

Why Legality Matters: The Limits of Markets and Governance Reform in the Public Sector

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QoG WORKING PAPER SERIES 2009:5

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April 2009

ISSN 1653-8919

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QoG Working Paper Series 2009:5
April 2009
ISSN 1653-8919

Abstract

Market-based administrative reform and governance reform have aimed at increasing the efficiency of the public service and opening up new channels for exchange between the public administration and actors in its environment. The emphasis has been on the service-producing elements of the public service; much less attention has been paid to those structures that implement the law and exercise public authority. As a result, administrative reform now challenges the legality of the public service and the norms and values that sustain that administrative role. The paper looks at recent market-based administrative reform and governance reform with particular attention to the relationship between the norms and objectives that drive reform and the norms of legality in the public service.

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The story of administrative reform in the western democracies, Asia and the Antipodes over the past couple of decades has been told many times by now (see, for example, Aucoin, 1990; Cheung, 2005; Kettl, 2002; Peters, 2001; Pollitt and Bouckaert, 2004; Savoie, 1994; Suleiman, 2003). It presents an unprecedented wave of public-sector reform with objectives such as organizational effectiveness and efficiency, customer satisfaction, managerial autonomy, separation of policy and operative agencies and efficient allocation of resources through internal markets. After the initial reform campaign several countries conducted an assessment of what had been achieved and what had been lost. As a result of those appraisals countries like Australia and New Zealand reassessed to some extent the role of political institutions and political control in order to “rebalance” the public administration system. Today, the map of administrative reform appears to be more scattered as the next steps of reform present a more heterogeneous picture. The next set of challenges in this process appears to be how to reconcile the tension between the traditional, legalistic nature of public administration on the one hand with the emerging values of flexibility and customer satisfaction on the other.

The general tenor of reform has been that the public sector has suffered from too much political and hierarchical control which has stifled flexibility, modern human resource management, organizational efficiency and customer satisfaction (Peters, 2001). New Public Management (NPM) in various guises was introduced as a model of management which would mitigate those problems and create a modern service-producing and customer-friendly public administration. By emulating service production in the private sector, red tape would be cut, institutional and procedural obstacles to

efficiency would be removed and those who deliver services would be given more autonomy to engage their clients, or, as it were, customers.

The solution *prima facie* looks entirely logical and obvious. While the private service sector excels in flexibility and adapts their products to market demand, public-sector institutions still herald values such as uniformity, predictability, impartiality, equal treatment, legality and due process. Customers find it difficult to understand why private sector service providers allow you to use digital technology to tailor the commodity you are purchasing into the smallest detail while a social welfare office staff heralds principles of equal treatment, legality, predictability and equality. Surely the public sector would have much to learn from modern, private sector management and organization.

What was forgotten in the process was that public administration is not just about service production. It is an institutional system that serves a large number of tasks—enforcement of the law; policy implementation; regulation; control and oversight and service delivery—and displays a model of governance that is both political and professional (Christensen et al., 2007). Thus, public administration historically has catered to several objectives of which efficiency and customer-friendliness were not very high on the list. The fairly recent emphasis on efficiency and effectiveness has therefore caused significant problems to public-sector institutions because it is unclear how that objective is to be weighed against more traditional organizational goals. Most importantly, perhaps, recent administrative reform is now to an increasing extent encroaching the realm of public administration where legality ancise of administrative

processes affecting individuals most directly. As a result, core public administration values like legal security and equal treatment are being jeopardized.

Alongside this campaign of NPM reform, western democracies have spent the past decade implementing an array of reform aiming at making the public administration better equipped to contribute to new, emerging forms of democratic governance. E-government, one-stop shops, stakeholderism, users' boards and new modes of popular participation in public administration are but a few examples of this type of reform. On an institutional level, today's public administration is much more keen on forging or joining networks with key societal actors as part of collaborative strategies of governance. As is the case with market-based reform, however, governance reform feeds back into the public administration and poses significant challenges of adaptation and change.

Against this backdrop, this article will explore the limits of market-based and governance reform strategies in the public sector and the potential pathologies that such reform triggers in the public administration. The article compares internal and external obstacles to the two types of reform. The analysis is mainly conducted at the organizational level but also at the level of individual public sector employees to see what impact the two types of reform has had on the preconditions of their work.

The key argument of the article is that NPM reform and governance reform, albeit in different ways and with different consequences, challenge the fundamental distinction between individual rights and group rights in relationship to public administration modus operandi and organizational strategy. Both market-based reform and governance reform disaggregate collectivities and challenge group rights in order to

strengthen individual rights vis-à-vis the public administration. While this could be seen as an appropriate development in order to modernize public administration, these reforms require a redefinition of core public administration values and norms.

NPM reform initially targeted the service production functions of the public sector because it was there that it could demonstrate its superiority compared to a Weberian model in terms of efficiency, cost-effectiveness, and customer satisfaction. After that, the NPM reform caught momentum, reform as a mode of organization, management, and work became institutionalized, and the attention to the border between service production and legal processes in the public sector was gradually downplayed. As a result, the public sector in a number of countries is currently struggling to defend and sustain that border. With regard to governance reform, we had expected less implementation problems given that it largely emerged endogenously to the public administration. However, there are commonalities between market-based reform and governance that pose similar challenges to the public bureaucracy.

The article thus looks at clashes—potential or real—between the traditional norms of public administration and the NPM objectives of efficiency, cost reduction and customer satisfaction. The argument is thus not normative—it makes no prejudgment about the quality of different models of administration—but it is about the compatibility of different systems of norms.

Two faces of public administration and public management

The title of the article alludes to what appears to be two conflicting images or perceptions of public administration. Both are stylized, idealized models or constructions, bordering on misperceptions, of public administration. However exaggerated and distorted these images are, they have nonetheless been instrumental in shaping much of administrative reform in the western world. In fact, in order to be successful most reform is predicated on some degree of simplification; reform that seeks to take all specific aspects of an organization into account is likely to lose sight of the overarching goals and is sure to become bogged down in detail. By simplifying the nature of the problems to be resolved, reform packages become more logical, consistent and comprehensive (cf. Peters, 1998).

One perception of the public bureaucracy is that it is essentially all about service production. In this perspective, public administration is seen as crippled by hierarchy, political control, input-based resource allocation, and a lack of expertise in organizational management. The obvious benchmark for comparison is private sector service organizations, the preferred yardstick is efficiency, and in that comparison public bureaucracies invariably come out losing. Therefore, the strategy of reform has been to allow the public administration to emulate private sector service production models, downplay political steering and control, focus on results, and give operative managers significant autonomy. The strategy promised to deliver lower costs, satisfied customers, and more efficiency in service production. The legalistic nature of the public administration, in this view, was more part of the problem than of the solution.

The other image of the public administration is that it is first and foremost a structure created to ensure legality, equality, legal security in the implementation of public policy and, more broadly, to serve as a keystone of democratic governance

(Suleiman, 2003). The state, through the public bureaucracy, controls awesome powers over the individual and from a democratic point of view it is imperative that those powers are exercised under legal and administrative control. While efficiency is certainly viewed as an important objective of reform—not least since citizens are entitled to high-quality service on legal matters—it must never compromise its core values related to the legalistic nature of the public administration. In this stylized image of the public administration, reform has been conducted within the existing structural and normative framework of administration. The focus of reform has been on improving the public administration's contribution to democratic governance, by, for example, increasing transparency, making public administration more accessible to the citizens through e-government, one-stop shops (or *maisons de services publiques* in France or the general notion of *Bürgernähe* in Germany), and allowing users of services to engage in the management of public institutions. Thus, legality and equal treatment remained the core values of the administration and only very marginal improvements were made in terms of efficiency and cost-effectiveness.

Again, these are idealized images or constructions of public administration, but as constructions they have shaped the diagnosis of the problems facing public administration and the reform that should be implemented to address those problems (see Peters, 2001). The key problem in the dominant market-based reform strategy has been that it only sees one of the faces of public administration and largely ignored, or circumvented, the other. However, as that reform gained momentum in the public administration it became more and more difficult to sustain the boundaries separating the two areas of public administration. Today, market-based reform is knocking on the door

to those areas of the public administration where legality has been the unchallenged organizational norm, ie. the institutions that deal specifically with enforcing the law and exercising administrative authority.

If we accept the argument that public-sector organizations operate according to a different logic, with a multitude of objectives and with a different organizational structure and leadership compared to for-profit organizations or NGOs then it is only logical to argue that there are, or should be, rather distinct limits to what the public sector can learn from for-profit organizations (Christensen et al., 2007). If we furthermore agree with Suleiman (2003) that the public administration, and indeed the public sector as a whole, is an integral part of democratic governance, it becomes even more obvious that standards and benchmarks from the corporate world really have rather little to offer when it comes to assess the quality of public-sector organizations. Yet, the normative point of departure of NPM was to deny any specificity of the public sector. Public management, to the extent that there was any managerial thinking, was arcane and had not adopted modern corporate philosophies. Indeed, management was believed to be a “generic” organizational task; there do not exist any significant differences between managing public or private organizations (Peters, 2001). Indeed, as Rosenbloom (1988:16) points out, “those who define public administration in managerial terms tend to minimize the distinctions between public and private administration”.

The same philosophy was applied to reform of organizational structure, to performance measurement, to customer-provider exchanges, to efficiency improvements, and to organizational leadership and managerial autonomy. Reform only saw one of the two faces of public administration and forgot, or ignored, or circumvented, legality and

the role of the public bureaucracy in enforcing the law and ensuring legal security and protection. Today, we seem to be at an impasse where the legal nature of public administration can no longer be ignored or circumvented by administrative reform, yet the architects of reform have few ideas about how to deal with legality or what could replace it. Therefore, we need to think carefully about what legality means to public administration, the extent to which is a critical feature of a public bureaucracy and the extent to which NPM, in various guises, is compatible with legality, transparency, due process, predictability and a public service ethos.

Governance reform evolved under considerably less ideological horn blowing and fanner waving than NPM reform. Introducing and managing e-government systems has proven to be a major challenge to the public administration (Dunleavy et al., 2006). Finding appropriate institutional models for stakeholder input on public services or users' boards has also proven to be a challenge, not least because of the clashes (perceived or real) between these new players and the traditional line command and control processes in the public organizations. Improving transparency and accountability—governance reform objectives which have been more important in some countries than others—has meant considerable rethinking of entrenched administrative routines and practices. The main drivers of governance reform have been to strengthen the service notion of public service, thus enhancing the legitimacy of public services, and to cut costs for administrative deliberation.

On closer inspection it becomes clear that market-based reform and governance reform are closely linked. NPM, with its emphasis on customers rather than citizens and on performance rather procedure, has had ramifications on the role of the

public administration in governance. At the same time, governance reform, while more attentive to both faces of public administration, has promoted individual values, either as citizens or users or stakeholders and has therefore also challenged the core, group right-related norms of public administration. “Customers are not a collectivity”, as Suleiman (2003:55) reminds us and in the implementation of NPM reform, “democratic societies have been following a path that leads to undermining, or even destroying, one of the central institutions on which a democratic polity depends” (Suleiman, 2003:18).

Limits to market-based reform

We will first address the issue of what have been the most important problems in implementing NPM reform with particular attention on the significance of traditional public administration values and norms.

Internal obstacles. One of the key internal obstacles to market-based reform has been the tension between uniformity and service adaptation, or more specifically the tension between group rights and individual rights. Traditional public administration values emphasize group rights like procedural justice and uniformity, while NPM emphasizes customer choice and tailoring public service to the needs of the individual as much as possible. The traditional norms of public administration serve core organizational functions; they define due process as well as the organizational framework within which that process is embedded. Although the NPM and “reinvention” advocates do not take explicit issue with those norms—even hard-line market-based reform supporters like

Osborne and Gaebler claim to “believe deeply in government” (Osborne and Gaebler, 1992:xviii)—there are aspects of legality that must be downplayed in order for NPM-style reform to work. Group rights like equal treatment and due process do not sit very comfortably with the individual rights like customer empowerment, popular involvement in public administration and tailoring of public services advocated by NPM.

Legality has for long been the defining organizational norm of public bureaucracies, together with political control and democratic accountability. The more specific organizational features to deliver and safeguard those norms vary across time and space (Cheung, 2005; Jabbra and Dwivedi, 2005; Kettl, 2002; Perry et al., 1996; Pollitt and Bouckaert, 2004) and it also seems clear that the concrete manifestation of legality and other core public administration values will look differently in different jurisdictions and in different societal, political and administrative contexts. However, to say that those values need to be adapted to present conditions is not to suggest that they are dispensable. At a very baseline level, they constitute a system of norms that hold the organization together and provide objective, direction and meaning, just as the bottom line or the market share are focal points of for-profit organizations.

Equally important, perhaps, is the role of legality in shaping the public servants’ image of the public organization and of themselves. Legality, in this perspective, is not only an organizational attribute or the normative framework of the public administration. To the public servants, legality is a state of mind; it is what defines their workplace and separates it from private-sector organizations and NGOs, and it also defines an ethos and a moral compass. Being a public servant thus has a distinct meaning to the members of public organizations (cf. *Author*, forthcoming). That means that

reform which directly or indirectly weakens the significance of legality in a public organization will be opposed by many civil servants, not so much because it means that their tasks in the organization changes or because the relations between higher and lower organizational levels change, but because reform challenges the self-image of the public servants and their sense of purpose.

Market-based reform has also encountered opposition from senior-level civil servants because it entails profound changes in organizational structure and processes and a loss of power from the top to the middle and lower ranks of the organization. Historically in Europe, at least, working as a senior civil servant has been associated with significant social prestige. With the denial of public-sector specificity that the most ideologically driven NPM advocates have articulated, much of that prestige has disappeared.

On the other hand, there are some aspects of NPM suggesting that the public servants would support such reform. In Britain, Canada and the Antipodes this reform was preceded by an intensive, ideological campaign that portrayed public servants as over-paid, under-performing and privileged (Hood, 1995; Savoie, 1994). This denigration and delegitimation of public employment could encourage public bureaucrats to accept market-based reform so as to change the public administration into something more valuable in a neo-liberal sense. If performance, not procedure, is the key to support and acceptance, groups of public servants could come to accept that as a new organizational norm and objective. The introduction of performance-related pay has not had a negative impact on the public ethos. Interestingly, a recent study on Britain reports “the public service ethos appears to have increased rather than withered during the New

Labour years. It would seem as if private sector forms of management are not necessarily incompatible with sustaining the public service ethos” (John and Johnson, 2008:121).

Thus, despite the attacks on the “privileged” public servants in countries such as Britain, the public ethos remains intact, or is even strengthened. One explanation this pattern could be that recent reform has led public servants to rediscover those values and to recast them into a set of values that is consistent with today’s public administration. It could also be that the relative success of the public service in many countries to adapt to a new set of goals and organizational strategies has boosted public sector morale. In any event, it appears if the public sector ethos has been more resilient to external change than was perhaps expected. The public ethos is a set of deep-seated norms that are not easily changed.

External obstacles. One would not expect to find any significant obstacles to market based reform since the whole idea of such reform is to open up for private entrepreneurship. But there are issues that relate to the logic of markets that, directly or indirectly, create such obstacles.

One problem is that some public services have features which do not exist in the market hence there is no prior market experience for those services. For instance, while there is a private market for water and sewage systems maintenance that easily supply public-sector demand, too, and create economies of scale, the private sector in most countries have far less experience in matters related to social welfare.

Furthermore, for market-based reform to function properly there has to be a market, which facilitates private-sector actors that are willing to engage in public service

delivery. There also has to be a sufficient number of players in that market in order to create competition for contracts. These may appear to be rather simple requirements, and in many areas of public service they do not pose an obstacle to reform. In some areas of social service delivery, however, markets are too weak to offer any real competition, mainly because those services do not exist in the private market. Also, in more high-tech public service sectors, for instance in the medical care sector, the market will only offer one potential contractor. If heart transplantation surgery capacity is acquired through a purchaser-provider model, as is the case in much of Europe these days, most small and medium-sized cities and counties will be happy to have one potential provider of that service within its jurisdiction, at best. Thus, what van Slyke (2003) calls “the mythology of privatization” is that markets for public contracts always exist and that there are a sufficient number of competitors to warrant real competition.

Third, markets for advanced public services are potential high-risk areas for private actors. Those markets tend to have a very limited number of purchasers—usually only one—and purchasing requirements are sufficiently challenging to allow only very few private companies to enter the market. The combination of a very limited number of buyers in a market for highly advanced services provides powerful disincentives for most private companies and other types of actors to enter that market. However, players who have the capacity to deliver those services, like research hospitals, find themselves in a position where they have a major influence on the prices for services delivered. To what extent a situation where the market displays only one buyer and one seller qualifies as a market in a true sense is another matter.

Finally, in public service areas where contractors to some degree assume the role of street-level bureaucrats, for instance security personnel and teachers, there has been some concern that private contractors fail to deliver good services because of a lack of public values and public ethos. The dangers of granting extensive rights vis-à-vis the individual to an organization that lacks of public ethos have been demonstrated several times, most notably in the Blackwater incident in Iraq. The apparent solution to the problem is to have private contractors to provide education to their staff, giving them an introduction to public-sector values and ethics. However, insisting that for-profit contractors provide such education would entail significant costs for those private companies that could lead them to decline contract for public service delivery (Freeman, 2000; Rosenbloom, 2000).

Further along this line of argument, it is in the very nature of purchasing services from private sector firms that contracts will have to regulate in great detail conditions of service, quality, assessment and evaluation, and “the rigidly constructed legal agreements between the government and private sector service providers can distort incentive structures, causing programmatic conflicts between management and staff” (Johnson Dias and Maynard-Moody, 2005:189). This is the essence of what Johnson Dias and Maynard Moody call the “performance paradox”; “the same actions taken to achieve contractual results ironically produce negative program practice and poor client outcomes” (Johnson Dias and Maynard-Moody, 2005:189).

Limits to governance reform

Governance reform is conducted to give the public administration a modernized role in governing. Much of the modernization is triggered by a decline in traditional representative structures, something that creates problems for political steering and democratic accountability (see Dalton and Wattenberg, 2000). To address these problems there is now a growing interest in bringing users of public services into the management of those services (Jarl, 2005), to empower citizens (Peters and Pierre, 2000), to give stakeholders more input on public services (Ackerman and Alstott, 1999), to open up for popular participation more broadly (Kettl, 2002) and to equip and design the public administration so that it can engage in collaborative strategies of governance (Frederickson, 2007). Thus, this reform is almost as far-reaching as market-based reform although it is less obtrusive on the normative framework of the public bureaucracy.

Internal obstacles. Senior-level bureaucrats tend to have fairly clear, professional views about what constitutes proper modus operandi of public-sector institutions and do not easily embrace reform aiming at decentralization and lower-level organizational autonomy. For that reason, they may also object to giving users of public services representation on decision-making bodies or according stakeholders a stronger say on the management of public sector institutions. Also, civil servants have had a long tradition of operating to some extent in camera; while transparency has been an important consideration for a very long period of time, bureaucratic deliberation has been secluded from the public. With citizens, stakeholders and other societal actors roaming the corridors of the public bureaucracies much of that seclusion is lost. Instead, there is now

an expectation to engage, formally and informally, in networks, partnerships and other contemporary models of collaborative governance.

Furthermore, governance reform can trigger a power game in the public administration since any influence given to citizens, clients or users could be seen as taken from senior bureaucrats. While that may or may not be the case—much of the powers given to citizens or stakeholders appear to be taken from political parties rather than from senior civil servants—this reform fundamentally alters entrenched power relations in the public administration. The senior level of the public service in many countries has fostered an efficient relationship with elected officials which has given the bureaucracy substantive control over its organization. Some time ago this scenario was summarized as the “administrative state” where senior bureaucrats, due to their continuity and expertise on both policy and organizational management, have acquired significant influence and autonomy in relationship to elected politicians (Aberbach and Rockman, 1985; Morstein Marx, 1957). It would probably seem ironic to the bureaucrats if they succeed in developing some degree of autonomy vis-à-vis elected officials only to find themselves captured by empowered citizens and stakeholders.

Thus, the main internal obstacles to governance reform are related to process and representation and less to performance and equal treatment. Legality continues to pose a significant challenge to this type of reform, however, as the legal framework is concerned just as much with defining who are legitimate participants in public sector deliberation and who is not. That having been said, the administrative reform that has been implemented during the past couple of decades has meant a significant challenge to the public administration system as a whole and has sent a clear

signal that the heyday of Weberianism is gone once and for all. Thus, even the more conservative senior bureaucrats probably acknowledge that reform is coming whether they like it or not and in that perspective governance reform is preferred to market-based reform, perhaps even supported, partly because it is a path-dependent response to societal frustration with public-sector inertia and partly because it, if successful, might preempt extensive market-based reform.

It also seems plausible that the changing role of the public administration in governance may invigorate the public bureaucracy. The new administrative role and the engagement in new governance forms provides opportunities for civil servants to play a less regulated and more open, problem-solving role which may be more personally challenging and rewarding than their traditional administrative role (*Author*, forthcoming).

External obstacles. Since the ultimate goal of governance reform is to empower societal actors vis-à-vis the public bureaucracy, we should not expect any major external obstacles to such reform. But the inclusion of social constituencies into the public administration and service production has proven more complicated than was perhaps expected. One problem is related to the incentives for individuals and stakeholders to become involved; there will have to be something to be gained from participation. Material benefits are a complex matter since that would run against norms of equal treatment and due process. Giving societal actors input on public administration decisions potentially jeopardizes those norms, too. Users' boards or stakeholder committees institutionalize societal participation but unless those institutions are given some degree

of control participants are likely to think that they are merely hostages of the public bureaucracy and scapegoats for unpopular decisions and actions. Thus, the paradox is that unless societal actors are rewarded in some way or other for their involvement they are not likely to participate, yet strong public administration norms prevent such rewards. In addition, individuals and groups that choose not to become involved will make sure that they are not punished for doing so and will employ public administrations like legality and equality to sustain their argument.

Another potential external obstacle to governance reform is related to the nature of non-governmental organizations. The idea of bringing in civil society and NGOs into the process of public service delivery, which is central to both NPM and governance reform, hinges on the consent of those organization to actually become involved. The problem here has been that sometimes members of NGOs have doubts as to whether they should become involved since it does not sit well with the independent and autonomous nature of the organization. Thus, NGOs like the Red Cross or organizations that manage shelters for women or the homeless take some pride in the fact that they are freestanding organizations devoted to a social cause. To some members of those organizations, working under contract with the public administration would mean that they would de facto become involved, if not embedded, in public-sector service delivery and hence lose significant parts of their autonomy. Incentives is not the issue as much as the self-image and the autonomy of the organization.

As is the case with market-based reform, modernizing the role of the public administration in governance challenges traditional group interests. The types of obstacles to governance reform that have been discussed here ultimately relate to the

basic issue of how to balance those rights against each other. This problem is exacerbated by the increasing significance of output legitimacy; there is now growing evidence that the outputs of the political system account for much of the support and legitimacy for the political system (Christensen and Laegreid, 2005). It is plausible that the role of the public administration in fostering institutional support and legitimacy to some extent is contingent on its ability to resolve the tension between individual rights and group rights.

Can legality be salvaged?

Administrative reform has aptly been described as a pendulum movement (Aucoin, 1990); rapid change is followed by assessment after which new objectives are defined and strategies developed. The pendulum analogy does not suggest returning to the previous point of departure but rather a process of incremental progress wherein reform is evaluated before next steps are planned. In the case of administrative reform in most of the advanced western democracies there has been very little *ex ante* assessment of various reform concepts; instead assessment has taken the character of damage control and if dysfunctional outcomes have been few and insignificant that has been taken as proof that reform has been appropriate and efficient. This pattern has also been the case when designing market-based reform in public-sector institutions where legality and predictability are paramount, i.e. where administrative decisions are implementations of law and public authority vis-à-vis the individual citizen. Thus there is today a search for a solution to the problem of combining flexible service with legality as a public administration norm.

Legality and a public service ethos are not inconsistent with modern public management, provided that the public administration operates according to a model that combines managerial autonomy with the explication and reproduction of that ethos. One of the key variables in this problematic is the degree of delegation of authority from elected politicians to professional managers (Bertelli and Lynn, 2006; Moore, 1995). Another important factor is the degree to which public services and administrative deliberation allow some degree of administrative flexibility. Thus, one strategy to resolve the tension between public management and the legality requirement has been to move from systems of detailed regulation of the public administration towards a model where managers and frontline staff operate under more autonomy within a fairly wide regulatory framework. This model facilitates some degree of customer-attuning services without having to stretch or break public administration rules.

Another strategy would be to avoid as much as possible the blending of legality and other public sector values with the values harbored by for-profit organizations. This strategy would minimize the use of hybrid organizations, public-private partnerships and other collaborative service instruments and instead make a clean break between the public and the private. This would obviously complicate public service delivery, but it would at the same time clarify the border between market accountability and administrative accountability. That strategy would mean that very clear choices will have to be made between legality and market solutions.

Conclusions

This article argues that in order to understand the challenge that legality poses to market-based reform, we need to take into consideration that legality is not only a particular administrative practice. It is the normative keystone of the public bureaucracy that creates meaning to the organization among societal actors and to the members of the institution. It is also the chief professional norm that is taught at schools of public administration and other professional schools. Furthermore, the philosophy of legality helps define the public administration as something fundamentally different from other types of organizations in society and thus defines the boundaries of the organization. This means that legality is not just another organizational feature that can be replaced overnight with some other feature. Since legality and the public ethos have shaped public sector organizations and their members for more than a century it is deeply institutionalized in those organizations. The resilience of public sector ethos found in Britain, despite extensive market-based reform, is proof of that institutionalization (John and Johnson, 2008).

There is also a more functional aspect of legality that poses a challenge to administrative reform in the non-service producing part of the public administration. Here, due process, uniformity and legal security are the main guidelines of administrative deliberation. These norms are put in place in order to protect the individual from arbitrary use (or abuse) of political and administrative authority. Thus, removing or downplaying those values alters the relationship between the civil servant and the citizen. In the NPM literature this is not believed to be a problem since the civil servants' focus is on results and satisfied customers, and this model of administrative deliberation rests on the assumption that civil servants are essentially good guys.

Finally, legality and uniformity remain essential for society's trust in public administrative institutions. There is some evidence that output-based legitimacy is becoming more important than input legitimacy, something which emphasizes the need for legitimacy in the public administration. Output legitimacy can be either related to public-sector performance, in which case process is secondary to performance, or it can be related to the public administration as a vehicle for good, democratic governance. These different interpretations obviously mean different things for the public sector ethos and legality and we need more empirical research on these issues to see how citizens' perceptions of the public sector are changing.

Governance reform, the other set of reform, poses less of a challenge to those core values because much that reform tends to be path-dependent and consistent with those values. Even so, however, governance reform shares a basic problem with market-based reform in that both challenge group rights and promote, for different reasons, individual rights. This raises a series of difficult questions about the reform design and objectives. To what extent can public management cater both to objectives of equal treatment and legal security on the one hand and to efficiency and customer satisfaction on the other? Is the performance of the public sector becoming more important than the legality of its procedure? Can the increasingly important role of output legitimacy compensate for decreasing legality and procedural justice?

These issues are, or at least should be, high on the future administrative reform agenda.

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