

# WHAT IS PUBLIC ABOUT PUBLIC SERVICES?

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Commissioned by the World Bank as a background paper for the  
**World Development Report, 2004, *Making Services Work for Poor People***

## *Public bars and private hospitals*

On my first visit to Prague after the 'Velvet' revolution of 1989, I spent a morning discussing the post-communist future of public services with Czech labour leaders. For a while I was perplexed: why were they so sanguine about the prospect of hospitals being privatized? They were baffled too: why would a Londoner favour state control of pubs? It soon dawned on us that we were at cross purposes because we were talking about 'public services' as a general category without having defined what we meant. Once we had established our agreement that state-run bars are about as much fun as market-designed health services, we got on a lot better.

Public houses ('pubs') are public in a very different sense than are public hospitals. At that time, Prague's bars and restaurants were indeed being restored to private ownership, with benefits about which millions of tourists have since testified. Not long afterwards, much of the health care system went the same way, with less benign consequences. Yet there are countries, such as Canada, where alcohol retailing is not only strongly regulated but state-owned, and others, no less committed to social welfare, such as Germany, where public health care providers run their own businesses.

So, if our Prague misunderstanding could be easily resolved over an excellent public sector lunch in a soon-to-be-privatised restaurant, real differences, shaped by cultural, institutional and social as well as economic and political history, are somewhat more challenging. Indeed, even within the same national context, the meaning of 'public' when applied to services is prey to the variety of meaning of the word 'public' in general. The Oxford English Dictionary devotes several pages to the word 'public', beginning with the following:

'Public (adj): In general, and in most of the senses, the opposite of private. The varieties of sense are numerous and pass into each other by many intermediate shades of meaning. The exact shade often depends upon the substantive qualified, and in some expressions more than one sense is vaguely present; in others the usage is traditional, and it is difficult to determine in what sense precisely the thing in question was originally called public.'<sup>1</sup>

When the substantive qualified is 'services', all of the points in that quotation apply. The sense of a service provided by the state is certainly one of the senses of 'public' when applied to services, but there are many others: services to the public; services on behalf of the public; services providing public goods; services accountable to the public; and so on. It can indeed be 'difficult to determine in what sense precisely the thing in question was originally called public'.

## *Public policy and public services*

If history has shaped our understanding of public services, the boundaries of the public and private realms and the way in which services are delivered in different contexts, these are also being

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<sup>1</sup> 'Oxford English Dictionary', Second Edition (1989), Vol. 12, p.778

transformed also by current economic and political change. This finds expression especially in tension between integration and liberalisation of national economies, on the one hand, and public policy made and implemented at national and sub-national levels, on the other.

These are fundamental issues in the continuing formation of the European Union, whose leading institutions eschew the term 'public services' in favour of 'services of general interest' and 'services of general economic interest'. These denote 'market and non-market services which the public authorities class as being of general interest and subject to specific public service obligations,' states a recent consultative document ('Green Paper') from the European Commission (the EU's executive administration), explaining:

"The terms "service of general interest" and "service of general economic interest" must not be confused with the term "public service". This term is less precise. It can have different meanings and can therefore lead to confusion. The term sometimes refers to the fact that a service is offered to the general public, it sometimes highlights that a service has been assigned a specific role in the public interest, and it sometimes refers to the ownership or status of the entity providing the service.

"The term "public service obligations" is used in this Green Paper. It refers to specific requirements that are imposed by public authorities on the provider of the service in order to ensure that certain public interest objectives are met, for instance, in the matter of air, rail and road transport, and energy. These obligations can be applied at Community, national or regional level. It is irrelevant under Community law whether providers of services of general interest are public or private; they are subject to the same rights and obligations.<sup>2</sup>

### ***Public responsibility and public services***

Like the European Commission, the authors of the World Bank's 2004 World Development Report, *Making Services Work for Poor People* (WDR 2004), avoid the term 'public services', in the title at least (it is used occasionally in the report itself). Rather, they argue that the essential characteristic in common of the services with which the report is concerned – health care, education, water and sanitation, and electricity – is that governments have 'public responsibility' for them. Direct state provision is not the only way to exercise that responsibility, which can also be expressed through public regulation or financing, the report argues. Indeed, it goes further: public responsibility can be exercised better through alternatives to direct state provision in many of the circumstances which actually confront poor people.

The latter position prompted much debate during the consultative discussions about WDR 2004 as it was being prepared, written and revised. Many of those consulted believed that, by advocating private sector delivery in some circumstances, the report was undermining the essential public characteristic of the services concerned. Others argued that, while direct service delivery by government organisations was not necessarily an essential characteristic of public services, it remained possible that involving the private sector in their provision could harmfully erode their distinction from private services.

What emerged less clearly in the discussion, and is much less easy to define in precise terms, was the substance of the publicness of services. If services do not necessarily cease to be public if they are privatized, but rather become privately delivered public services, it follows that direct government provision is not necessarily a defining characteristic of their publicness. In that case,

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<sup>2</sup> Green Paper on Services of General Interest (Presented by the Commission) Brussels, 21.05.2003 COM (2003) 270 final, Commission of the European Communities, [http://europa.eu.int/eur-lex/en/com/gpr/2003/com2003\\_0270en01.pdf](http://europa.eu.int/eur-lex/en/com/gpr/2003/com2003_0270en01.pdf)

however, what are those defining characteristics, and if they are compatible with private provision, what other factors enable that reconciliation?

### ***Public service and public services***

It might be that in exploring the relationship between 'public service' and 'public services', we begin to identify some defining characteristics of the publicness of public services, and to explore the tensions between that and private provision. M. Shamsul Haque of the University of Singapore attempts something of this sort in identifying five 'specific criteria or measures of publicness' as being:

- *the extent of its distinction from the private sector*: Haque goes on to identify impartiality, openness, equality and representation as being distinctly public characteristics.
- *the scope and composition of service recipients*: the greater the number and broader the scope of service recipients, Haque writes, the higher the degree of publicness, and he refers to a 'shared and universally accessible domain involving the interest of all citizens'.
- *the magnitude and intensity of its socioeconomic role*: the wider a service's societal impact, the greater the degree of its publicness.
- *the degree of its public accountability*: this goes beyond the existence of institutions to the extent to which those institutions are influenced by particular classes or sections of society.
- *the level of public trust*: that is, how much people trust the credibility, leadership or responsiveness of a service.<sup>3</sup>

In that view, it seems that there are several characteristics of publicness in public services and that each of them, and overall publicness, are matters of degree more amenable to qualitative judgement than to quantitative measurement. This is important, because it implies that political processes and the changing policies they produce, rather than the technical certainties of economic theory, should be our guide. That is, in its turn, significant, because the relationship between the political and economic realms is clearly at the heart of the changing political context of public services internationally. The arrangements for alcoholic beverage sales and health care delivery in Canada and Germany are a product of national and sub-national political deliberation; challenges to them stem in large part from international economic pressures and the tendency to cultural convergence associated with them.

### ***Private interests and public services***

The German health care system operates with considerable success on the basis of a state-run social insurance system regulating the behaviour of privately owned health care providers. Cuba's health care system is wholly state-owned and no less effective. Provision of publicly raised finance has been crucial in both cases, but the same levels of resources do not necessarily produce the same results in other contexts. The policies and systems through which services are run are also decisive factors.

If the poorest people are obviously excluded from market-led service provision, they are often also neglected by state provision. The fact that a billion people are without piped water supply and two billion without sanitation cannot be blamed on the 1990s trend towards formal privatisation of urban water supply, which still affects far fewer people (since 95 per cent of global piped water remains state-run) than informal local private provision. The latter, in the form of street vendors,

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<sup>3</sup> 'The Diminishing Publicness of Public Service under the Current Mode of Governance', M. Shamsul Haque, in *Public Administration Review*, January-February 2001, 61 (1)

have (normally inequitably) filled gaps left by state provision, while, in health care and education, lack of trust in state provision even where it exists has helped to stimulate private markets in those services.

None of the above means that privatisation is the answer, but it can be seen as more an effect than a cause of public services failing to serve the public. The truth is that there are many public services provided through state organisations employing public servants under the leadership of elected governments that fail to advance very far along the publicness spectrum as benchmarked by Haque. As Joseph Stiglitz has observed:

'A central problem facing all the Eastern European countries in the process of making the transition to market economies is the privatization of the currently "publicly" owned and operated firms. I put the word "publicly" in quotation marks deliberately. In different countries there are different patterns and forms of ownership and control – as we would normally use those terms. While *nominally* all the property may belong to all of the people, the "people" do not directly exercise control, and even in democratic governments the link between those who actually make decisions and those on whose "behalf" they exercise control, may be very weak.'<sup>4</sup>

### ***Public rights and public service***

Similar observations have been made about other contexts in which the state represents the public no more than (and possibly less than) the market does. (There is, of course, a relationship between private control of states and private control of markets – the former is immensely helpful with the latter, and modern trends in the convergence of economic and political power are increasingly manifesting the converse.) The Latin American experience of public policies, services and administration governed within a clientelist political culture has been analysed by former Brazilian government minister Luiz Carlos Bresser Pereira, who has written:

'It is not by accident that almost simultaneously a Brazilian social-democratic political scientist first wrote about the "privatization of the state" (Martins 1978) and a conservative US economist (Krueger 1974) defined "rent seeking". They were referring to the same problem. If the historical realization of the need to protect the individual from an oligarchic state took place in the eighteenth century, and if ensuring the democratic rights of political participation and protecting the poor and the weak from the rich and the powerful occurred in the nineteenth century, the importance of protecting the public patrimony only became dominant in the second half of the twentieth century.

'These writers were acknowledging that it was necessary to protect the *res publica* and define another basic right – the public right that all citizens have – that what is meant to be public should indeed be public. In other words, this right guarantees that state property be available to everybody, instead of being the object of rent seeking, instead of being privatized'.<sup>5</sup>

By 'privatized' in this context, Pereira means not transfer of responsibility for delivering public services to private companies but usurpation of public property and authority by private interests in control of the state apparatus. Indeed, he argues that transparent privatization in the more conventional sense can contribute to avoidance of murkier privatization in the sense he is using it here. (In Russia, murky privatisation in the one sense led seamlessly to murky privatisation in the other.)

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<sup>4</sup> Whither Socialism?, Joseph E. Stiglitz, The MIT Press, 1994, p.171.

<sup>5</sup> 'From Bureaucratic to Managerial Public Administration in Brazil', Luiz Carlos Bresser Pereira, in *Reforming the State: Managerial Public Administration in Latin America*, Luiz Carlos Bresser Pereira and Peter Spink (eds.), Lynne Rienner, 1999, p.4.

### ***Public ownership and public services***

In Pereira's analysis, 'the modern state oversees four sectors', which he calls 'the strategic core, the exclusive activities, the nonexclusive services, and the production of goods and services for the market'.<sup>6</sup> He adds: 'The ownership question is essential. In the strategic core and in the exclusive state activities sectors, ownership will be state ownership. In contrast, in the production of goods and services sector, there is an increasing consensus today that ownership should be private, particularly when the market is able to control business enterprises. When there is a natural monopoly the question is not so clear, but even in that case an effective and independent regulatory agency will permit private ownership in the goods and services sector.'

'In the realm of the nonexclusive services, however, decisions about ownership are more complex. States and citizens may assume that health, education and cultural activities are supposed to be financed or developed by the state, either because they involve basic human rights (education, health) or because they imply sizeable externalities (education, health, culture, scientific research). However, since they do not involve use of state power, there is no need for them to be state-controlled. A third option is to adopt public nonstate ownership (in Anglo-Saxon terminology, "nongovernmental" ownership): "public" in the sense that they are devoted to the public interest, that they are of and for everybody, that they are not profit-oriented; "nonstate" because they are not part of the state apparatus.'<sup>7</sup>

### ***Private provision of public services***

The implication of Pereira's widely shared analysis is that transparently regulated private provision of public services, on the basis of public policies created through accountable democratic institutions, could increase rather than diminish their publicness. However, the elegance of this proposition is continually challenged by experience of imbalance in the powers and responsibilities between parties to regulated privatized public services and 'public-private partnerships'.

The fate of several recent examples of urban water privatization contributed to the decision of the World Bank's Latin American and Caribbean region to hold a staff seminar called 'Rethinking Privatisation' in early 2003. Re-evaluation of privatisation policies has been prompted not only by celebrated cases of social uprising against privatisation, such as Bolivia's Cochabamba, nor just by cases in which private companies have effectively transferred risk back to the public by withdrawing prematurely from concessions, such as in the Philippines capital Manila. Even declared success stories, such as Buenos Aires, have experienced renegotiation of contracts after social problems manifested themselves in vigorous protests against price rises and economic problems in water infrastructure investment turning out to be only one third, and sewerage investment only one fifth, of original commitments.<sup>8</sup>

Such experiences should not be torn from a context in which private investment in public infrastructure has mobilised capital that was otherwise unavailable to states, but even in many of those cases the public risk involved has turned out to be at least as great as the private risk. For example, the National Power Corporation of the Philippines was financially ruined by the obligations placed upon it by the distribution of risk through its power purchase agreements with independent power producers during the 1990s. Britain has experienced expanding costs and contracting capacity and services – the opposite of the intended consequences – following its

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<sup>6</sup> *ibid.*, p.9.

<sup>7</sup> *ibid.*, p.10-11.

<sup>8</sup> United Nations Development Report 2003, p.119.

Private Finance Initiative for the National Health Service.<sup>9</sup> And the United Nations Development Programme has found failings in privatisation in both health care and education services. The 2003 Human Development Report (HDR 2003) has noted: 'The supposed benefits of privatizing social services are elusive, with inconclusive evidence on efficiency and quality standards in the private relative to the public sector. Meanwhile, examples of market failures in private provisioning abound.'<sup>10</sup>

The HDR 2003 concluded: 'In all sectors regulatory capacity should be built up before privatization. Otherwise, the private sector may merely respond to different demand, not to excess demand, whether in education, clinical health care or water and sanitation.'<sup>11</sup> However, if the proposition that sufficient regulatory capacity should be a condition of public service privatization can be accepted, the benefits and costs of privatization even on that basis must be judged against the alternative of making equivalent investments in the capacity of state organisations to deliver services subject to regulation via more direct democratic accountability.

### ***Public choice and public service***

The latter proposition would be swiftly rejected by those whose confidence in the ability of democratic processes to ensure public accountability is inferior to their confidence in the ability of market mechanisms to do so. Applying the same logic as that which guides private provision of public services, such policy makers seek to secure the public interest in public administration through reforms guided by public choice theory. This is an application of classical economics to public administration and has been the dominant influence in the development of the 'new public management', or what Pereira calls 'managerial public administration'. In this view, the introduction of market forms of accountability into public administration is required precisely to overcome its privatisation in the Pereira sense, to disable 'rent seeking'.

Challenging the assumption that elected and appointed public servants are motivated primarily by a 'public service ethos', market-mechanised public administration is based on the idea that participants in the whole process of public service delivery are primarily self serving. The operational idea, defining relationships between service providers and their employees and contractors as much as relationships between public service recipients and providers, is that the contract is the key mechanism of accountability. The public interest is served by aligning through contract design the private interests of public servants with the public policy goals for which they have implementation responsibility.

Julian le Grand, of the London School of Economics, has recently argued, in the context of opposing the idea that market-based reforms necessarily damage the 'public service ethos', that 'competition in public services has the moral virtue of encouraging respect for their users'. Explaining what he means by 'public service ethos', he writes: 'On this view, public sector workers are not self-interested knaves but closer to "knights": public spirited altruists whose only concern is for the services and those who use them. To press on with reforms is implicitly to say that these knights can no longer be trusted to provide a good service, and that they need to face either positive external incentives (such as financial rewards) or negative ones (such as increasing job insecurity)'.<sup>12</sup>

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<sup>9</sup> See the British Medical Journal series on the Private Finance Initiative by scholars at University College London's School of Public Policy, available at <http://bmjjournals.com>

<sup>10</sup> *Human Development Report 2003*, UNDP New York, 2003, p.113

<sup>11</sup> *ibid.*, p.121.

<sup>12</sup> Julian le Grand, *New Statesman*, 13 October 2003, p.27.

He goes on to note the concern that market-based reforms can self-fulfil such prophecies, in that 'by introducing potentially knavish incentive structures, they turn public sector knights into knaves, and exacerbate the very problem of mistrust they try to address.' He argues, however, that, in creating a climate of mutual respect between the parties to public service relationships, market mechanisms can raise their moral level - up to a point. 'What is needed is well-designed public policies, ones that employ mechanisms which encourage respect for users but which do not allow unfettered self-interest to dominate altruistic motivations.'

### ***Public accountability and public service***

As with private provision of public services, however, the reality has proved more problematical than the elegantly balanced assumptions of the theory. No country has applied public choice theory to reform of public administration more systematically than New Zealand has done, and the most thorough analysis of the results has been carried out by Allen Schick.<sup>13</sup> 'In my view, organizational performance has been significantly enhanced,' Schick has written, but he attributes the improvements to decentralization of authority and the problems to the marketization of the accountability arrangements, noting:

- 'The New Zealand model emphasizes matters that can be specified in contracts, such as the purchase of outputs, but gives inadequate attention to outcomes and the government's ownership interest because they do not fit easily into the contracting framework.
- Robust contracting depends on voluntary, self-interested action. Sometimes, however, self-interest defeats the government's collective interest. In the early years of reform, for example, efforts to establish a senior executive service were undermined by managers who preferred to contract on an individual basis.
- Contractualism may weaken traditional values of public service, personal responsibility, and professionalism. It can induce managers to take a checklist approach to accountability—"if it's not specified, it's not my responsibility."
- Contract-like arrangements do not themselves create arms-length relationships in the public sector, nor do they enable the government to toughen its insistence on performance. In most cases, government has little choice but to contract with internal suppliers, typically its own departments. If these fail to perform, the government can sack the chief executive and apply some pressure. But it rarely has the exit option that is essential to the effectiveness and enforcement of private contracts.
- Chief executives, senior managers, and others attribute most of the improvement in government performance to the discretion given to managers rather than to formal contracts. Managers differ on how much value is added by contracts, but few think that they have been the main contributor to higher operational efficiency.
- Contracting is not costless. Negotiating and enforcing contracts entails enormous transaction costs that have not been systematically studied, although they take a deep bite out of operating budgets, especially those of small departments.<sup>14</sup>

### ***Public design of public services***

Le Grand refers to the need for 'well-designed public policies', but how is good design effected? If market mechanisms are effective in delivering public services, as he and Pereira suggest, why are they not also best at designing them? That is indeed the logic of designing public services through

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<sup>13</sup> *The Spirit of Reform: Managing the New Zealand State Sector in a Time of Change*, Allen Schick, State Services Commission, Wellington, 1996.

<sup>14</sup> 'Why Most Developing Countries Should Not Try New Zealand Reforms', Allen Schick, *The World Bank Research Observer*, Vol. 13, No. 1 (February 1998), p.126.

consumer choice, an approach that is implicit in what the WDR 2004 calls the 'short route' of accountability (and which the WDR advocates in cases of the failure of the 'long route' through representative government captured by clientelism).

However, like private provision of public services and market incentives within public administration, this can lead to other forms of capture. Consumers are not the equally well-informed, equally wealthy and equally powerful individuals of the idealised market place. Therefore, in redefining the public interest in terms of aggregation of separate private interests, definition of the public interest through consumer preferences enables some private interests to gain undue ascendancy over others, precisely the problem it is supposed to solve.

Moreover, such an approach discards the role of collective construction of the public interest through democratic processes of deliberation, processes which can produce a publicness that is more than the sum of its parts. As Catherine Needham has argued: 'The consumer is primarily self-regarding, forms preferences without reference to others, and acts through a series of instrumental, temporary bilateral relationships. Accountability is secured by competition and complaint, and power exercised through aggregate signalling.'<sup>15</sup>

Needham adds: 'The citizen-consumer model can be contrasted with an alternative model of participatory citizenship centred on concern for a common interest, collective deliberation and discussion, loyalty to a political community and the value of public engagement as a good in itself.'

### ***Public participation in public services***

To be sure, the same people whose citizenship is expressed through democratic processes are also consumers of the public services they produce, and services – and, for that matter, people -- are heterogeneous in this as in other respects. Some people will want to participate more than others in any collective processes contributing to the design of health care and education systems; some will want a more discursive kind of partnership than others with the doctors and teachers that serve them individually; and some who want to make decisions about their medical treatment and studies will not wish (or have the knowledge) to exercise judgement over the workings of their sewers. Nevertheless, as Robert Kramer has inspiringly expressed it:

'Only by becoming active participants in civic life, rather than remaining passive spectators on the sidelines, can citizens regain trust in the democratic idea that *government is us* – regain trust, as it were, in their capacity to govern themselves. It is relationship that allows the wholeness of individuality to emerge, that spawns the self-acceptance necessary for discovering – or, better, recovering or uncovering – one's full creative potential as a citizen.'<sup>16</sup>

It is certainly possible to overdo the paeans to participation, and for that matter participation itself. There is no doubt that the role of civic participation in enhancing democracy is not a straightforward matter, and that 'governance', like public-private partnerships, can involve relationships that are far from equal and are subject to capture by relatively powerful interests (both inside and outside the state apparatus), a hazard made all the more pernicious by disguise. Nevertheless, participatory democracy can improve design, implementation and sustainability of public services, as well as increasing public trust in government, as the outcomes of processes such as Porto Alegre's increasingly emulated participatory budgeting have shown.

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<sup>15</sup> *Citizen-consumers: New Labour's marketplace democracy*, Catherine Needham The Catalyst Forum, London, 2003, p.5.

<sup>16</sup> 'Weaving the Public into Public Administration', Robert Kramer, in *Public Administration Review*, January/February 1999, Vol. 59, No.1, p.90.



## *Public goods and public services*

The WDR 2004 refers to experiments in participatory democracy as showing how what it calls the 'long route of accountability' can be improved to produce more pro-poor policies in government. In whatever manner the legitimacy of government as custodian of public responsibility can be increased, it is self-evident that it must be matched by both authority and capacity to make and enforce public policy. There are many who fear that both will be diminished by the World Trade Organisation's General Agreement on Trade in Services (GATS), which is aimed at forming an international and increasingly open market for services of all kinds. The WTO itself pours scorn on such claims, and has responded: 'Many public services are not provided on a commercial or competitive basis and are not subject to the GATS. The Agreement excludes from its coverage all services provided in the exercise of governmental authority, which are defined in Article I:3(c) as those supplied neither on a commercial basis nor in competition with other suppliers.'<sup>17</sup>

It is not hard to see why that defence tends to increase rather than assuage anxieties about the future authority and capacity of governments to make policy for and provide or regulate services of public responsibility. The implication of the GATS definition of 'governmental authority' is that, in providing some services 'on a commercial basis' or 'in competition with other suppliers', governments are exceeding their authority. This is a most novel meaning of 'governmental authority', implying that governments derive their authority not from the people but (by default) from the market.

This goes to the heart of the matter. While it is clear that both government and market are social creations, and that there are areas of our lives in which one of them has an important role while the other has little or none, it is less clear how they should relate in that majority of circumstances in which both have roles. The implication of the WTO formulation is clearly that the market comes first and that government's role should be defined by the parameters of market interests and possibilities, that the role of politics should be defined by economics.

Let us examine the WTO's formulation a little further. If services are supplied on a 'commercial basis' or 'in competition with other suppliers', why does that mean they are not being provided on 'governmental authority'? What does 'commercial basis' mean? If a hospital charges fees for its services (as WDR 2004 recommends in some circumstances), does that mean the service is being provided on a commercial basis? If the fees are subsidised with public finance, does that render the basis of provision non-commercial? In that case, what about a public water company that sets its tariffs on a full-cost recovery basis? Does that mean water supply is being provided on a commercial basis and therefore, by the GATS definition, not provided on governmental authority?

Similar difficulties arise with the second GATS condition of 'governmental authority', the absence of competition from other suppliers. In how many fields of services provided by governments is there no private sector at all? As both the HDR 2003 and WDR 2004 point out, there are mixed economies of supply in health and education services throughout the world. If the state did not provide schools and hospitals for the poorest, no-one would, because the market certainly will not. The WTO formulation implies that that is *all* the state should do – provide what private business does not want to provide. But the inequitable consequences of defining the state's role as being to provide a safety net and no more are also clear from international experience, and the GATS definition of 'governmental authority' would prevent it from exceeding that second class role.

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<sup>17</sup> *Gats – fact and fiction*, World Trade Organization, Geneva, 2001, p.10.

Indeed, the implication of the WTO definition is that the scope of governmental authority would be reduced to the narrowest core of classic public goods, such as defence and the judiciary, where states have a monopoly of power by definition. The paradox of this extreme effect of the GATS criteria is that, if you turn the proposition around, you find yourself defining total state monopoly as a necessary condition of governmental authority: on that basis, the WTO finds common cause with those governments whose hostility to the market excludes them from membership!

### *The public good and public goods*

It might be objected that, in extrapolating to the most extreme interpretations of the WTO's concept of governmental authority, we are departing from the real political world. We can learn something about the dynamic of these things, however, by considering the experience of Canadian public policy making in the context of the North American Free Trade Agreement (Nafta). There are public authorities in Canada that, rather than risk some future legal claim against them from corporate sources, avoid regulatory decisions that might lead to such action. That 'freezing' effect on policy arises not from a literal and explicit interpretation by corporate complainants but rather from a sort of self-discipline by public officials aiming to avoid future liability: it is they, rather than their potential litigants, that feel obliged as a matter of publicly responsible prudence to base themselves on extreme interpretations of international economic agreements.

In that way, and in others, there can be no doubt that economic interests are defining the parameters in which political decisions are taken to an increasing extent, and that trade agreements are among the economic instruments that are shaping the international political environment. So, if, whether by design or in effect, the scope of governmental authority is understood by the WTO as being limited to the provision of basic public goods (those in which the market has no interest because they are non-excludable and prone to free ridership), the public good can be undermined as a result of governments retreating from a broader view of their legitimacy. We can explore this theme further by reference to the WDR 2004 discussion of why public responsibility is associated with some services more than others. The report explains: 'By financing, providing, or regulating the services that contribute to health and education outcomes, governments around the world demonstrate their responsibility for the health and education of their people. Why?

'First, these services are replete with market failures – with externalities, as when an infected child spreads a disease to playmates or a farmer benefits from a neighbour's ability to read. So the private sector, left to its devices, will not achieve the level of health and education that society desires. Second, basic health and basic education are considered fundamental human rights. The Universal Declaration of Human Rights asserts an individual's right to a "standard of living adequate for the health and well-being of himself and of his family, including ... medical care ... [and a right to education that is] ... free, at least in the elementary and fundamental stages".<sup>18</sup>

The first proposition is based on the inescapability of public responsibility not only for public goods as defined by economic theory, but also for what political processes define as the public good (outcomes 'that society desires'). The second proposition is based on a broader view of public responsibility: not only is it in my interests for others to have access to services because of the positive or negative externalities (that could affect me and other citizens) arising from their access or lack of it, but it is right in principle that they should have it because our rights in common mean that I am no more entitled to it than they are.

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<sup>18</sup> World Development Report 2004, 'Making Services Work for Poor People', World Bank, 2003, p.3

In its concept of 'public responsibility' for which governments are the chief custodians, therefore, WDR 2004 argues, in effect, that governments must have authority not only over public goods as defined by economics but also for the public good as defined through politics. This is important not only because of its implicit challenge to the GATS definition of governmental authority but also because of its implications for operational judgements about the scope of public services and the capacity they require. In relation to HIV/Aids, for example, the first proposition (market externalities) points to public responsibility for providing preventative services, while the second (human rights) points to public responsibility for curative services too.

But the WDR's explanation of public responsibility goes further. It also suggests that some past political decisions about public services have, like constitutional foundations of political systems, the higher status of rights, meaning that entitlements arising from those rights form a non-negotiable policy parameter. This is important too, because our civilization depends not only upon the higher moral authority of market relations in comparison to the Hobbesian dystopia they have historically superseded, as le Grand presents it in his *New Statesman* article, but also upon the yet higher level of potential human relationships that cooperation and democracy have displayed and enabled.

### ***The public realm and public services***

It is the political environment that shapes, and requires space to shape democratically but with regard to economic realities, the extent of public responsibility. As Richard A. Chapman has pointed out: 'In liberal democracies, it is the political environment which determines the scope and objectives of the public services; it is the political environment which determines the values to be applied when delivering these services; and it is the political environment which affects the ways public servants work and is the most important factor in the differences between public administration and management or administration in other contexts.'<sup>19</sup>

Both the state and the market have demonstrated their capacity to enable private interests to undermine the publicness of public services, as this paper has tried to explore. The avoidance of capture of either kind requires a thriving public realm that is independent of both state and market, and influential over both, but is inevitably also influenced by both. This means that a concept of public service that transcends changing government policies even as it implements them must be at the core of public services. Pereira explores the necessity to understand the public realm, the state and the market as distinct though inter-active as follows:

'For capitalism to work, there must be a clear distinction between the state and the market. Democracy can only exist when society, composed of the citizenry, is viewed as separate from the state and simultaneously in control of the state. Consequently, it became necessary to create a type of administration founded not only upon a clear distinction between public and private but also upon a separation between the politician and the public administrator. This marked the birth of rational-legal, modern, bureaucratic administration.'<sup>20</sup>

As Pereira insists, the bureaucratic administration can be captured. Yet his own prescriptions of 'managerial public administration', which make public servants accountable to their political masters for results rather than for exercising a professional and ethical responsibility, are tending to

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<sup>19</sup> 'Ethics in Public Service for the New Millennium', Richard A. Chapman, in *Ethics in Public Service for the New Millennium*, Richard A. Chapman (ed.), Ashgate, 2000, p.219.

<sup>20</sup> 'From Bureaucratic to Managerial Public Administration in Brazil', Luiz Carlos Bresser Pereira, in *Reforming the State: Managerial Public Administration in Latin America*, Luiz Carlos Bresser Pereira and Peter Spink (eds.), Lynne Rienner, 1999, p.118.

facilitate private capture of public service. This is because of the context of increasing convergence of economic and political power: the results demanded by politicians are increasingly shaped by market-driven policies, and the market disciplines of 'new public management' are increasingly used to enforce them.

It is in this context that the tendency to equate the public realm with the state, a tendency associated with the left, colludes with the tendency to define the public interest in terms of aggregated private interests, a tendency associated with the right. What both tend to leave out is that both the state and the market demonstrated during the 20<sup>th</sup> century their catastrophic capacities to enslave society: as I have argued before, the point is to enable society to make servants of them both.<sup>21</sup>

In exercising public responsibility and authority over public assets and policies, governments continually make relationships with the private sector as well as the public sector, and use market mechanisms as well as democratic processes. A mixed economy of provision can be reconciled with public responsibility on the basis of governments, as the custodians (but not owners) of public responsibility, having the authority and capacity to ensure that the democratically determined public interest is served. But the public interest must be defined in terms of shared values and rights, and safeguarded and nurtured by a thriving public realm, if the market is not to secure government's collusion in atomising it beyond collective security and trust.

Three quarters of a century ago, at a time when the menace of allowing either state or market to boss the people rather than serve them was all too clear, the British political scientist W. Hardy Wickwar wrote: 'What makes the public services public is the general feeling that we cannot live our private lives without them if we are to make the most of our material civilization.'<sup>22</sup> Today we can go further: our material civilization will prove unsustainable unless public services secure the economic and social rights to enable all to participate in it, and in doing so give expression to a public service steeped in collective, cooperative and democratic values. The idea that those values can find expression in policy while individualist, competitive and market values dominate implementation requires a mechanical view of processes that can be better understood as ecological.

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<sup>21</sup> *In the Public Interest? Privatisation and Public Sector Reform*, Brendan Martin, Zed Books, London, 1993.

<sup>22</sup> *The Public Services: a historical survey*, W. Hardy Wickwar, Cobden-Sanderson, 1938, p.11.