: A Code of Conduct and Guidance on Procedures for Ministers*, Cabinet Office (July 1997), available at <http://www.cabinet-office.gov.uk/central/1997/mcode/index.htm>.

⁷ For detailed data on ministerial resignations see Keith Dowding and Won-Taek Kang (1998), ‘Ministerial Resignations 1945-97’, *Public Administration* Vol. 76, Autumn 1998 (411-429).

It is vital to pause to explore the components of ministerial responsibility, which Rodney Brazier classified into three categories: collective responsibility, individual responsibility, and rules relating to Ministers' personal financial affairs.⁸ It is the first two categories with which I am here concerned, in order to compare the classic doctrine of ministerial responsibility with the delegation of accountability to the executive agencies under the Next Steps initiative.

Like other constitutional principles, the doctrine of ministerial responsibility is neither invariable nor static and may give way before more political forces. Today collective responsibility incorporates a number of related aspects.⁹

- Ministers are collectively responsible to Parliament, and to the Commons in particular, for the conduct of national affairs.¹⁰
- The essence of collective responsibility lies in a realm whereby “ministers must in the nature of things have differences, but they must outwardly appear to have none”,¹¹ meaning that ministers may not publicly criticise government policy.
- In return, the government will generally rally to his or her defence if members of the Commons seek to censure an individual minister, though ministers are individually responsible to Parliament for the conduct of their departments.¹²
- There is no defence or excuse for a minister to disagree publicly with Cabinet decisions on the grounds that the doctrine of collective responsibility binds all members of government from the lowest to the highest, in the sense that he/she will have to support it publicly through his votes in Parliament and through his speeches.¹³
- A minister may at any time resign in protest against Cabinet decisions with which he/she strongly disagreed, though once Cabinet decisions have been reached, collective Cabinet responsibility applies. Refusing to accept collective responsibility may lead to resignation.

⁸ Rodney Brazier (1994), *Constitutional Practice*. Clarendon Press. Oxford. P 140.

⁹ For a summary of the development of collective responsibility, see A. W. Bradley and K. D. Ewing (1997), *Constitutional and Administrative Law*, Twelfth Edition. P 115-117

¹⁰ Ibid.

¹¹ Walker, P Gordon (1972), *The Cabinet*. P 27-28.

¹² See A. W. Bradley and K. D. Ewing, 1997, *op. cit.*, p 116.

¹³ Rodney Brazier (1994), *op. cit.*, P 140.

Clearly, collective ministerial responsibility seems to rest upon an assumption of collective decision-making, which can never fully correspond with the practice of modern government.¹⁴ In a strict version, this principle of ministerial solidarity requires that a minister should not publicly dissent from government policy without first resigning from office, and that a minister who so dissents without resigning should be dismissed.

As for individual ministerial responsibility, it involves the following aspects: (a) his private conduct; (b) his general conduct of his department; and (c) acts done or left undone by civil servants in his department.¹⁵ It is generally held that in responsibility for (a) and (b), it is somewhat easier to apply to the sanctions for individual responsibility¹⁶ than in (c). The category of (c) cast doubt on the role of the Next Steps agencies relating to delegation since 1988 onwards with the intention of achieving effective delegation of management power. Individual ministerial responsibility is complemented by the tradition of civil service anonymity, which has been challenged in recent years by developments based on the notion of 'accountable management'. The matter will be discussed later on. The heart of the relationship between ministers and civil servants lies deep in the convention that ministers are individually responsible to Parliament for the conduct of their civil servants. It has two strands: the first is that a minister has an obligation to answer for, and explain to Parliament, the work of his department; the second strand is that a minister, in addition to being responsible for his own conduct, is also responsible for every failure of departmental policy and administration, and should resign if the failure is a serious one.¹⁷

Those principles stated above are the essence of the classical doctrine of ministerial responsibility, which dominated the British political system ever since its establishment

¹⁴ Jeffrey Jowell and Dawn Oliver (2000), *op. cit.*, chapter 5 and 6; A. W. Bradley and K. D. Ewing (1997), *op. cit.*, chapter 2, 9, 10 and 13; P.P. Craig (1994), *Administrative Law*, Third Edition, London, Sweet & Maxwell; Christopher Brady and Peter Catteral (1997), 'Managing the core executive', *Public Administration*, Vol. 75 (509-529); and Norman Lewis and Diane Longley (1996), 'Ministerial Responsibility: The Next Steps', *Public Law* (490-507).

¹⁵ Rodney Brazier (1994), *op. cit.*, P 147.

¹⁶ For details of sanctions applied to individual ministers fell into these two categories see Rodney Brazier 1994, *op. cit.*, chapter 7, and also see Keith Dowding and Won-Taek Kang (1998), *op. cit.*

¹⁷ Gavin Drewry & Tony Butcher (1995), *The Civil Service Today*, Blackwell, P 150-51.

as early as 1878.¹⁸ More positively the individual responsibility of ministers is not negated or absorbed by the collective responsibility of government but coexists with it as an associated convention by which ministers answer for their own actions and for those of their department. However, reality is demolishing the basic doctrine of ministerial responsibility. First, the classic doctrine of ministerial responsibility to Parliament cannot be applied in any meaningful sense in modern complex political conditions. The fact is that a unitary government department as the body making and administering policy no longer exists owing to the very *raison d'être* of the creation of the Next Steps agencies responsible for the administration of service. Second, the effectiveness of ministerial responsibility even for Departments proper has been called into question, remarkably in the Sir Richard Scott's inquiry into government policy on arms sales to Iraq. It is revealed that ministers had misled Parliament and that key information had not been given even when there was no commercial reason preventing disclosure.¹⁹

11.3. Ministerial Responsibility: Application to Next Steps

Having examined the principles of ministerial responsibility, attention may now be turned to their application to Next Steps in contemporary parliamentary practice, including re-formulation of ministerial responsibility and the delegation of responsibility to an executive agency.

11.3.1. Responsibility and Accountability Re-formulated

The creation of Next Steps agencies, it is claimed, has given rise to an 'accountability gap' whereby ministers have distanced themselves from the traditional full accountability for their departments.²⁰ In order to bridge this gap, attempts have been made over the last ten years to formalise the concept of ministerial responsibility to

¹⁸ A. W. Bradley and K. D. Ewing (1997), *op. cit.*, P 116.

¹⁹ *Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions*. HC 115. (1995-96).

²⁰ HC 27-II (1993-94), p 189.

facilitate the implementation of Next Steps to reflect the modern realities of the British politics. For example, the previous government has sought to make a distinction between “responsibility” and “accountability” to solve the ministerial responsibility resulting from the creation of Next Steps. A split between ‘policy’, for which ministers could be held to responsibility, and ‘operational matters’, for which Next Steps executive agencies were supposed to be accountable, is a prerequisite for *responsibility* and *accountability* reformulated. A minister is ‘accountable’ to Parliament for what had occurred in his department without that implying personal blame on the part of a minister if things had gone wrong.²¹ By contrast, a minister is said to be ‘responsible’ for broad policy, and the issues that he/she has been personally involved, not for all department affairs. In other words, the minister is not responsible for what is done by the civil service in the Next Steps agency where he has delegated the accountability for administration from parent departments.

This distinction between accountability and responsibility has not been accepted as satisfactory since it provides a means by which a minister may avoid personal liability for unpopular or mistaken decisions; and it opens up potential areas of government for which no one is ‘responsible’ to Parliament, even though a minister remains ‘accountable’.²² Thus, Carol Harlow argues that ‘the distinction is now firmly entrenched and can be relied on by ministers entirely to deflect responsibility’.²³ This argument implies that the means adopted so far to reformulate ministerial responsibility would seem to be founded on concern over the political consequences of more comprehensive accountability rather than on a consideration of being compatible with the development of Next Steps executive agency structures.

²¹ For definition see Cabinet Office, Memorandum to Treasury and Civil Service Committee, H. C. Deb. 27-II, *op. cit.*

²² A. W. Bradley and K. D. Ewing (1997), *op. cit.*, p 128.

²³ Carol Harlow (1999), ‘Accountability, New Public Management, and the problems of the Child Support Agency’, *Journal of Law and Society*, Vol. 26, No. 2 (150-74), P 151.

Criticisms of this distinction have been voiced on the grounds that in practice ministers do not give full explanations to Parliament with respect to their accountability for what had happened in their departments. Nor do they resign in cases of personal culpability.²⁴ The Scott inquiry into Government policy on arms sales to Iraq and the dismissal of the Prison Service head, Derek Lewis (a contracted businessman) have further affirmed these criticisms. What has occurred is that this distinction inevitably results in the blurring of the line of responsibility, a problem long associated with the establishment of the Next Steps executive agencies. More seriously, there is no clear dividing line between accountability and responsibility, a line having an important bearing on strengthening the British responsibility system to meet the development of the Next Steps structure. The Public Service Committee of the Commons has insisted that no clear dividing line can be drawn between accountability and responsibility. Ministers bear two main aspects of ministerial responsibility: (a) the duty to give an account, and (b) the liability to be held to account.²⁵

The dismissal of Derek Lewis by Michael Howard, the Home Secretary, after the publication of a scathing report by General Sir John Larmont into the incident in January 1995 when three prisoners escaped from the Parkhurst high-security jail, was a case²⁶ in point. It not only highlighted familiar divisions between the “policy” and “operations”, a division said to be reflected in the Framework Document of the establishment of Prison Service as an Executive Agency,²⁷ but also obscured the point of “individual ministerial responsibility”, under which the role of the Executive Agencies under the Next Steps initiative remains a live issue. The case of Derek Lewis witnessed confusion and ambiguity as to the requirements of ministerial responsibility where the agency operates in a politically sensitive area. Importantly, from April 1993 the Prison Service was given greater operational independence, hence converting it to agency status so as to make ministers responsible only for overall policy. By curtailing the proliferation of detailed administrative control, political control would be strengthened by explicitness of delegated responsibilities and agency accountability for

²⁴ Sir Richard Scott (1996), *op. cit.*; Second Report from Public Service Committee, *Ministerial Accountability and Responsibility*, H. C. 313-I, 1995-96; TCSC, *The role of the Civil Service*, H. C. 27, 1993-94.

²⁵ HC 313-I, *op. cit.*, paras 21 and 32.

²⁶ See 8.3.2 ‘A case study’ in chapter 8 above.

²⁷ For a discussion of framework documents see 8.3.1 in chapter 8 above.

performance. Is it feasible in practice for ministers to extricate themselves from detail in the event of a politically sensitive situation?

Mr. Lewis, the Director General of the Prison Service, had suffered daily political interference and unjustified pressures from Mr. Howard, an example verified by Learmont's report,²⁸ on the one hand. On the other he tried to use modern management techniques to manage the prison service, keeping politics out of jail which proved very difficult, as illustrated by his resignation. It is quite clear on prison reform that operational considerations have received insufficient priority. The case of Mr. Lewis ignored the key problem for the Next Steps programme that "politically sensitive issues must be handled effectively. Ministers and departments will have to ensure that this happens if difficulties are to be sorted out without shattering the position and confidence of executive managers".²⁹ More seriously, it means that it is difficult to ensure effective parliamentary scrutiny for operational matters in a politically sensitive area.

Undoubtedly, the sacking of Mr. Lewis not only raised questions about the nature and extent of accountability, but also shattered the position and confidence of executive managers, which resulted in great suspicion about the running of Britain's prisons. Derek Lewis was the first head of an agency to be dismissed, and the grounds for it were completely unacceptable. The most controversial aspect of the doctrine of ministerial responsibility is that of the question of ministerial resignations, or at least the refusal of ministers to resign. The case of Derek Lewis has corroborated an idea that the division of responsibility and accountability between departments and agencies, and thus between policy and its operations is bound to make harder the tasks of scrutiny. Diana Woodhouse's argument has further demonstrated this assertion that "the convention has been subject to the vagaries of interpretation by ministers defending themselves from charges of culpability and by those wishing to make political capital out of a minister's discomfort",³⁰ rather than serving the effectiveness of accountability.

²⁸ As it has been discussed earlier that Mr Lewis had suffered daily political interference and unjustified pressures from Mr Howard which has been exposed by Learmont's report. It was said that 'in 83 working-days from October 1994 to January 1995, the Prison Service had to submit more than 1,000 documents to ministers, covering all the details minutiae of prison life'.

²⁹ Efficiency Unit 1988, *op. cit.*, para. 29.

³⁰ Diana Woodhouse (1997), *op. cit.*, p 268.

In order to facilitate full and effective ministerial responsibility, one possibility would be to adopt a procedure concerning a particular ministerial intervention or a series of interventions which has been detrimental to the performance of the agency and its ability to meet the stipulated targets. Suppose instead “that agency chief executives should give evidence to the Public Accounts Committee and Select Committee, and that they should answer Parliamentary Questions themselves (*on their own behalf*, added by myself for emphasis) rather than through minister”.³¹ This would be fairer to the prison director. What has been implied is that the accountability system in Britain should be readjusted accordingly to meet the changing relationship between ministers and civil servants, Next Steps agencies in particular.

For the sake of the British accountability mechanism, “accountability should, as far as the committees are concerned, follow responsibility rather than be separated from it”.³² A good combination of accountability and responsibility makes it possible in practice to hold ministers responsible. This is because “responsibility and accountability are part of the same process and inextricably linked”.³³ Artificial divisions between responsibility and accountability would result in a negative effect that “ministerial responsibility for departmental acts has been defined away almost to nothing”.³⁴ Indeed, this separation between accountability and responsibility will require a new approach to scrutiny, as the existing British rules relating to this distinction are woefully deficient. Providing such a division is a central theme of ministerial responsibility but, although full of good intentions, the development of a clear dividing line remains to be fleshed out. A well-devised responsibility system compatible with the modern practice of the Next Steps structure, rather than concerning the political consequences of more comprehensive accountability, has a potential role in ministerial responsibility’s application. It is believed that a solution to this division will play a considerable role in facilitating the development of accountability system in today’s Britain.

³¹ HC 313-1, Session 1995-96, para 89.

³² Diana Woodhouse (1997), *op. cit.*

³³ Diana Woodhouse (1997), *op. cit.*, p 271.

³⁴ G. Mather (1996), *Clarifying Responsibility and Accountability*. Government Accountability (CIPFA), p 21.

11.3.2. Agency Accountability³⁵

Responsibility and accountability re-formulated cannot be divorced from the ongoing conflict between select committees and the government over the accountability arrangements for Next Steps agencies, both relating to answering MP's questions and giving evidence before select committees. In recent years, the classic doctrine of ministerial responsibility to Parliament is qualified by the emerging role of the executive agencies responsible for administration of services. When a question to a minister concerns the delegation of responsibility to an executive agency, so-called agency accountability, in practice two ways have been employed to resolve this issue. It is first for Agency Chief Executives (ACEs) to answer questions from MPs and, as a concession, these answers are published in *Hansard* under a general ministerial heading.³⁶ The second concerns the appearance of ACEs before select committees when a matter of dispute occurs.

Parliamentary Questions³⁷ and executive agencies

The first problem relating to the delegation of responsibility concerns the agency's chief executives answering MP's written questions. In contemporary parliamentary practice, where a member puts down a written Parliamentary Question to a Minister concerning an operational matter, the chief executive of the agency is obliged to reply by letter. If MPs are dissatisfied with the answers given by ACE, they may require a ministerial response. The practice for Chief Executives to answer MP's written questions suggests a move away from conventional principles of responsibility through ministers to Parliament. However, the system is still plagued by operational uncertainties, on the grounds that it is unknown whether a particular reply has come directly from the chief

³⁵ The word 'accountability' is deliberately used here in order to keep agreement with the 'responsibility' and 'accountability' distinction set by the previous government though there is a dispute over this division.

³⁶ This practice started in 1992. For more details see P Evens, in Giddings (ed), *Parliamentary Questions*. Chapter 7, and H. C. 178 (1990-91) and H. C. 14 (1996-97).

³⁷ Mark Franklin and Philip Norton (1993), *Parliamentary Questions*, Clarendon Press, Oxford; A. W. Bradley and K. D. Ewing (1997), *op. cit.*, p 225-232.

executive or has been assented to or amended by the minister, the practice varying from agency to agency.³⁸

Furthermore, the government has refused to adopt measures which would make the process more transparent or to clarify the contemporary parliamentary practice to accord with the ongoing governmental reorganisations under the Next Steps initiative. In 1996, in response to the Public Service Committee the government simply commented that “a Chief Executive may conclude that a particular issue requires discussion with the Minister, or a Minister Answer; and it is open to Ministers to arrange to be consulted on a more regular or routine basis if they consider it necessary”.³⁹ The occurrence of such arrangement is that, whilst the convention of ministerial responsibility has been maintained in theory, a number of institutional means of accountability seem, *prima facie*, rational, yet suggest a failure of the government to provide a clear indication of responsibility. This is because no satisfactory means have been adopted to solve the problems brought about by the devolution of power to the agencies themselves, the key feature affecting the effectiveness of ministerial responsibility. Thus the questions remain: how to bring the chief executive to be accountable for the operations of their agencies, while at the same time maintaining the “longstanding basic principle”⁴⁰ by which to hold ministers to be responsible only for policies.

Next Steps agencies headed not by ministers, but by chief executives, who are responsible for answering MPs’ written questions relating to delegated accountability, represent radical change without resort to legislation. This change reflects a perceived need to give greater priority to reforming the accountability system so that its service delivery operations function effectively in practice. The benefits of scrutiny and accountability should focus on performance in relation both to quality services and to efficiency, which can be achieved by amending the responsibility system to reflect contemporary parliamentary practice. Politicians would be better employed investigating

³⁸ H. C. 313-I (1995-96), *op. cit.*, para. 93.

³⁹ First Special Report from the Public Service Committee, *Government Response to the Second report from the Committee (Session 1995-96) on Ministerial Accountability and Responsibility (1996-97)*. H. C. 67, p xi.

⁴⁰ First Special Report from the Public Service Committee, *Government Response to the Second report from the Committee (Session 1995-96) on Ministerial Accountability and Responsibility (1996-97)*. H. C. Deb. 67, p vii.

ways of identifying endemic problems stemming from executive agencies and providing solutions. In this, they must acknowledge the importance of the creation of a 'new convention' for the accountability of the head of executive agencies responsible for administration of services so as to keep pace with the changing relationship between ministers and civil servants, including chief executives. Such a new convention will be of constitutional significance in facilitating the effective scrutiny of the accountability arrangements for the Next Steps agencies.

Select Committees⁴¹ and ACEs

The second, and most significant aspect of agency accountability concerns the appearance of chief executives before select committees. There is a view that is held by various committees that it is for chief executives to account to select committees on their own behalf rather than on behalf of their ministers. This has a significant bearing on ministers' accountability.

The government, however, has refused to accept the committees' viewpoint that civil servants, including ACEs, should also be brought within the ambit of the resolution on ministerial accountability. The major continuing disagreement between select committees and the government about the accountability arrangements for Next Steps executive agencies relates to giving evidence before select committees. In 1996, the Public Accounts Committee reported that, while the government had been 'sympathetic to the aim of achieving greater clarity in the respective responsibilities of Ministers and Chief Executive', at the same time 'it has been reluctant to surrender any rights over the agencies'.⁴² The government's confirmation was apparent that "the government is not prepared to breach the longstanding basic principle that civil servants, including the Chief Executive of the Next Steps Agencies, give an account to Parliament on behalf of the Ministers they serve".⁴³ The point of delegating a function to Next Steps agencies is

⁴¹ See generally, Erskine May, *Parliamentary Practice (The Law, Privileges, Proceedings and Usage of Parliament)* (ed Sir C Gordon), London: Butterworths, 21st edn., 1989. P 611-622; JAG Griffith and M. Ryle (1989), *Parliament: Functions, Practice and Procedure*. London: Sweet & Maxwell. Chapter 11.

⁴² HC 313-I (1995-96), *op. cit.*, para. 95.

⁴³ First Special Report from the Public Service Committee, *Government Response to the Second Report from the Committee (Session 1995-96) on Ministerial Accountability and Responsibility (1996-97)*. H. C. Deb. 67, p vii.

to delegate authority for operations, but without foregoing ultimate responsibility for them. What has happened is that *responsibility* is adjusted to accord with modern practice (chief executives answering MPs' written question), so that chief executives are responsible for the operation of their agencies and thus culpable when things go wrong, whilst *accountability* continues in line with the "longstanding basic principles".⁴⁴ The connotation is that ministers claim the exclusive rights to account to parliament for the policies, decisions and actions of their departments and agencies and this, substantially, excludes independent account giving by civil servants.

The government's intransigent attitude over the issue of allowing civil servants to give evidence to the select committees on their own behalf is grounded on the following argument. This argument is based on the Osmotherly Rules⁴⁵ that "officials who give evidence to Select Committees do so on behalf of their ministers and under their direction".⁴⁶ Chief executives are also bound by the Osmotherly Rules when giving evidence to select committees. The rules demonstrate explicitly the position of ACEs. Thus "where a Select Committee is investigating matters which are delegated to an Agency in its Framework Document, Agency Chief Executives give evidence on behalf of the Minister to whom they are accountable and are subject to that Minister's instructions".⁴⁷ Furthermore, the government readjusted the changing situation and restated the accountability system in that "the agencies are no longer grouped according to the nature of their business but under the Minister they are responsible to".⁴⁸ This emphasises the line of accountability that "Agency Chief Executives are still civil servants; they still act on behalf of, and under the authority of Ministers, and are not directly accountable to Parliament".⁴⁹ What suggests is that it is Ministers who 'decide what information should be made available, and how and when it should be released, whether it is to Parliament, to Select Committees, to the media or to individuals.'⁵⁰

⁴⁴ H. C. Deb. 67, *op. cit.*, p vii.

⁴⁵ Office of Public Service (1997), *Departmental Evidence and Response to Select Committees*.

⁴⁶ *Ibid.* para. 38 and 41. Also see H. C. Deb, 19 March 1997, cols 1046-7.

⁴⁷ *Ibid.*, para. 42.

⁴⁸ Cabinet Office, *Next Steps Report 1997*. Cm 3889.

⁴⁹ H. C. 313-I. *op. cit.*, para. 90.

⁵⁰ See Armstrong Memorandum, para.9. In response to the Ponting affair, Sir Robert Armstrong, the then Head of the Civil Service and Cabinet Secretary drew up a memorandum entitled *Note of Guidance on*

The consequence for chief executives is that they could be publicly questioned on operational matters delegated to them by Framework Documents,⁵¹ whereas they may be unable to defend themselves fully against explicit and implicit criticism imposed on them. The grounds for this are that they are not allowed, without the minister's permission, to reveal the facts about what had happened. Nor can they indicate the extent to which ministerial interference has affected operations. Such intervention could be extensive, particularly in a political sensitive area, which was brought sharply into focus following the dismissal of Derek Lewis, the chief executive of Prison Service as has been discussed above.

The possibility of extensive intervention was induced and beclouded by a loophole in the system of ministerial responsibility to Parliament. Although in the case of Derek Lewis, 'the Home Secretary will not normally become involved in the day-to-day management of the Prison Service, he will expect to be consulted on the handling of operational matters that could give rise to public or parliamentary concern'.⁵² Such 'expectation' therefore became the responsibility of the Minister and although the Minister delegated day-to-day responsibility to the executive agency, the Minister does not give up the right to intervene in the responsibility of the chief executive. Therefore, it is argued that "ministerial solidarity presents a shield against parliamentary scrutiny".⁵³

This argument demands that any interventions that the chief executive considers affect his ability to manage/operate the agency should be public and brought to a select committee's attention as I have argued above. To take this idea further, there should have been a new constitutional convention to respond to the development of the Next Steps. Under the new system, "heads of executive agencies would have delegated authority from their Minister for operations of the agencies within the framework of policy directives and resource allocations prescribed by Ministers",⁵⁴ whereas ministers should stand back from detailed involvement in day-to-day operations, managers should

the Duties and Responsibilities of Civil Servants in Relation to Ministers in 1985. This memorandum known as the 'Armstrong Memorandum' is a broad restatement of orthodox constitutional theory.

⁵¹ For more details of framework documents see 8.3.1 'Framework Documents' in chapter 8.

⁵² HC Deb, 19 October 1995, col 519.

⁵³ Norman Lewis and Diane Longley (1996), *op. cit.*, p 493.

⁵⁴ Efficiency Unit (1988), *op. cit.*, p 17, Annex A.

be left free to manage and efficiency in the delivery of services would improve. Effective delegated responsibility and empowerment of ACEs would then constitute 'part of the documentation supplied to the relevant select committees'⁵⁵ to ensure that no blame is attached to a chief executive. In today's Britain, fresh legislation concerning agency accountability is still absent from the responsibility system, thus ministers cannot rescind responsibility imposed on them by existing legislation. And that is best illustrated by the government's unyielding attitude over the issue of executive agencies giving evidence to select committees on behalf of Minister they serve.

A paradox between theory and practice

The government's uncompromising stand of refusing to allow chief executives to account for their delegated operational responsibilities demonstrates a growing gap between theory and practice. The classic doctrine of ministerial responsibility, which simply illustrated the methods by which ministers are responsible to Parliament for everything done or left undone by their civil servants, is already frequently ignored or forgotten, especially in the agencies where there is little of political interest. The major changes by which Next Steps executive agencies are headed by chief executives, illustrate the fact of the demise of the British hierarchical civil service, whereupon a 'federal' civil service has emerged, which has already discussed in chapter 8. ACEs answering MP's questions and giving evidence before select committees are gradually dismantling the convention of ministerial responsibility. The accountability through ministers to Parliament may no longer be the essential characteristics of the civil service. The growth and complexity of government have led to reassessments of ministerial responsibility, redefining the relationships between civil servants and ministers and between ministers and parliament. Ministerial responsibility has, like the House of Commons itself, been captured by modern administrations so that it operates to further these primary executive ends.

However, in practice, "it turned out that no changes were made in the accountability arrangements for the Executive Agencies though chief executives can answer written Parliamentary Questions and be present before the select committees on behalf of their

⁵⁵ Diane Woodhouse (1997), *op. cit.*, p 274.

ministers”, as it is now well understood that “agencies are not something separate from departments”,⁵⁶ they are a token of governmental mechanism restructuring. This suggests a huge distance between the lofty intentions of public sector reform and the reality of modern practice.

Clearly enough, a distance between constitutional theory and practice impairs the status and authority of ministerial responsibility and perpetuates the belief that the convention is simply a facade behind which the government can hide.⁵⁷ The indication here is to maintain the traditional anonymity of civil servants theoretically so as to secure the political impartiality of the civil service as a whole on the one hand. But on the other hand, in practice, restriction on the accountability of chief executives does not equate with the changing relationship between ministers and the civil servants, a relationship which “has been transformed by everything that has happened to the public service”.⁵⁸ Nor does it accord with the requirements of modern government.

11.4. Conclusions

The convention of ministerial responsibility has been challenged ever since the Next Steps agencies were created. The government refusing to allow chief executives to account for their delegated operational accountability demonstrated that the gap between constitutional theory and modern practice continues to grow. Moreover, there is a diminution of ministerial responsibilities in practice owing to the artificial division between responsibility and accountability. Coupled with no clear and authorised dividing line between policy and operations, there would now seem to be more chances for ministers to escape personal responsibility and thus culpability. As a result, the policy/operations split has become a good excuse for ministers to unload their responsibilities by saying that matters have been delegated to executives for accountability. This is a way for ministers of evading responsibility, and was probably encouraged by the government insistence on the convention of ministerial responsibility

⁵⁶ Leo Pliatzky (1992), ‘Quangos and agencies’, *Public Administration*, Vol. 70 p 559.

⁵⁷ Diana Woodhouse (1997), *op. cit.*, p 277.

⁵⁸ Dr T. Wright, H. C. Deb., February 12, 1997, col. 289.

to Parliament and the illogically of refusing to allow chief executives to give evidence before select committees on their own behalf.

Most of the evidence, however, suggests that the conventional position of ministerial responsibility is already frequently ignored, especially in an area where few political interests are involved. It seems likely to be the practice in a number of agencies that the accountability of chief executives to Parliament through Select Committees is emerging and “*de facto*, accountability will grow along that line”.⁵⁹

“The practice of the House in relation to agencies has already moved a good distance from the conventional position on the relationship between Parliament and civil servants. Agency Chief Executives are deeply involved in giving information directly to Parliament, with only the most formal involvement by Ministers. Agency Chief Executives give evidence to Select Committees about the work of the agency... It would seem that what happens in practice in this case has evolved considerably in advance of the theory enshrined in the Osmotherly Rules.”⁶⁰

The aim of quoting this statement is to support my viewpoint that the concept of ministerial responsibility needs to be re-formulated so as to reflect the modern realities of British politics, given greater consideration to realities rather than insisting its form. Otherwise the gap between lofty conventional theory and practices will broaden, which will affect the process of political system reform.

The lesson China should draw from the experience of the British public sector reform is to establish a clear responsibility system on government officials, from policy-making officials down to service delivery officials. This system has twofold implications: one is to reduce the role of political civil servants and employ new measures to improve the responsibility system; the other is to strengthen responsibility control mechanisms, NPC in particular. This is because the lack of an effective and forceful responsibility system provides a means by which government officials are increasingly involved in corruption,

⁵⁹ Second Report of the Public Service Committee *Ministerial Accountability and Responsibility*. H. C. 313-I, Session 1995-96. P lii.

⁶⁰ H. C. 313-I, *op. cit.*, para. 110.

and it opens up potential areas for high officials who may avoid personal liability for mistaken decisions, as was the case in setting up administrative companies.

In the Chinese context, the division between career civil servants and political civil servants should be largely maintained in practice. The former are responsible for administration of services to the public; the latter are supposed to be responsible for overall policy making, thus establishing a clarifying responsibility system. This responsibility control mechanism must be scrutinised or supervised by the NPC rather than by the Party Central Committee. To be more precise, in present day China, top priority should be given to abolishing the longstanding principle by which the Party Central Committee supervises civil servants. In this, China should learn from the British experience to make up deficiencies in supervising officials, and strengthen the role of NPC and its commissions in scrutinising administration control.

Moreover, the ideological means of educating civil servants to serve the people wholeheartedly and provide quality service to the public should give way to the importation of British experience on civil service reform. It is suggested that the British initiatives, such as 'Next Steps', 'Citizen's Charter', and 'Modernising Government' have created a new way to manage the civil service, though they need to be perfected in practice. Applying principles like 'competition' and 'flexibility' to respond to the changing situation, insisting on 'accountable management' and enforceable supervision over government officials will be of benefit to the government-restructuring programme, but all this must be combined with the Chinese practice. The matter has been demonstrated in chapter 6, and will be further discussed in chapter 12.

CHAPTER 12

COMPARISON AND CURE

12.1. Introduction

As has been discussed throughout the above chapters, administrative reform had been given top priority over the past decade both in China and the UK, though the developments varied in degree and scope. Nevertheless, similar objectives have been expressed in the post-Mao Zedong China and the Britain, including a consumer orientation, structural reorganisation and new public management, which have been given greater prominence in designing administrative reforms.

Putting aside public sector reforms in each single country, a brief comparison of the administrative reforms between the UK and China is helpful for a better understanding of the major thrusts of this administrative reform agenda which has occurred recently in both countries. This is because no one should accept ready-made blueprints for public sector reform, as different countries have different policy ambitions as well as different policy outcomes that this has actually achieved. For this reason, a comparative approach seems to be the most suitable in the assessment of public sector reform.

Therefore, this chapter begins with a discussion of the drive for consumerism which occurred in the UK and China over the last decade. Next it examines the function of structural reorganisations in relation to civil service reform. The third section examines how the Parliament of the UK and the National People's Congress of China define means and ends in holding administrative executives accountable. Finally it describes how the ombudsman and Chinese 'letter and visits bureau' are employed in dealing with individual disputes within the public sector. The aim of comparison is to challenge the traditional way of governing China through national-scale ideological mobilisations, one

of the peculiarities of Chinese politics, so as to provide methods to improve Chinese civil service reform.

12.2. Consumerism: Reform Manifesto

Although belonging to different political systems and having different social backgrounds, China and the UK have the same objective in reforming their administrative systems, namely, putting people first. Nonetheless, there is a striking difference between the two in pursuit of consumerism in the administrative paradigms. China's political system reform has given endless emphasis to the convention of 'politics' and 'ideology' without any applicable measures and legal means to assure consumerism is achieved in practice. For example, as the three ideological liberations¹ over the last 20 years and the present three-fold themes (*sanjiang jiaoyu*) of "learning, politics and honesty",² to educate civil servants to foster the idea of serving the people wholeheartedly; whereas consumerism in the British reform agenda is seen in a series of government-led initiatives, including the Citizen's Charter, Service First and Modernising Government to back up the sentiment of consumer orientation.

In other words, the thrust of consumerism in the Chinese administrative reform is often manifest in an illusory ideological education, merely appreciated by politicians; whilst the British consumerism drive has been sustained by service principles and service standards, coupled with concrete measures like the People's Panel and internal complaint systems,³ through which the relationship between service providers and service users is determined. Though this drive needs to be perfected in future administrative reform, for example, by giving legal rights to back up the consumer

¹ For more details of three liberations occurred in recent twenty years of the economic and political system reforms, see chapter 4 under the sub-title of Party and government, and chapter 5 on 'contemporary China's three ideological liberations'.

² The three-fold themes of "learning, politics and honesty" as a new round of anti-corruption campaign were launched on January 13, 1999. In February 2000, President Jiang Zeming made a speech to mobilise the whole Party and the country to stress on the three-fold education. Now People's Daily, the newspaper of the government and party organs, has been permeated with three-fold education since February onwards. The government work report delivered by Premier Zhu Rongji at the third plenary session of the 9th NPC on 5 March 2000 emphasises the importance of three-fold ideological education in the process of the establishment of a highly efficient, well-coordinated and standardised administrative system. See People's Daily, Overseas Edition, 17 March 2000.

orientation, yet its positive significance lies deep in its recognition that public services have to 'meet the needs of citizens, not the convenience of service providers'.⁴

This recognition requires a new approach, for example, in relation to the empowerment of citizens, through setting up service principles and standards to sustain its implementation in reality. This approach relating to the Chinese civil service reform is woefully deficient and, in today's China, the ideological thrust of 'serving the people wholeheartedly' remains to be fleshed out with systematic and applicable service principles and standards like the UK's Citizen's Charter⁵ initiative, coupled with concrete measures. The ground for this is that, in a Chinese context, bureaucrats do not fully understand what performance they should provide to the public as public office holders, and the public does not know what service it is entitled to receive from the government.

Therefore, breaking through the old pattern of educating the civil servants dominated by 'politics' and 'ideology', and instead setting up a series of service standards and principles is of great significance in promoting the Chinese administrative reform. Indeed, merely training civil servants to serve the people through large-scale ideological education loses its attraction as commercialisation intensifies in the present China. What people seek now is not the noble idealism of devoting their lives to the cause of socialism or communism as the Party expected,⁶ but tangible manifestations of wealth, such as limousines, luxury apartments, and lavish banquets. 'People's satisfied civil servants'⁷ are less admired than cadre entrepreneurs or '*dakuan*' (wealthy men/women)

³ For analysis, see chapter 7 and 9 above.

⁴ Cm 4310, 1999, *op. cit.*, P 7.

⁵ Cm1599, 1991, *op. cit.*, London HMSO.

⁶ In Mao's China, people were educated to devote their lives to the cause of communism. Everyone believed that communism would come true in China. Therefore, everyone tried hard to join the membership of the Communist Party so as to work well for the people. Nowadays, people, young people in particular, believe in 'money', rather than communism. See Minxin Pei (1994), *From Revolution to Reform: The Demise of Communism in China and the Soviet Union*. Cambridge, MA: Harvard University Press. p 112.

⁷ An activity of 'people's satisfied civil servants' has been launched to reward those who do well in delivering services to the public. On 16 October 1998, Premier Zhu Rongji met with representatives of 'people's satisfied civil servants' at the Great Hall of the People in Beijing and encouraged them to keep in mind the principle of serving the people. See People's Daily. 17 October 1998.

who create their careers by setting up 'administrative companies'.⁸ This deviation bears out the facts that the public ethos of 'serving the people wholeheartedly' as a dictum is now totally eclipsed, and the traditional way of managing civil servants through ideological education does not function well in today's commercialised China, and this conspicuously limits its implementation.

What China is lacking is a systematic and enforceable administrative statement of political wisdom for a functioning consumer focus, which has been largely ignored by both legislature and the government. Until now, few attempts have been made to set up details of service standards, let alone to empower citizens. The will of serving the people, which originally was an important means to hold civil servants responsible to the public, evaporated because concrete procedures were not laid out. No practical and effective measures and service standards required officials to respond to people's needs or complaints in contemporary Chinese administration. Even though there are now some rules requiring officials to deliver high quality service to the public, many of them focus on illusory and feeble ideological education as I have discussed earlier. The notion of 'serving the people' is hollow because it lacks concrete service standards and measures to buttress it.

By sharp contrast, a British consumer focus is full of pragmatic means with the Citizen's Charter (Cm 1599) at its core, diverse national and local charters⁹ as a base for the achievement of quality services, the People's Panel as consumer voice group where people will be asked for their views about public services, and more use of telephone access for services (NHS Direct and Employment Service Direct). Most importantly, the substantial creation of the Next Steps agencies provides the internal apparatus for fixing attention on customer needs.

The above contrast in consumer orientation reflects the preference for different structures of administrative reform. It is constitutionally and practically a fact that the

⁸ For analysis, see chapter 6 above. And Liqing Liu (1999), *The Rise of Cadre Entrepreneurs in China - Elite Transformation?* International Institute of Administrative Sciences. Sunningdale, United Kingdom, 12-15 July 1999.

⁹ There are 42 national charters and more than 10,000 local charters setting standards for public services. More details see chapter 7 and 9.

Chinese system emphasises the function of 'politics' and 'ideology' in the search for political system reforms. From the late 1970s onwards, ideological debates have played a dominant role in influencing the path of economic and political system reform.¹⁰ By contrast, in the UK, pragmatic principles dominate the path of administrative reform. The ground for this is that 'the United Kingdom is relatively unencumbered by legal niceties when the need is felt for a change of direction or the over ride of previously announced policies'.¹¹ Political, institutional and ideological adaptation is always required in these changes rather than specific legislative authority or national debate. The lesson of this comparison is that the trend of consumerism demands that the Chinese government break through the traditional means of governing the country through ideological mobilisation so as to stimulate administrative reform towards the rule of law, which the Chinese government claims to be doing. This good intention without the rationalised and concrete means to support it is meaningless.

Compared with the UK's redefining the citizens as consumers, consumer rights are poorly defined and haphazardly enforced in China; there are few measures to disseminate information on how public services are provided and what citizens can be entitled to from the government. The detrimental effect of this become obvious as corruption has been on the rise to such an extent that the leadership has constantly called for nation-wide anti-corruption campaigns,¹² and cadre entrepreneurs¹³ whittle away the state's assets and resources to enrich themselves with their cadre backgrounds and strong official connections. This is because the government mechanism provides officials with opportunities to do so. All this warns us that 'serving the people' can only be achieved through establishing a series of systems, rather than through nation-wide ideological education. The ground for this is that the political consciousness of bureaucrats and politicians is not developed enough to reform themselves to serve the people without considering their own interests.

¹⁰ For reasons, see chapter 5 on contemporary China's three ideological liberations.

¹¹ Norman Lewis (1994), 'Reviewing Changes in Government: New Public Management and Next Steps', *Public Law*, P 109. For more details see chapters 9 and 8.

¹² For more details of corruption, see chapter 6 of this thesis. By the time I was working on this thesis, some more government officials involved in corruption, for example, Hu Changqing, vice director of Jiangxi province, was sentenced to death for corruption. See *People's Daily, Overseas Edition*. 16 February, 2000. He is one of the higher government officials who received a death sentence in recent years. Also see notes 31 in chapter 6.

¹³ More details see chapter 6 above.

There is a strong opinion among specialists that China needs 'formal' systems, such as applicable and well-adjusted systems like service standards and service principles to regulate the behaviour of civil servants so as to make public providers responsive to the people, rather than 'informal' system including ideological education stressing the importance of three-fold themes of 'learning, politics, and honesty'. If China has more formal systems to control and supervise the behaviour of civil servants, corruption and abuse of powers may be reduced to a minimal degree. We cannot expect those who benefit from the political system to reform themselves. In other words, in China, the priority should be given to the creation of new systems or new mechanisms that are responsive to their customers, offering high quality and extensive choices of services to meet the needs of consumers, rather than over emphasising 'politics' and 'ideology'. This is because ideological education cannot save China as has been proved by practice.

Regrettably, until now, the slogan of 'governing the country by law',¹⁴ only endorsed in theory, has not been fully recognised by the Chinese leaderships. It is very difficult in practice for Chinese leaderships to break through the old conventions of ruling the country through publicised ideological mobilisations led by the Party. The present nation-wide ideological education accounts for this. The fact that more and more government officials enrich themselves by abusing their administrative powers proved indisputably that the traditional way of governing the country through over-emphasised ideological education has been called into question. But, woefully, until recently few questioned the government strategies on ideological mobilisation in educating civil servants to serve the people. On the contrary, the central leader's speeches¹⁵ added fuel to the flames of this movement.

Today's environment demands that government not only creates formal systems that empower citizens rather than simply educating them, but also kills off obsolete ones and

¹⁴ Political report delivered by Jiang Ze-min at the 15th CPC national congress in September 1997, and report presented by Luo Gan on the *programme of the government institutional reform* at the 9th NPC on 6 March 1998. See People's Daily, Overseas Edition, 7 March 1998.

¹⁵ Jiang Zemin, the State President, Hu Jintao, the standing member of the CPC, and Li Peng, the General director of the NPC made speeches to address the importance of three-fold themes of 'learning, politics and honesty' when they visit Guangdong, Shandong, and Jiangshu. People's Daily, Overseas Edition, 21 February 2000, 28 February 2000.

absorb new ideas so as to keep pace with a global marketplace. Although the UK public sector reform has made little use of formal law, yet it is sustained and facilitated by a series of government-led initiatives like the Citizen's Charter¹⁶ and its related initiatives, supplemented by a variety of systematic and concrete measures including service principles/standards, new public management, people's panel and internal complaints systems. For this reason, the UK's experience may offer a good example of clear division between understanding of the modern concept of 'public office' and 'public service' by setting up service principles, standards, and targets facilitated by a set of concrete measures, such as the Charter Marks Scheme and People's Panel.

12.3. Institutional Restructuring

Both China and the UK have witnessed the latest rush to overhaul administrative systems and to rejuvenate public organisations, which is largely due to the decline in public finance and the need to 'get more for less'.¹⁷ Governments have had to cut back, to reduce expenditure, staff, investments and services from sluggish public sectors.¹⁸ In doing so, both China and the UK have blamed the poor performance of public bureaucracies, poor service and unpleasant officials, which led to the consequence of institutional restructuring campaigns. Striving for 'small government, excellent services' is pursued by both governments though the substantive results brought on are conspicuously different.

The substantial emergence of new executive agencies from 1988 to replace the traditional civil service hierarchy relating to service delivery created a new epoch of British government mechanism restructuring,¹⁹ which has considerable constitutional significance for the future structure and functions of the civil services. Since then, larger

¹⁶ Cm1599, (1991), *op. cit.*, London HMSO.

¹⁷ Christopher Hood (1991), *A public management for all seasons?* Public Administration Vol. 69, Spring 1991 (1-19).

¹⁸ Argyriades, Demetrios (1986), *The Adoption of Governments to Economic Changes, XXth International Congress of Administrative Sciences*. Amman, Jordan.

¹⁹ For more details, see chapter 8. Also see Gavin Drewry, *Revolution in Whitehall: The Next Steps and Beyond*, in Jaffrey Jowell & Dawn Oliver (2000), *op. cit.*, P. 156; Robert Baldwin (1988), 'Next Steps: Ministerial responsibility and Government by agency', *The Modern Law Review*, Vol. 51, September 1988, P 622-28.

executive agencies have been on the rise to such an extent that by 1st April 1998 more than 325,669 civil servants were working in the Next Steps agencies or 138 departmental units organised on Next Steps lines.²⁰ This momentum continues to rise with another 19 executive agencies having been established by the end of 1998.²¹ Moreover, a salient characteristic of executive agencies is that this drive is facilitated by a series of related initiatives and practices, including market testing, a performance-related pay system, and great use of short-term contracts by open competition in filling the posts. New ideas and management techniques have been introduced along with the establishment of executive agencies with the aim of raising the effectiveness and efficiency of administration.

In contrast to British institutional adjustments, China's reorganisation of the state apparatus shows less vigorous and creative action.²² To a certain extent, institutional reforms which developed in China over the last decades have increasingly failed us. The grounds for this can be illustrated as follows. Firstly, the traditional government mechanisms addressed by top-down hierarchical 'controls' through rules and regulations remain untouched. Secondly, the principle of managing the state by law remains the obvious solution to curb the power of the state and party. Such a principle will be beneficial to the establishment of a highly efficient, well-co-ordinated, and standardised administrative system, but now China's renewed interests are still emphasising the role of the Party through ideological mobilisations such as educations of three-fold themes and Jiang Zemin's 'three representatives'.²³ For China's leaders, it is a dangerous prospect: the Party must give way not just to an independent judiciary but to administration in accordance with the law and other disinterested arbiters of conflicting rights and claims.²⁴ The recent warnings by President Jiang Zemin against 'bourgeois

²⁰ Cabinet Office (1998), *Next Steps Report 1998*. Cm 4273. P 326.

²¹ Cabinet Office (1998), *Next Steps Report 1998*. Cm 4273. P 327., Annex B, Next Steps - Activities announced by Ministers as candidates for Agency Status as at 31 December 1998.

²² For analysis, see chapter 5 on modern Chinese civil service reform.

²³ This is evident from the very recent movement launched by President Jiang Zemin by which the role of the Party in the contemporary China is even more emphasised. This is embodied in Jiang Zemin's 'three representatives' speech that the party is the representative of the advanced social productive forces, of the advanced culture and of the interests of the broad masses. For China's leaders, it is great prospect: the careful construction of the Party by ideological means will be of benefit to China's reforms on the ground of Party's interests representing the interests of the whole country. People's Daily, 4 March 2000.

²⁴ 'China's new revolutionary?' *The Economist*, September 13th-19th 1997. P 17.

liberalism' have demonstrated this perspective.²⁵ Thirdly, over-emphasising the role of the Party cast doubt on what government calls "governing the country according to law",²⁶ and this in turn fetters the new ways of managing the state to emerge in public sector.

Although the very recent institutional reorganisation, which was launched in March 1998, marked a step away from the state planning system, and introduced the idea of separating the sphere of government from managing the day-to-day operation of state enterprises, and also opened the way for the concept of public service, which encompassed the proper handling of administrative powers, nevertheless, the mechanism by which the government will try to separate the regulatory role of ministries from their commercial interests - one of the main reasons for the reform - was still far from clear. The state-owned enterprises ombudsman is the only measure to be established to supervise this division to be achieved in practice.²⁷ No further attempts have been made to ensure that the operation or managing powers of the enterprises are really delegated to the enterprises' managers.

If the positive significance of the British institutional restructuring led to a substantial emergence of the Next Steps agencies carrying within itself the idea of the policy and operations division, the Chinese large-scale reorganisations campaigns failed to create a new way of solving this division. On the contrary, they took the existing mechanism for granted and tried desperately to adapt the new jobs to it. They might be trapped into the pernicious routine, like the last three organisational reforms, of 'streamlining-swelling-streamlining again-swelling again'.²⁸ The institutional restructuring demands wholesale change, including new structures, policies, programme and services that are better

²⁵ The Chinese government is orchestrating a quiet purge of liberal officials in a new push to clamp down on the spread of Western ideas such as democracy and free market capitalism. He Depu was dismissed in March 2000 from the Beijing Academy of School Sciences for his association with banned Chinese Democratic Party. Jiang has warned that implementing "the West's model" of democracy would lead to chaos. See Damien McELROY 'China moves to crush liberal trends'. *The Scotsman*, 10 April 2000.

²⁶ Political report delivered by Jiang Ze-min at the 15th CPC national congress.

²⁷ The state-owned enterprise's ombudsman was established in April 1998 under the meeting of the 9th NPC, with the aim of changing the basic function of the government in governing large-scale state owned enterprises. For details see 5.4.3. 'A new drive for government mechanism reform' in chapter 5.

²⁸ For details see 5.5.2. 'Creating the organisational framework to carry out the government restructuring programme' in chapter 5.

equipped to tackle the challenges the government faces, not ideological matters, such as the Party as 'three representatives' launched by Jiang Zemin recently.²⁹

The state owned enterprises ombudsman, as being a subordinate body of the State Council, has no legal status, which limits its function in supervising the government.³⁰ The policy of separating functions between the government and the enterprise demands a new approach, as China's existing rules relating to supervision of government are woefully deficient. Constitutionally, the NPC is authorised to supervise government, but much of the evidence demonstrates that the Party plays a dominant role in the Chinese political system.³¹ In the absence of a properly enforceable and independent ombudsman system distinct from that of the government and Party, state-owned enterprise reform will still be a tough problem relating to the Chinese economic system reform.³² This in turn will impede the process of administrative reform.

There is a saying in the Chinese military that if a battle results in defeat, there must be a failure in tactics; if a lot of battles result in defeat, there must be a failure in strategy. The above saying hints that the Chinese administrative reform compared with the British institutional campaigns is a failed one, on the grounds that the Chinese government is reluctant to accept the new concept of managing the state by law. The principle of 'managing the state by law' remains appreciated by politicians only because it lacks stimulus and detailed means to develop it, such as creating new mechanisms to separate functions between the party and the government. Therefore, striving for a clear division between policy and operations without enforceable and systematic measures to back it up becomes meaningless.

Failing to reform the Chinese political system to respond to the market economy has led to the Chinese crisis of confidence in government. All this demands government

²⁹ See note 23 above.

³⁰ See *The State Council Ombudsman Regulation*. 3 July 1998.

³¹ For an analysis, see chapter 4 above. And also Ho Pin (1996-1997), *Who's the Boss: The highest rank of decision-making in China*. Mirror Books.

³² Since economic reform was initiated in the late 1970s, many attempts, such as contracting out business management to state enterprise's managers, which was known as 'contract responsibility system', have been made to separate the functions between the government and the state enterprises so as to make enterprises be fully responsible for their own business. But none of them succeeded in doing so. On the contrary, a lot of state enterprises trapped into production and financial difficulties.

restructuring campaigns to create a new model for managing the state, which would promote competition between service providers, and focus on 'results, not rules and regulations'.³³ The prototype of the British Next Steps agencies, facilitated by new public management, has created incentives to develop 'alternative' ways to deliver services, from which China's institutional restructuring should learn.

For China's sake, administrative reform should be used for designing new mechanisms, which prevent problems from emerging, rather than simply addressing the role of the Party. Without properly enforceable measures on the policy and operation division and rationalised public management techniques, China cannot make the best use of its human resources. Without greater decentralisation of decision making and more checks and balances on the party's power, the aim of establishing a 'highly-efficient, well-coordinated administration'³⁴ cannot be achieved in practice. In today's China, there needs to be a fundamental change in structure so as to keep the politicians and bureaucrats from doing anything that might endanger the public interest. In most cases, the development of the legislature, government institutional restructuring, a civil Service Act, and supervisory procedures of administration are of great importance for the pursuit of the aim of administrative reform. Therefore, the Chinese mechanism should be re-organised and managed according to the requirements of economic developments and the fast changing global situation so as to enable China to march forward on the way to join the membership of the World Trade Organisation.

12.4. The British Parliament and the Chinese National People's Congress

The British Parliament and the Chinese NPC have a basic role in common, namely, to hold government responsible, although there is a conspicuous difference between the two in terms of supervision. A brief comparison of the Chinese NPC system and the British Parliament system is helpful for better appreciating the latter's supervision role in holding government accountable. Although over recent years the existing accountability mechanisms, such as ministerial responsibility and parliamentary

³³ David Osborne and Ted Gaebler (1993), *op. cit.*, P 19.

questions, have been called into question as I have detailed in chapter 11, however, the defects cannot obscure the virtue.³⁵ Constitutionally, China is a one party-rule country upon which the National People's Congress is the highest authority of the state mechanisms from which the State Council, the Supreme People's Court, and the Supreme People's Procuracy are structurally formed. These three branches are responsible to the NPC under whose supervision they operate. It is conventionally a fact that China conducts the system of multiparty co-operation through political consultation led by the CPC. The "people's democratic dictatorship" is the state system,³⁶ in which the Chinese leaders have advocated popular sovereignty and political representation within a centralised state. In 1937, Mao said:

"There is no impossible gulf between democracy and centralism, both of which are essential for China. On the one hand, the government we want must be truly representative of the popular will; it must have the support of the broad masses throughout the country and the people must be free to support it and have every opportunity to influence its policies. This is the meaning of democracy. On the other hand, the centralisation of administrative power is also necessary."³⁷

Most of the historical events demonstrate that the establishment of the people's congresses was partly to complement direct mass-line participation so as to give these groupings a voice in the state affairs, and partly to legitimise party rule. Examples of this stand out particularly in the following two aspects. First, national mobilisations are often seen in a series of the Party-led initiatives rather than by the NPC, which account for the Party political supremacy and the NPC legal sovereignty. Second, the national congresses of the CPC laid down the Party's policies and programmatic documents, letting government play the role of translating the party's policy and programmatic documents into government work programmes through the legal assembly of the NPC.

³⁴ *An explanation of the government mechanism reform* delivered by Luo Gang at the 9th NPC in March 1998. People's Daily, Overseas Edition. March 7, 1998. And also see chapter 5 above.

³⁵ For details of ministerial responsibility see chapter 11.

³⁶ The 1982 constitution law, art. 1.

³⁷ Mao Zedong, "Interview with the British Journalist James Bertram", cited in John Bryan Starr, *Continuing the Revolution: The Political Thought of Mao* (Princeton: Princeton University Press, 1979). P 215-16.

This is one of the salient peculiarities of the Chinese politics, wherein legal processes have to find a niche next to political requirements.³⁸ In President Jiang Zemin's account, the role of party determines the achievements that China can make in the future.³⁹ The implication is that if China strengthens the Party ideologically and organisationally, both economic and political system reforms can succeed.

Distinct from China's NPC, the British Parliament is composed of the House of Lord and House of Commons, wherein a two-chamber structure is an integral part of the parliamentary system. Within the Parliament the House of Commons is the dominant House, as it is the composition of this House that determines which party will form the government, and from the Commons that most ministers are drawn, and it is the House of Commons that by withdrawing its support can cause the Prime Minister to resign or to seek a dissolution.⁴⁰ But the role of Lords as a revising chamber is important, especially for securing amendments to Bills which have been subjected to closure in the Commons.⁴¹ Moreover, the political authority of the House of Commons does not extend to its undertaking the work of government itself. Finally, most members of the Commons are not members of the government.⁴²

The contrast in the systems arises from the fact that the British Parliament's controls play a considerable role through which administrative action is controlled and supervised,⁴³ though sometimes such controls lack strength under modern conditions of party government because of the domination of the party whip system. Any vote of censure against an offending minister would be treated as an issue of confidence by the Government on which its survival depended. A Government with a majority will be able to use party discipline to prevent such a motion from being successful.⁴⁴ This I have addressed in chapter 11. On the contrary, the political role of the NPC is secondary to that of the CPC⁴⁵ and the lack of systematic and enforceable measures limit its role in

³⁸ For an analysis, see 4.2.4 on party and government in chapter 4.

³⁹ People's Daily, Overseas Edition, 4 March 2000.

⁴⁰ A. W. Bradley and K. D. Ewing (1997), *op. cit.*, Chapter 9, and 10.

⁴¹ A. W. Bradley and K. D. Ewing (1997), *op. cit.*, p 163.

⁴² A. W. Bradley and K. D. Ewing (1997), *op. cit.*, chapter 10.

⁴³ See chapter 11, and also A. W. Bradley and K. D. Ewing (1997), *op. cit.*, chapter 10.

⁴⁴ Tony Prosser (1999), *op. cit.*, p 3; and A. W. Bradley and K. D. Ewing (1997), *op. cit.*, 117-118.

⁴⁵ The NPC embodied socialist democracy on the one hand, and on the other hand boosted party legitimacy by emphasising the 'principle of democratic centralism' in the form of a dictatorship of the

controlling and supervising the administrative actions. The typical scrutiny of administration is conducted by the House in terms of parliamentary questions, debates and select committees, though the legislative and financial procedures of Parliament have strongly influenced the means by which Parliament finds out about the work of government. For example, parliamentary questions provide members with the opportunity to question ministers through written and oral parliament questions, which is regarded as the routine of scrutiny of the administration, and are held at the start of each day.

By contrast, in China, the conduct of administration may be scrutinised by the NPC through the following: (a) listening and discussing government work reports; (b) addressing questions to the state organs and state officials with a quorum of over thirty NPC's deputies. The special term of this is 'interpellations', and (c) appointing committees of inquiry into specific questions when the need is felt by the NPC and its standing committee.⁴⁶ In any case, the 'interpellation' is subject to strict restriction in practice, which means scrutinising the work of civil servants through NPC has not developed as a systematic system in the Chinese administration.

Listening and discussing

A common form of legislative supervision in China is found in 'listening and discussing' government reports, which involves every deputy and is carried out by the full NPC. When 'listening and discussing' are completed, the representatives are required to support government reports by votes.⁴⁷ In most cases, the government reports are passed with full votes. This is because the NPC representatives were not really elected by the people but decided on by votes on leadership-provided candidate lists, and these 'imperialy ordered' representatives lacked the courage and character to

proletariat, and the NPC legalised Communist Party rule in the preface of the Chinese 1982 constitution. Moreover, the role of party has been once more emphasised in article 3 of the recent published law titled '*Legislative Law of the People's Republic of China*' by the third plenary of the 9th NPC on 15 March 2000. See People's Daily, Overseas Edition, 20 March 2000. For analysis see chapter 4.

⁴⁶ *Renda daibiao shouce* (The booklet of the NPC representatives) (1997), Edited by the liaison bureau of the NPC standing committee. China Fangzheng Press. p 17; 51-53; 1982 constitution of the People's Republic of China, art. 71 and 73; and the organic law of the NPC of the People's Republic of China, art. 13, and 14.

plead on behalf of the people and the people were indifferent toward them and their activities.⁴⁸ In other words, few deputies served as a bridge between the masses and the leadership and many were not even known in the district they represent. Such inspections could have provided a means for the represented to express their preferences, but without sufficient institutionalisation, their effect dwindled.

However, in the 1980s, three forms of supervision in three different settings emerged. They are (a) criticisms of ministry or State Council officials by deputies in small group meetings, (b) inspection of local government organs and economic enterprises by groups of NPCSC or NPC deputies, and (c) institutional oversight of subordinate administrative agencies by the NPC committees. For example, deputies at the 1988 convention criticised Premier Li Peng's suggestion that intellectuals moonlight to supplement their incomes, saying it was an 'improper measure' that would interfere with teaching and research and 'damage long-term national interests'.⁴⁹ These activities did not resemble the scrutiny of administration in a parliamentary democracy like the UK, but in a weakly institutionalised system with a very strong executive, they serve similar ends.

Interpellations

After 1979, interpellations as one of the means of scrutinising administration become a common occurrence at the NPC sessions, but remained limited owing to uncertainty over how the NPC could supervise judicial and administrative organs without supervising party committees. *De facto*, the advent of limited legal and constitutional supervision did not diminish the importance of party self-restraint. All state administrative, judicial and procuratorial decisions have to accord with party policies.⁵⁰ This is one of the peculiarities of the Chinese governmental mechanisms.

⁴⁷ 'One representative one vote', therefore, the number of representatives represent the number of votes, by which the representatives conduct their supervisory role. A salient characteristics of the Chinese NPC's representatives is that they represent the popular will of the country, not certain districts.

⁴⁸ Tao Jin, *Poushi liujie renda* (An analysis of the 6th NPC), Zhengming, No. 69. (July 1983): 51.

⁴⁹ He Ping and Yang Xinzhe, *Intellectuals' Second Job Opposed*, Foreign Broadcast Information Service, Daily Report China, 63 (April 1, 1988); Robert Delfs, *Brighter Means Poorer*, Far Eastern Economic Review 140 (June 16, 1988): 34-36.

⁵⁰ In China, one of the principles of legislature is to adhere the leadership of the CPC, and this has been emphasised in the preface of the Chinese constitutional law. And also see *The legislative Law of the People's Republic of China*, art. 3.

Compared with the UK's parliament questions, interpellations are less vigorous and ineffective with many restrictions and the lack of systematic and regular measures. In the UK, questioning ministers is an indispensable and regular means to hold ministers to be responsible to Parliament, and questions to ministers involve those relating to the 'public affairs with which they are officially concerned, the proceedings pending in Parliament, or on matters of administration for which they are responsible'.⁵¹

By contrast, the Chinese leaders regard interpellations as a stricter form of supervision, and in most cases they are subject to practical restrictions.⁵² Therefore, questions to the state organs and state officials by individual deputies can be raised only during the time when the NPC is in session. Secondly, a quorum is required when questioning the state organs and officials, usually over 30 deputies. Thirdly, the questions should be made to the departments, rather than a single person. Finally, questions to be raised must be in writing.⁵³

Although three forms of supervision emerged, as has been mentioned above, the lack of systematic and concrete measures still limited its implementation in reality. Deputies' right to inquiry, which 'originally was an important means to supervise the government', was diluted because 'it lacks enforceable and concrete procedures',⁵⁴ and deputies are not encouraged to apply it. No rules required officials to respond to deputies' inquiries or criticisms in a set period of time and, in an increasingly chilly political climate, challenges seldom arose and were easily deflected. The few questions that emerged were directed at corrupt local officials who violated laws or discipline, and served primarily to warn other wayward officials who abuse their administrative powers and do money-power exchanges. By and large, deputies were unfamiliar with government work and lacked sufficient data to draw conclusions.⁵⁵ The only well-informed deputies were typically administrators themselves, who had little incentive to open their agencies to

⁵¹ A. W. Bradley and K. D. Ewing (1997), *op. cit.*, p 226. And also Erskine May, pp 285-7.

⁵² *Renda daibiao shouce* (The booklet of the NPC representatives) (1997), Edited by the liaison bureau of the NPC standing committee. China Fangzheng Press. p 17.

⁵³ *Renda daibiao shouce* (The booklet of the NPC representatives) (1997), Edited by the liaison bureau of the NPC standing committee. China Fangzheng Press. p 51. And also see 1982 constitution, art. 73.

⁵⁴ Xu Chongde and He Huahui (1982), *Xianfa yu Minzhu Zhidu* (The Constitution and Democratic System). Hubei: Huebi Remin Chubanshe. P 61.

⁵⁵ See Xu Chongde and He Huahui, *op. cit.*, p 60-1. On the limited data released to deputies, see Zong Nankai, *Chuping renda huiyi* (First evaluation of the NPC), Dong Xi Fang, no. 7. (July 1979): 7.

legislative scrutiny. High officials could act as they pleased and were immune from criticism by deputies because the deficient supervisory systems offered them opportunities to do so. Illegal actions and constitutional violations frequently went unsanctioned. This perception has been further evident by the following:

“The system was not sufficiently sound. In theory the NPC was the highest organ of the state power, but in practice it did not control state power; it was unable to supervise the enforcement of the constitution or to exercise its extensive powers of supervision.”⁵⁶

In the UK, the system of select committees play a significant role for the life of a Parliament by examining the ‘expenditure, administration, and policy’ of the main departments,⁵⁷ and is directly related to the principal government departments. The most important characteristic is that only back-bench MPs serve on the committees. In addition, each committee has power to look at ‘associated public bodies’, such as executive agencies, public corporations, boards and advisory bodies in the relevant field. During the 1990s, the committees have made a positive contribution to the debate on accountability, the full fruits of which still lie ahead.⁵⁸

Unlike the British parliamentary system and the select committees, the NPC, from its inception, lacked the organisational muscle to tell the state council, ministers, or courts what to do, having been created for the assurance that the party’s policies would be implemented in practice through legal means.⁵⁹ Prevailing political theories placed the NPC at the apex of the state structure, but at the same time, delegitimized its supervisory role. Theory accorded the NPC formal supremacy and a mandate to be involved in administrative work, yet this meant little in a system in which all state organs were considered to be simultaneously executive and legislature. This view has been further verified by the newly published legislative law named “*Legislative Law of the People’s Republic of China*”, which was published at the third plenary session of the

⁵⁶ Shi Xiaozhong, *Jianquan guojia zhengzhi zhidu wenti dangyi* (Current discussion on perfecting the nation’s political system). *Minzhu yu Fazhi*, No. 10 (October 1981): 6.

⁵⁷ W.A. Bradley and K. D. Ewing (1997), *op. cit.*, p 229.

⁵⁸ See e.g. the Treasury and Civil Service Committee’s report on the civil service (HC 27, 1993-94) and the Public Service Committee’s report on ministerial accountability (HC 313, 1995-96).

⁵⁹ For an analysis, see chapter 4 under the sub-title ‘Party and government’.

9th NPC on 15 March 2000.⁶⁰ It laid out the principles for a legislature abiding by the constitution and economic reform, and emphasised the 'five adherences'. They are: adhering to the socialist road, people's democratic dictatorship, the leadership of the Party, Marxism, Leninism, Mao Zedong's thoughts, and Deng Xiaoping's theory, and reform,⁶¹ of which the party's leadership is the backbone.

Moreover, the Party enjoyed unclear and ever-changing legal status.⁶² The result was a maze of overlapping jurisdiction and numerous opportunities for Party committees, powerful individuals, or subordinate state bodies to make and carry out policy themselves outside the purview of the NPC. In principle, the constitution places the NPC in the dominant role of administrative supervision, but constitutional provisions notwithstanding, rejection of checks and balances in favour of unified power put it on an unsure footing and freed the hand of party/state executive organs. This is in accordance with the principle of 'democracy and centralisation' China advocates. The NPC's supervision is a weak point in the Chinese administration, which has been emphasised by both government and the deputies at the third plenary session of the 9th NPC in March 2000.⁶³

Apart from select committees, Britain has the system of the Parliamentary Ombudsman who provides an independent means of scrutinising administration. But in China, no such mechanism existed to conduct independent administrative surveillance. The Supervisory Ministry, which was re-established in 1987, conducts supervisory functions under the leadership of the State Council on the matters of the implementation of the state laws, regulations, policies and resolutions among the state organs, and their staff,

⁶⁰ China has the two-layer law making system within the NPC, the NPC and its standing committee. In addition, there are two other hierarchies, the State Council and provincial level people's congress, that shared the rights to translate broad programmatic decisions of the party leadership into specific legal norms. See *The Legislative Law of the People's Republic of China* (2000), Art. 7, 56, 63 and 78; The revised constitutional law (1982), art. 89. For an analysis, see 4.3.1 in chapter 4.

⁶¹ *The Legislative Law of the People's Republic of China* (published on 15 March 2000 at the third plenary session of the 9th NPC).

⁶² The Party plays a very important role in the Chinese legislature, which has been legitimated in art. 3 of the *Legislative Law of the People's Republic of China* (2000). The party's policies and laws are equally authentic. For an analysis, see chapter 4 under the sub-title 'party and government'.

⁶³ See section 8 of the government work report delivered by Premier Zhu Rongji at the third plenary of the 9th NPC in March 2000. *People's Daily, Overseas Edition*, 17 March 2000. And also *People's Daily, Overseas Edition* on 15 March 2000.

and behaviour in violations of laws and disciplines.⁶⁴ It is not entitled to make independent investigations over maladministration by state organs or officials on behalf of aggrieved individuals, and it has to work under the leadership of the State Council. The main tasks of the Central Commission for Discipline Inspection are to defend the constitution and the rule of the Party, to assist in strengthening the Party, and to supervise the implementation of the Party's policies and resolutions.⁶⁵

At present, China's administrative supervision is in the stage of theoretical exploration, trying to find experience in practice and absorbing experience from other countries. It is worth mentioning once more that the role of newly established enterprises ombudsman system is quite distinct from those of British Parliamentary ombudsman who has power to investigate independently complaints from individuals relating to maladministration by departments and authorities. The essential role of enterprises ombudsman is to supervise the division between policy and operations in practice. To a certain extent, administrative supervision in China has not developed as a regular supervisory system. However, there are some signs at present that the NPC and its standing committee are showing their muscle in scrutinising governmental economic work. An ordinance for strengthening the examination of economic work has been passed at the 14th plenary session of the 9th NPC.⁶⁶ Its positive significance lies in the recognition of the supervisory role of NPC in expenditure and the NPC has a final say on national special big projects.⁶⁷

The contrast in supervision patterns reflects the impact of the different structures of the political game. Under the pressures of elective politics, the government in the UK has undertaken to cooperate fully with the committees,⁶⁸ and the British ministers generally prefer to make themselves appear cautious, reasonable, and consistent when answering parliamentary questions, diverting responsibilities onto civil servants, perhaps in the Next Steps agencies. The example of the dismissal of Derek Lewis demonstrated this perception, which has been discussed in chapter 9 and 11. In contrast, without the

⁶⁴ *Regulations for the State Administrative Supervisory of the People's Republic of China* was released on 9 December 1990. See art. 2.

⁶⁵ The revised constitution of the CPC on 18 October 1992. Art. 44.

⁶⁶ *People's Daily, Overseas Edition*, 2 March 2000.

⁶⁷ *ibid.*

⁶⁸ *HC Deb*, 25 Jun 1979, col 45; and 16 January 1981, col 1697.

pressure of elective politics, the Chinese leaders like to play the role themselves of being bold, pushy, demanding, and even ruthless.

In China, in the absence of vigilant criticisms by an opposition party, ever-present pressures of organised interest groups, and constant scrutiny by a free press, the intimidating quality around political authority is functionally indispensable. A dreaded leader is often the only effective means to maintain proper functioning of the bureaucracy in general. Therefore, the Chinese leaders, the chiefs of leadership squads in particular, are required to possess '*juedui quanwei*' (the quality of authority),⁶⁹ or awe-inspiring authority. This might account for the top Chinese leader who himself always holds the post of the state president, the Party secretary and the chairman of the Military Commission of the Central Committee of the CPC at the same time, as is the case of Mao Zedong and Jiang Zemin.

The last major form of scrutinising administration lies in the NPC and its Standing Committee. When they deem it necessary, the NPC and its standing committee may appoint committees of inquiry into specific questions and adopt relevant resolutions in the light of their reports.⁷⁰ But law does not specify the remits of this kind of investigation, which is very difficult to put it into practice, and it also lacks systematic and applicable procedures to back up its implementation. So far little literature has contributed on this matter.

12.5. Informal Dispute Resolutions

In China, there is long established tradition of citizens using the 'letter and visits bureau' when they wish to complain about the actions of central government, and party organs. The 'letter and visits bureau' is well structurally built within the state organs,

⁶⁹ Possessing the authority role in the Chinese leaderships is very important, which has been proved from the Chinese history, otherwise, one might lose his power, as was the case of Zhao Ziyang who was forced to leave his office in Summer 1989 owing to his sympathy for the May/June student movement. And also see Jing Fuzi (1983), *zhongnanhai enchou lu* (reminiscences of gratitude and enmity in zhongnanhai). Taipei Press.

⁷⁰ The 1982 constitution, art. 71; and *Rules of procedure for the National People's Congress of the People's Republic of China* (passed at the second plenary of the 7th NPC on 4 April 1989). Art. 45-48.

party organs and the NPC. Therefore, China has a letter and visit bureau of the State Council (*guoban xinfangju*), a letter and visits bureau of the party central committee (*zhongban xinfangju*), and a letter and visits bureau of the NPC. The first two are more popular than the last, as the Chinese system has become accustomed to blending the powers of the party and government, whereas the role of the NPC in the scrutiny of the administration is largely neglected.

The role of 'letter and visits bureau' is, in a sense, similar to that of the UK's parliamentary ombudsman in relation to dealing with complaints from citizens of maladministration by departments and authorities. But the system has a striking difference in the following aspects. First, the Parliamentary Ombudsman was created by the Parliamentary Commissioner Act 1967. The Parliamentary ombudsman has a close link with the legislature, the office being designed as an extension of Parliament to investigate independently complaints through MPs from individuals. Distinct from the UK ombudsman, the 'letter and visits bureaux' were established as special organs adjunct to State Council, the Party Central Committee, and the NPC respectively under whose leadership they deal with letters from the citizens, and receive visitors from those who are aggrieved.

Secondly, the British Parliamentary Ombudsman has two distinguishing features of constitutional independence and extensive powers of investigation, which play a very important role in supervising governmental administration independently. Significant though the Parliamentary Ombudsman has been for solving the complaints from individuals relating to maladministration by departments and authorities, the MP "filter" and the lack of legal power to back up enforcement for his decisions have been limited the number of complaints dealt by the Parliamentary Ombudsman. These issues have already been addressed in chapter 10, and were brought sharply into focus following this Consultation Paper: *Review of the Public Sector Ombudsmen in England*.⁷¹ Nonetheless, most of the evidence suggests that the 'system' provided a channel for individuals to complain about government departments and authorities over maladministration, as it has formed part of the United Kingdom's unwritten

⁷¹ See also *A Consultation Paper: Review of the Public Sector Ombudsmen in England*, June 2000, available on the Cabinet Office website at: www.cabinet-office.gov.uk/central/2000/consultation.pdf.

constitution.⁷² But in China, the role of letter and visits bureaux as an informal disputes resolution mechanism, owing to the lack of features of the British ombudsman system specified above, limits its function in term of the individual disputes which are settled or grievances resolved. In practice, the function of letter and visits bureau is not to investigate the grievances from the citizens by themselves, but to provide information through the masses' letters to the leadership for consideration. Whether the grievances will be investigated depends on the relative units or leaders, not the letter and visits bureau.

Thus, the Chinese system has not established any mechanisms like the UK ombudsman to investigate independently complaints from individuals relating to maladministration by departments and authorities. What is lacking in China in relation to administrative justice is to give the letter and visits bureau the real power of dealing with complaints from citizens by themselves, or China needs to establish a new mechanism that represents citizens to complain against the government departments and authorities. This is because seeking redress of grievances against the state institutions has been slow to be realised by the Chinese government, and this is important for the Chinese administrative reform.

Thirdly, in British administration, when investigations are completed, the Parliamentary Ombudsman files a report with the MP who referred the complaints and the Permanent Secretary of the department concerned, and incorporates an anonymised summary version of the case in his quarterly report to Parliament. The report may lead to two consequences: (a) finding the department guilty of the charge of maladministration, or delivery a remedial verdict in which case remedial action will be recommended; (b) finding some faults within its administrative procedures.⁷³ The role of Parliamentary Ombudsman is seen to achieve better administration through the investigation's recommendations and to provide justice for aggrieved individuals.

The following two functions of the Chinese letter and visits bureau differentiate it from those of the UK Parliamentary Ombudsman. Instead of making recommendations

⁷² HC 129, 1990-91. First Report from the Select Committee on the Parliamentary Commissioner for Administration. London: HMSO, p xiii.

through the investigation of aggrieved individuals, the role of the letter and visits bureau is to provide government with information through the letters of the masses for policy making so as to assuage aggrieved individuals.⁷⁴ Many regulations were made as a result of these letters, such as those concerning government officials being honest in performing their official duties, government officials being banned from taking posts in economic entities, and government officials being prohibited from banqueting using public money.⁷⁵ Although the letter and visits bureau themselves have no legal status in investigating complaints from citizens, however, many big cases have been brought to light through their work, including the so-called 'the first big tax case of the People's Republic of China'. More than ten government officials were involved, and up to 12.34 million yuan RMB was refunded from evaded tax and a fine.⁷⁶

The procedural patterns of internal complaints systems are influenced by different political systems. In the British political arena, an independent means of scrutinising administration conducted by the Parliamentary Ombudsman has been given great emphasis, whereas in China, inadequate staff support (essentially a small office responsible for visits and letters)⁷⁷ and unclear procedures have hamstrung the legislature's efforts to conduct regular, institutional supervision of the government. Thus letters bureaux only serve as an intermediary organ between the government and the citizens, not to represent the citizens complaining against the state organs or officials. However, both letter and visits bureau and the Parliamentary Ombudsman serve similar means and ends in achieving better administration.

12.6. Conclusions

⁷³ Robert Pyper (1995), *The British Civil Service*, Prentice Hall Harvester Wheatsheaf, p 127.

⁷⁴ He Ping and Hu Manhong (1999), *Ouxinglixue wei renmin* (Serving the people heart and soul). Minzhu yu fazhi (Democracy and law). No. 290, p 19.

⁷⁵ He Ping and Hu Manhong (1999), *op. cit.*, p 18.

⁷⁶ He Ping and Hu Manhong (1999), *op. cit.*, p 19..

⁷⁷ The Letter and Visits Bureau of the State Council and the Party central committee received and met with visitors of up to 460,000 in total in 1998, on average, every one received 7000 letters and met with 600 visitors. He Ping and Hu Manhong (1999), *op. cit.*, p 18. See also Tian Jun and Liu Huiming, *Lun woguo renda jiandu zhidu de wanshan* (On perfecting our country's people's congress supervision system), *Jianghai Xuekan*, No. 1 (January 1989): 70-1.

The comparisons presented in this chapter have demonstrated that 'ideology' and 'politics' play a dominant role in the Chinese politics, although China is destined to build a country ruled by law. By contrast, the United Kingdom has a highly pragmatic system: when the need for a change of direction or the overriding of previously announced policy is felt, political, institutional, and ideological adoption is required to this changing situation rather than specific legislative authority and national debate.

Furthermore, great changes have taken place through the structural reorganisations in the UK, which led to the substantial consequence of the Next Steps agencies responsible for the administration of service, creating a new epoch of the civil service. The Chinese institutional restructuring was a complete contrast to that of the UK, where the traditional state apparatus remains untouched, trying desperately to graft the new functions onto the existing structure. The mechanism by which government will try to separate the functions of the government from the enterprises' management remains far from clear.

Thirdly, the British Parliament plays a critical monitoring and controlling role in scrutinising administration through parliamentary questions, debates and select committees. On the contrary, owing to the lack of enforceable and systematic procedures and adversary institutional institutions to check the work of the government, supervision over administration through the NPC is woefully deficient. Demands for strengthening the supervision of the NPC have been repeatedly voiced in both academic and executive circles in recent years, by representatives of the third plenary of the 9th NPC in particular.⁷⁸

Finally, the last comparison between the letter and visits bureau and the Parliamentary Ombudsman reflected the fact that the Chinese system in relation to dealing with individuals' disputes needs to be reinforced and rationalised so as to achieve better administration and to provide justice for aggrieved individuals.

⁷⁸ The third plenary session of the NPC opened in March 2000.

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CHAPTER 13

CONCLUSIONS

13.1. Summary of the Study

In this thesis, a wide range of studies have been carried out through government documents, both published openly and internally, a literature search from academic sources and interviews. A comparative legal method has been employed by which new public management, organisational restructuring and consumer orientation have been assessed in comparative perspective between China and the UK. The development of recent managerial and organisational changes has shown important significance of the public sector reforms in China and the UK over the last decade. A brief summary of the more important and more general conclusions is given below.

13.2. Conclusions

It is widely recognised that ancient China created many of the most vital traditions of representative government that entered the common heritage of personnel administration in the modern state. As has been detailed in chapter 3, China early developed techniques to promote an examination system, notable as '*kejuzhi*', and the promotion of government officials on the basis of ability with the aim of maintaining honesty, discipline and initiative among government personnel. Noticeably, the system of supervision over misconduct by officials developed into two forms: censors in central government and civil circuit intendants in local government, which is of historical significance for modern Chinese civil service reform. The play of personal influence had been brought into the open, and subjected to rules and standards. All of this carried with

itself the seeds of modern administrative responsibility, to which Confucian insistence contributed much. The grounds for this are as follows:

- (a) Confucius and his disciplines provided the basic teachings of schools, which were largely translated by Mencius some thirteen centuries earlier.
- (b) The Confucian classics became a fundamental part of the state constitution, with a force which neither the emperor nor his subjects could venture to deny.

In chapter 4, some peculiarities of Chinese government mechanisms, including the structure of the NPC and its standing committee, the State Council, GOs, letter and visits bureau, the Supreme People's Court, and the Supreme Peoples Procuratorate and their working relationships with the NPC, have been discussed. Constitutionally, the NPC is the highest organ of the state power, but practically, the Party enjoys political supremacy. In practice, Chinese history has witnessed the interaction of blending the Party's supremacy and the NPC's legal sovereignty; sometimes, in certain circumstances, the Party has intervened directly in state affairs or supplanted state administrative organs. This can be evident from the relationships between the law and policy, and the *ad hoc* procedures of Chinese administration that National Congress of the CPC always precedes the NPC several month earlier. That formed a fundamental characteristic of the Chinese government of system.

The socialist market economy and anti-corruption movements are calling for the "rule of law" to challenge the Party's privileges. Most importantly, the third generation leaders are beginning to use law to govern the state rather than Party policies although the recent warnings by President Jiang Zheming against "bourgeois liberalism" of Western ideas such as democracy and free-market capitalism¹ cast doubt on the manifesto of building the country ruled by law.

Chapter 5 has discussed the outcomes of the civil service reform drive that has been primarily a response to economic reform since late 1970s in China. It provides readers

¹ See note 17 of chapter 4 and Damien McElroy, *China moves to crush liberal trends*. The Scotsman, 10 April 2000.

with both theoretical analysis and analysis of public sector realities through government initiatives, ideological struggles and provisional recommendations.

It is noteworthy that the ideological struggles enjoy priority in both economic and political reforms throughout China from the late 1970s onwards, which demonstrates the characteristics of the Chinese people over important matters. To condemn them out of hand would be unwarranted as three ideological liberations occurred over the last decade and resulted in revising the constitution three times in 1988, 1993 and 1999, and four major institutional adjustment campaigns occurred in the year of 1982, 1988, 1993 and 1997. The problem lies deep in the way which the Chinese leaders enjoy educating civil servants in terms of politics and ideology, rather than setting up a series of applicable and concrete measures to promote civil service reform.

Ostensibly, the government institutional reform of 1998 introduced the new idea of public management techniques, and opened the concept of public service including the proper handling of administrative powers. The Chinese leaderships claim to achieve the objectives of the administrative reform within three years as follows:

- Establishing a highly efficient, well-coordinated and standardized administrative system,
- Further improving the civil service system,
- Forming a contingent of qualified administrators and gradually building an administrative management with Chinese characteristics suitable for the system of a socialist market economy.

To expedite the process of administrative reform, China's next steps in administrative reform should depend largely on the following recommendations from this thesis:

- Setting up a new conceptual framework for the current organisational readjustment and restructuring,
- Creating the organisational framework for implementing the restructuring plan resolutely in all the ministries and offices covered by the plan,

- Speeding up the establishment of legal and supervisory and social intermediary organisations, supplanting ideological education in reform,
- Evaluating results and making revisions as necessary in practice.

Chapter 6 has considered through case studies why the public sector might have found it difficult to adapt to changing circumstances. The rising number of cadre entrepreneurs and corruption involving many government officials illustrates the fact that China's political system has failed to adjust itself to adopting changing economic modernisation, which reveals a loophole in administrative management systems.

The techniques of managing the state through Party led ideological education like the three-fold themes of "learning, politics and honesty" to lose its attraction and they do not accord with the principle of "governing the state by law", and the socialist market economy. The grounds for this demonstrate: (a) as commercialisation intensified in the present China, political priorities, such as politics first and the Party's interests over anything else, have gradually given way to economic interests, which inevitably has had a strong influence on the civil service. Personal status in the society is no longer determined by post holding and office, but by wealthy men/women or "*dukuan*" (big money); (b) the political consciousness of bureaucrats and politicians is not developed enough to reform themselves to serve the people without considering their own interests. Without bold political system reform and breaking through historical patterns, corruption afforded by administrative powers will destroy not only the Party, but also the state. Eventually, it will affect the public ethos. Therefore, administrative reform needs another big overhaul if China is expected to cope with the fast growing global market economy.

To conclude, it may be beneficial to import the British 'Next Steps', 'Citizen's Charter', and 'Modernising Government' into the Chinese civil service to facilitate the government restructuring programme by applying private principles like 'competition' and 'flexibility' to respond to the changing situation, insisting on 'accountable management' and enforceable supervision over government officials with the aim of enhancing the public ethos of 'serving the people wholeheartedly'.

Consumer orientation as the main thrust of public sector reform has been discussed in chapter 7. Over the last decade or so, throughout the world public attention has been drawn in various degrees to empowering consumers in the realm of public services, which led to a growing demand for reappraisal of the role of the consumer in the process of reshaping the relationship between the state and the public. Attitudes towards consumerism turned out to be quite varied in public sector reform. Indeed, there is a mixture of views as to whether conceptualising people as consumers works or not. A critical appreciation of consumer orientation can be provided by supplementing a historical analysis with relevant political, social, economic and administrative perspectives based on the evolution of citizenship, and consumer empowerment in terms of users' involvement in policy evaluation and the quality of service. In such areas quality service is much emphasised through a series of governmental initiatives and the realities of public sector reform.

The deeper question concerns a shift towards a consumerism that is more fundamentally manifest in the process of governmental restructuring campaigns which happened in the UK over recent years. This is part of the large question of the extent to which commercial approaches to management can be transferred to public service.² In order to provide sufficient background for the latest rush to overhaul administrative reforms in the UK, chapter 8 has detailed Next Steps and the changing civil service structure.

Chapter 8 analysed the changing civil service structure of the British public administration, in which the Next Steps initiative plays a significant role in regulating the government mechanism's reorganisation. In relation to public service delivery, contracts in terms of framework documents and other contracts are taking a dominant role in the arrangement of public services from 1988 onwards, though 'contract can never produce the automatic market processes that in theory operate in the private sector'.³ Moreover, the individual employee contracts linking their pay to the performance of the agency also play a considerable role in public sector restructuring. Performance-related pay is an important element in a more consumer orientated culture that is being developed in the public services.

² Pollitt, C. (1990), *Managerialism and the Public Services: The Anglo-American Experience*. Blackwell, Oxford.

The creation of Next Steps agencies has not only eclipsed the hierarchical civil service running from the apex to the base, which has a great impact on the ways the public service is being managed, but also challenged the traditional anonymity and immunity from external accountability of civil servants by developments based on the notion of 'accountable management'. These developments have considerable constitutional significance for the future structure and functions of the civil service, ministerial responsibility, civil service management and supervision.

In chapter 9, far-reaching managerial changes to the public sector over the last ten years in the UK have been discussed. These managerial changes - emphasising the amalgamation of strategic management, structural restructuring to create more responsive and accountable units, and the development of better personnel management system - are broadly defined as the NPM. Obviously, the trend of NPM continually dominates the political agenda in which the public sector is being managed. There is no doubt that they represented the practical face of the NPM and a critique of traditional public administration. Moreover, the NPM expedites the formation of public sector internal complaints systems, which has been discussed in chapter 10. The basic principles of the Charter programme provide the basis for the establishment of internal procedures for handling complaints. Hence, a number of interconnected themes run through the Charter initiative, such as quality and standards, and complaints procedures, and have had potentially far-reaching effects on the public's perceptions about complaints and their resolution.

Furthermore, an effective public management and internal complaints system have also pointed to the key theme of political responsibility. In this system, accountability is twofold: the strategic or policy level for public services lies in ministerial responsibility, and operational responsibilities are delegated to the sphere of the managers, which involves the core issue of organisational restructuring - the division between policy making and policy delivery. Whether the classic doctrine of ministerial responsibility matches the agency structure in a modern state demands carefully consideration with

³ Ian Harden (1992), *The Contracting State*. p 77.

politicians' boldness and wisdom to challenge the conventions and policies of constitutional and administrative law.

Chapter 11 has discussed the convention of ministerial responsibility from the standpoint of its classic nature and its changing nature brought on by the delegation of accountability to the Next Steps agencies responsible for administration of services. Over the last ten years, the dominant convention of ministerial responsibility⁴ has been questioned by both theoretical and empirical challenges, which led to a repeated demand for 'reassessments of ministerial responsibility'⁵ at the time when the Next Steps agencies were created.

The government refusing to allow chief executives to account for their delegated operational accountability demonstrated that the gap between constitutional theory and modern practice continues to grow. Moreover, there is a diminution of ministerial responsibilities in practice owing to the artificial division between responsibility and accountability. Coupled with no clear and authorised dividing line between policy and operation, there would now seem to be more chances for ministers to escape personal responsibility and thus culpability, as was the case of the dismissal of Mr Derek Lewis, the chief executive of prison service, by Mr Michael Howard, the Home Secretary. As a result, the policy/operations split has become a good excuse for ministers to unload their responsibilities by saying that matters have been delegated to executives for accountability. This is a way for ministers of evading responsibility, and was probably encouraged by the government insistence on the convention of ministerial responsibility to Parliament and the illogicality of refusing to allow chief executives to appear before select committees on their own behalf.

Most of the evidence suggests that the convention of ministerial responsibility is already frequently ignored, especially in areas where few political interests are involved. It seems likely to be the practice in a number of agencies that the accountability of chief executives to Parliament through Select Committees is emerging and "*de facto*,

⁴ For details see notes 1 in chapter 11.

⁵ Colin Turpin, *Ministerial Responsibility* in Jeffrey Jowell and Dawn Oliver(1994), *The Changing Constitution*, Third Edition, Clarendon Press, Oxford, chapter 5. P 137.

accountability will grow along that line”.⁶ This may be evident from the statement of the Public Select Committee:

“The practice of the House in relation to agencies has already moved a good distance from the conventional position on the relationship between Parliament and civil servants. Agency Chief Executives are deeply involved in giving information directly to Parliament, with only the most formal involvement by Ministers. Agency Chief Executives give evidence to Select Committees about the work of the agency... It would seem that what happens in practice in this case has evolved considerably in advance of the theory enshrined in the Osmotherly Rules.”⁷

The aim of quoting this statement is to support my viewpoint that the concept of ministerial responsibility needs to be re-formulated so as to reflect the modern realities of British politics, giving greater consideration to realities rather than insisting its form. Otherwise the gap between lofty conventional theory and practices will broaden, which will affect the process of political system reform.

Chapter 12 examined the major overhauls of public sector reforms in comparative perspective between China and the UK over recent years, including the drive for consumerism, structural reorganisations, the role of the Parliament of the UK and the National People’s Congress of China in holding administrative executives accountable, and the peculiarities of the British Parliamentary Ombudsman and Chinese ‘letter and visits bureau’ in dealing with the informal individual disputes within the public sector.

Firstly, the comparisons of the drive for consumerism between the UK and China demonstrated that the ‘politics’ and ‘ideology’ play a dominant role in the Chinese politics, as it has been evident from the recent Party-led ‘three-fold’ education, which has already been addressed earlier. On the contrary, the United Kingdom has a highly pragmatic system in pursuing consumerism with many concrete and applicable measures to back up the consumer orientation.

⁶ Second Report of the Public Service Committee *Ministerial Accountability and Responsibility*. H. C. 313-I, Session 1995-96. P lii.

⁷ H. C. 313-I, *op. cit.*, para. 110.

Secondly, organisational reorganisations in the UK led to the substantial consequence of the Next Steps agencies responsible for administration of service delivery, creating a new epoch in the civil service. By sharp contrast, the Chinese institutional restructuring did not touch the traditional state apparatus, the separation of the functions between the government and the enterprises' management remains far from clear. This led to repeated voices for political system reform in both academic and executive circles over recent years, by representatives of the third plenary of the 9th NPC in particular.

Thirdly, the British Parliament plays a critical monitoring and controlling role in scrutinising administration through parliamentary questions, debates and select committees. On the contrary, supervision over administration through the NPC is extremely ineffective, on the grounds that the NPC, from its inception, lacked the organisational muscle to tell the State Council, and ministers what to do, having been created for the assurance that the Party's policies would be implemented in practice through legal means. Chinese history and the practical emphasis of politics demonstrated this assertion.

Finally, the comparison between the 'letter and visit bureau' and the Parliamentary ombudsman illustrated the fact that the Chinese system in relation to dealing with individuals disputes needs to be reinforced and rationalised so as to achieve better administration and provide justice for aggrieved individuals.

To conclude, a comparative legal method has been employed by which new public management, organisational restructuring and consumer orientation have been assessed in comparative perspective between China and the UK. The developments of recent managerial and organisational changes have shown great significance of the public sector reforms in China and the UK over the last decade. All this will facilitate public sector restructuring campaigns in both China and the UK.

13.3. Prospects for successful reform of the Chinese public service

The achievements of research themselves are important, but more important is that the achievements provide a basis for the future research to extend our understanding on the subject. During the course of the presented study, prospects for successful reform of the Chinese public services have been raised to ensure that institutional reform is not a paper exercise. Therefore, it is felt that the following are some major aspects in which future Chinese public sector reform needs to be addressed.

13.3.1. Revision of the “State owned enterprise law of the People’s Republic of China”

In principle, all state firms are regulated by the “State owned enterprise law of the People’s Republic of China”, but in practice, they are also subject to the control of their relevant parent departments from the very early stage of their establishment to the last stage of bankruptcy.⁸ To put it another way, whatever they do, first of all, SOEs should require approval of their parent government departments under whose direction they are formed, otherwise it is very difficult for them to carry out their plans. This gives greater opportunities for government officials to enrich themselves and abuse their administrative powers because the Chinese mechanism on the whole lacks a forceful, regular, applicable and legal channel or measures to supervise government officials. Even where there are measures, they are subject to strict restriction in practice, for example, addressing questions to state organs and state officials with a quorum of over thirty NPC's deputies once a year when the NPC is in session.⁹ This can be blamed on an irrational national asset structure which has been discussed in chapter 4 and the lack of forceful, applicable and effective state owned enterprise law to regulate the activities of the SOEs. The shortcomings of the existing state owned enterprise law stand out clearly.

Firstly, in principle, all assets in SOEs belong to the state or all people; the management of the assets is taken on by the firms.¹⁰ Sometimes, it is not clear which part of the state owns an enterprise. Different levels of bureaucracy fight among themselves. In other

⁸ “State owned enterprise law of the People’s Republic of China” (1988), article 16 and 19.

⁹ For more details see chapter 12 under the sub-title “the British Parliament and the Chinese National People’s Congress.”

¹⁰ Article 2. Ibid.

cases, decentralisation seems to be working rather too well. A process of spontaneous privatization is under way in many of China's smaller state firms: shares are sold to other companies, to foreigners or to firms' own management and workers. Though the scale of this is difficult to gauge, a growing number of smaller firms are evidently being stripped bare by managers and local-government officials who seize the best assets for themselves at the expense of the state. Thus "State owned enterprise law" becomes hollow, it can neither regulate the behavior of the SOEs, nor it can be seen as a vehicle for the separation of the state as an owner from the operation of day-to-day management of the state firms.

Secondly, although the Chinese government has spent a lot of efforts on reforming SOEs, claiming to separate the state as an owner from day-to-day management, attempting to grant greater autonomy to management, imposing financial discipline, encouraging firms to merge and restructure, and exposing SOEs to competition. These are all sensible aims which are manifest clearly in the existing state owned enterprise law in terms of the "contract responsibility system", the "lease responsibility system" and so on¹¹, but none of them succeeded in doing so. Moreover, the state owned enterprise law has been far behind the reality of the state firms' reform. Mergers and restructuring are on the way, but these concepts do not appear in the law of the state enterprise. The implication here is that the "State owned enterprise law" has so far failed to achieve the aims of reforming the SOEs.

Thirdly, state owned enterprise law did not incorporate the idea of the market economy, instead the planned economy was more emphasized. This is not in agreement with what government claimed to do in establishing the socialist market economy. Therefore, state owned enterprise law needs immediate revision to reflect the reality of the present China. Only in this way, can the state owned enterprise law facilitate public sector reform to achieve a dedicated, efficient, honest and expert civil service with strong customer orientation.

13.3.2. Strengthening the state owned ombudsman system

As has been discussed above, the state owned ombudsman system was established in 1998 as a subordinate body to the State Council to supervise the division of government from managing the day-to-day operation of the state enterprises. The mechanism by which the government has been trying to separate the regulatory role of ministries from their commercial interests is still the toughest problem relating to the Chinese public service. A good solution to this problem will provide fresh impetus for achieving the ultimate goals of reform. Therefore, for China's sake, the state enterprise ombudsman system should develop a step further by (a) restructuring it under the control of the NPC rather than the State Council, (b) giving the state owned enterprise ombudsman extensive powers to investigate maladministration on SOEs' mergers and restructuring. The grounds for this are that emphasizing the need to place the state owned enterprise ombudsman under the NPC can facilitate China to achieve the aim of building the country rule by law claimed by the Chinese government. Moreover, the system of ombudsman with its legal role and extensive investigation can provide an authoritative means of 'judging' the behavior of government officials so as to maintain better administration that is publicly acceptable. Thus how to establish and stimulate ombudsman in redressing maladministration is of great significance because this system can make public bodies accountable to the public fully and properly so as to improve efficiency and effectiveness of administration.

13.3.3. Importation of the UK's experience of Citizen's Charter and Next Steps programme

It may be beneficial to import the British 'Next Steps', and 'Citizen's Charter' into the Chinese civil service to facilitate the government restructuring programme by applying private sector principles like 'competition' and 'flexibility' to respond to the changing situation, insisting on 'accountable management' and enforceable supervision over government officials. These measures may promote the process of public sector reform so as to enhance the public ethos of 'serving the people wholeheartedly'. The reasons are as follow:

¹¹ Article 2. Ibid.

First, many measures adopted to separate the government as an owner from managing day-to-day operation of the state firms have increasingly failed us in China. On this aspect, British experience may offer a good example of breaking through the traditional single hierarchical civil service. Instead, a loose federal civil service with the idea of a division between policy and operation matters has been established to raise the effectiveness and efficiency of administration. For China, institutional restructuring demands wholesale change, including new structures, policies, programme and services that are better equipped to tackle the challenges the government faces, not ideological matters. This is because ideological education cannot save China, and this has been repeatedly borne out by recent years' large scale of party-led ideological mobilizations, for example, from party-led anti-corruption to three-fold education and "three preventatives".¹² Failure to find an effective and rational way to separate the functions between the policy matters from administration of public service will affect the reform of the NPC system, the government-restructuring programme, and the personnel system. What China needs is not ideological education to train civil servants, but a new bold political system reform to keep pace with the growing desire for managing the state by law rather than by the party's discipline or rules. This means moving away from the model of the party dominating the state activities to one where the government takes responsibilities for the state's conduct. If China can find a suitable and effective means of separating policy matters from the administration of the public service, it can bring innumerable benefits to the public service reform.

Secondly, the UK's Citizen's Charter programme also sets a good example for China to follow. On the one hand, the Citizen's Charter makes a citizen more aware of his/her rights to receive the quality service from the government by means of setting service principles, standards and targets. This is an effective, applicable and obvious way to stop officials taking advantages of people's ignorance in order to make private gains for themselves. On the other hand, the Citizen's Charter also makes officials fully understand their role as public office holders to deliver quality service to the public by strengthening a set of systems to facilitate the implementation of the Charter's principles, standards and targets, such as the Charter Mark Scheme, internal complaints

system and People's Panel. This is because, in the Chinese context, there is a serious problem that bureaucrats do not fully understand what performance they should provide to the public as public office holders, and the public does not know what service they are entitled to receive from the government.

It is believed that if China addresses the above aspects of reforming the public service, institutional reform will be genuinely effective, thus serving the end of holding government accountable to the citizen and raising effectiveness and efficiency of administration.

¹² For analysis see chapter 5 and 6 of this thesis.

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