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***The Irish Public Service Modernisation
Programme 1994-2007***

***A Critique from the Perspective of Catholic
Social Teaching***

A Thesis

Presented to the University of Dublin

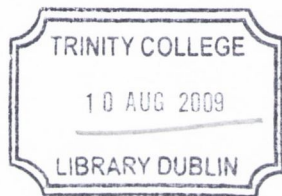
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Degree of PHILOSOPHIAE DOCTOR

2009

by

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Summary

This thesis critiques the Irish public service modernisation programme (IPSM) from the perspective of Catholic social teaching (CST).

The IPSM is part of an international movement called New Public Management (NPM). Chapter 2 analyses NPM. It concludes that while it may deliver effectiveness and efficiency, there have been some unanticipated side effects. Ethical and trust issues have suffered. NPM has led to an instrumentalist view of the person because its anthropology does not value the dignity of the individual as self-motivated at work, and is uncritical of an inherently competitive framework which cannot conceive of civic participation.

Chapter 3 examines NPM in Ireland. It concludes that effectiveness, efficiency and transparency have been improved. However, IPSM has presumed the givens about what to be efficient and effective about. Further, it has run the risk of devaluing trust and internal motivation; downgraded the deliberative imperative in the civil service; and devalued the place of the citizen in deference to a consumer-led approach.

Chapters 4 and 5 introduce the common good and the principle of subsidiarity as the basis of an alternative paradigm. Different conceptions of the two that can be found in different disciplines, in theology, philosophy, political theory and governance theory are explored. The chapter explicates the Catholic social teaching approach to the two concepts.

Chapter 6 examines the common good and the principle of subsidiarity in official Catholic social teaching. It concludes that a major shift has taken place in the teaching. As originally conceived it betrayed both a suspicion of the state and an authoritarian approach to citizens. Subsidiarity was invoked as a protection against state intervention. After Vatican II we see a different picture. Catholic social teaching is no longer underpinned by a fixed concept of 'human nature', but by a focus

on the human person in relation with other human persons. This shift allows Catholic social teaching to embrace human rights, religious freedom and democracy, so that it is well placed to enter into dialogue with current problems of late modernity.

Chapter 7 traces the emergence of what has been called revisionism in Catholic moral theology from the mid-twentieth century onwards. The chapter describes the demise of a universally accepted apodictic moral theology, which has been replaced by approaches that see natural law as: real, experiential, consequential, historical, proportional and personal. There has been a new departure whereby the autonomy of the world, the role of experience and the relevance of the domain specific are taken into account. This allows Catholic social teaching to dialogue with others, especially those who underwrite the modern subject's claim to autonomy and the justified autonomy of the worldly spheres.

Chapters 8 and 9 are devoted to two authors who seek to free the natural law approach from its classic constraints. The ethicist Jean Porter is explored in Chapter 8. She demonstrates that it is possible within a natural law system to take account of the contingent, to take account of the culturally-specific. She shows that the Scholastics' concept of the natural law '... offers a framework for moral reflection that is authentically theological while remaining open to the best insights of the natural and social sciences' (NDL, p.303). In Chapter 9 the approach of the American Jesuit theologian David Hollenbach is examined. Three facets in particular of his thinking make him more compatible with modernity – (1) his understanding of the common good as something that people pursue together and not as a 'thing'; (2) his emphasis on solidarity, where mutual recognition of each other by subjects brings people together in community; and (3) his 'pluralistic-analogical' understanding of the common good which sees Christians relating to fellow human persons in a plurality of fora.

The final chapter identifies three major unanticipated results of IPSM: a movement to a market type state; the downplaying of the deliberative role of the civil service; and the enshrining of an anthropology which devalues the person. It proposes that a common good/subsidiarity approach would counter these by: giving due credence to the role of social institutions in society; placing an anthropology centre stage that values the human person in relationalities; and underpinning the project with a concept of the common good that sees it as a means, facilitating flourishing, and as an end, the attainment of that flourishing in a participative just society. The chapter concludes with some practical recommendations, suggesting a methodology in keeping with the proposed approach, one which trusts internal motivation and begins at the level of self-understanding of civil servants, rather than a top-down approach, and specifies the administrative levels at which appropriate action could be taken.

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Chapter 1

Introduction

Catholic Social Teaching has a vital contribution to make to the transdisciplinary methodology in the realm of social science by helping to define the hermeneutical horizon guiding a change of categories of thought which are the basis of economic discourse. (Zamagni, 2000, p. 151)

1.1 The thesis

The Irish public service is undergoing what is referred to as a 'modernisation programme'. This programme has been in implementation since 1994 and is poised for a further impetus in 2008. I will contend in this thesis that this modernisation programme is, inappropriately, grounded in a certain type of instrumental rationality rooted in philosophical liberalism. I will further contend that this modernisation programme runs the risk of changing the relationship between citizens and the state. It also, I suggest, succeeds in changing the role of the civil service, as it indeed sets out to do, but not necessarily always as intended or for the better.

Irish society is undergoing profound changes. Its demography is changing. The demographics show an increasing population, with a decreasing birth rate but increasing immigration. The pattern of religious practice is changing significantly. The economic status of the country has changed beyond measure in the last fifteen years. This is the context in which the public service modernisation programme is taking place. In an already evolving and changing environment, a programme of 'reform' is being introduced to the public sector with the intent of radical

transformation to a more 'liberal' and 'market-like' public sector apparatus. One of the hallmarks of a liberal-market or managerialist public sector, one which is being actively pursued in the Irish modernisation programme, is the fostering of a customer-focused approach. Where the rights of citizens were primary heretofore, the customer is primary in the aspired-for new order. In other words, at a time when the environment of the public forum is already changing, the modernisation programme runs the risk of downgrading the participative nature of citizenship in the polity.

We are witness then to a profoundly changing society where there is a growing recognition of public responsibility for social outcomes. There is growing interdependency in modern welfare states. This entails provision in an equitable manner. I will be suggesting that, contrary to the instrumentalist approach which sees individuals as means, a more fruitful tradition is to hand. The natural law tradition has a position on the role of the state. This position finds expression in the notion of the common good and in the principle of subsidiarity. Important too, to this position, is the notion of civil society. This approach is in marked contrast to that characteristic of economic liberalism (which is at the core of the Irish public sector modernisation programme). This thesis will contend that it is an approach that is more suited to delineate the role of the state, and *pari passu* more appropriate as template for the Irish public service modernisation programme.

Specifically, I will be visiting the Catholic Social Tradition to enrich my natural law based paradigm. Note that I refer to a tradition. The tradition comprises: Catholic Social Thought (CathST), as espoused and explored by authors from this tradition, and Catholic Social Teaching (CST), the magisterial dimension, as espoused by popes in encyclicals and bishops in

various episcopal pronouncements.¹ A common perception of the tradition would see it as effectively comprising CST only. This I believe is to ignore a rich vein of the tradition. It is in what they term 'middle-level-thinking' that much that is enlightening from the tradition emerges. By middle-level-thinking they mean thinking

... in the large and complex areas of analysis, reflection and imagination which lie between values/ideals on the one hand, and historic situation or concrete action on the other. Such thinking necessarily draws both on empirical sources and on diverse models or theories of history and society. It often includes ideas of social improvement and categories of broad policy thinking at micro, national and international levels. (McHugh, undated, p.16)

One of the authors that I use in the course of the thesis, the American theologian David Hollenbach, is very much of this mould of middle-level-thinking. He looks closely at the conditions applying in his own society, more particularly urban US, and draws on the Catholic social thought to critique what he is presented with. I suggest that this thesis is an attempt at middle-level-thinking in a particular environment, the Irish public service.

¹ This description of the Catholic Social Tradition I have adopted from Boswell et al (2000, Introduction, pp. XIII-XXI). These scholars would also include the praxis of organisations throughout the world that are inspired by the tradition as part of that tradition and indeed contributing to the development of the tradition. 'The latter have included Christian trade union/worker movements, organisations for farmers, other professions, students and youth and, in earlier phases Christian democratic parties... More recently ... Justice and Peace Committees and small professional bodies concerned with particular aspects of social action: feminism, racial justice, third world issues, responsibility in corporate and political activity, and family values' (McHugh, undated, p.14). The Society of St. Vincent de Paul, Concern, Trocaire and others comes to mind in Ireland.

Catholic social thought has been accused of being an ultramontane classicist fixed body of thought(cf Hellemans, 2000 for an extended treatment of this issue). The provenance of Catholic Social Teaching is undeniably in an ultramontane mass Catholicism of the late nineteenth century. The classical doctrine² was first and foremost a papal doctrine proclaimed in encyclicals. It thrived in an age when ultramontane Catholicism (motto: *Instaurare omnia in Christo*: To restore all things in Christ) was happy to see the social encyclicals calling on all Catholics to restore the Christian order through Catholic action. Given, as Hellemans (2000, pp. 21 ff) describes, the deep crisis of ultramontane mass Catholicism in the twentieth century, a question arises as to whether Catholic social teaching can retain its cogency outside its context of origin?³ In other words, whither Catholic social thought, given a shift from a highly specific focus on particular social issues to a heterogeneous collection of issues, a move away from adherence to one theological approach only, a retreat from the sovereignty of top-down discourse⁴, and a marked decline in ultramontane mass Catholicism? Boswell et al (2000, p. xiv) suggest that the answer will be found in official social teaching adapting to varying geographical and cultural contexts ‘... to take greater risks (including political risks), to offer alternative approaches to policy or prescriptions for social, political and economic improvement’. For my part I think, following the Irish Cambridge-based theologian Francis McHugh, that part of the answer also lies in ‘... the development of middle level thinking to make informed connections between

² See Chapter 6 below for a fuller treatment of the problematic implications of the use of the word ‘doctrine’.

³ A related issue, given that the broader theoretical framework of Catholic social doctrine, neo-Thomism and natural law doctrine, has come under harsh criticism, CST is also threatened on this front. I deal with this issue extensively in chapters 7,8,9 and 10.

⁴ Hellemans, in common with many other commentators, sees the encyclical *Humanae Vitae* of 1968 as a watershed in the waning influence of central Rome-promulgated teaching; to the extent that the social encyclicals of the second half of the twentieth century had incomparably less influence world wide that did those of the late nineteenth and early twentieth centuries.

natural law, political economy and public issues'. In this thesis I attempt to follow that path. My dialogue with the Catholic social tradition is predicated on three tenets: it is not a tradition of reflection and praxis as an abstract theoretical framework standing apart from other communities; as a tradition it needs to pay more attention to theological considerations; it must also face the challenge of incommensurable other traditions. As the Belgian social ethicist in the CST tradition Johan Verstraeten puts it

In a complex global and pluralist world with new problems, new social challenges and radically new technological contexts, a permanent critical dialogue with different theories and traditions is a necessity. Catholic Social Thought must be looked at as tradition-constituted but enrichable by narrative and praxis. (2000, p.70)

It is with concepts drawn from this tradition that I will analyse the Irish public service modernisation programme. I will explore the Catholic social tradition as it has developed and contrast it with the developing Irish public service modernisation programme; and I will focus on the provenance of that programme in an international managerialist movement in the public sector.

1.2 The international context of the public service modernisation programme - NPM

The Irish modernisation programme is one of a range of similar programmes operating across the Organisation for Economic Cooperation and Development (OECD).⁵ Not all are the same,

⁵ Austria, Australia, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland,

but they share to varying degrees in their espousal of an approach called 'New Public Management' (NPM). This approach accepts rational choice theory, principal/agent relationship theory, transaction analysis and managerialism. It is radically instrumental in conception.

The more radical versions of NPM are to be found notably in the United Kingdom and in New Zealand. More moderate versions are in play in Australia and in Canada. In the US the approach has been pragmatic rather than ideologically driven, though also tending towards the more radical form. The Irish approach borrows from both ends of the continuum but in practice approximates more to the moderate approaches.

In the second half of the twentieth century a shift took place in the paradigm used in many OECD countries to describe the public service. The prevailing paradigm developed in the nineteenth century and consolidated in the welfare state of the twentieth century was 'public administration'. The system was seen as characterised by impartiality, integrity, collegiality and concern for the public interest. But an emerging view in the mid-twentieth century was that public administration was weak because of its centralised bureaucracy, over-reliance on top-down control and its pre-occupation with procedures. It was accused of being sluggish, plagued with excessive rules, bound by rigid budgeting procedures and personnel systems and pre-occupied with control. New Public Management (NPM) was put forward as the 'solution'. Management theory and skills gradually came to have a fixed place on the curricula of schools and departments of public administration in third level educational institutions. Theory and practice from private sector

Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.

management were lifted, adapted, to a greater or lesser extent, and applied to the work of civil servants.

I will suggest that NPM has more invasive effects than the managerialist objectives of its proponents, that it has the capacity to change the relationship between the government and its citizens (the discourse of public administration) to a different relationship, that between the government and its customers (the discourse of public management). I will further suggest that a change is effected whereby the deliberative role of the public service is threatened in favour of a more service /production role.

In recent years an alternative perspective which challenges NPM has gained some credence – called New Public Service. According to this view the role of the public service is to serve and empower citizens, as they (public servants) manage public organisations and implement public policy (Denhardt and Denhardt, 2000, p.549). I will explore this in some detail because it both critiques NPM and offers a cogent alternative. It is further an approach that resonates with the common good approach which I espouse, because it values citizens, sees government, and *ipso facto* the public service, as facilitating – here it is in accord with the value of the civic society and of the centrality of the principle of subsidiarity.

1.3 The Irish programme

In 1994 the then Taoiseach⁶ announced a programme of modernisation for the Irish public service – The Strategic Management Initiative, an Irish approach to NPM (though never officially espoused as such). In reality this was a civil service-inspired initiative and has continued to be civil service-driven. In

⁶ Taoiseach is the title used in Ireland for the prime minister.

fact the civil service origin of the initiative is one of its most significant hallmarks. It explains why the initiative seems to run in parallel with the political system rather than in tandem with it, thereby adding to the instrumental character of the approach to public administration which it embodies.

In order to understand the reform that has been set in train in Ireland it is necessary to first understand what it is that is the subject of this reform programme. Accordingly, in order to evaluate what is being promoted in the modernisation programme I will critically evaluate the system in place up to the 1990s and critically analyse what has been put aside to explore what, if any, gain has been made. And indeed to ask if valuable facets of the public service in Ireland have been lost or are endangered.

The Irish system is what is described as a Westminster model. The government is responsible to parliament and it to the people. The role of the public service is to advise and implement. This model, indeed a recently overhauled version at the time, was inherited by the new Irish state in 1922. Over the next six decades it served the country predictably and though reviewed on a number of occasions was in the main little adapted over the period. I will describe the major stages which the state went through in the following decades – consolidation, mobilisation of resources, nationalist activism, economic development and latterly economic crisis and rejuvenation. I describe how the current modernisation programme, in the crisis and rejuvenation stage, seems to be in line with an international trend where states have moved from being state nations, to being nation states and now to being market states.

I agree with the view that the Irish programme is public servant inspired. It emerged in Ireland because of the public service

perception of: the cost of public services on the economy, the ever-increasing demands for new services, public expectation of improved standards and accountability and the pace of change in society generally. There were also concerns in sections of the senior civil service with the need for better focus in direction; 'prioritisation', an awareness of deficits in feedback, analysis and performance information; the abolition of 'short-termism' and barriers to good personnel and financial systems and the need to advance information technology in the civil service. What we will see then is a civil service led process focusing on: delivering a quality customer service; reducing 'red tape'; delegating authority and accountability; introducing a new approach to human resource management; ensuring value for money; and supporting change with information technology. The language is that of metrics – performance managers and performance indicators figuring strongly – and the language of the market, competition, value for money and customer figuring strongly. This section of the thesis critiques the process from the perspective of the initiators themselves – where a 'whole-of-government' perspective is found to be missing; from the perspective of political science – where I will point to a possibility of a potential for the weakening of the deliberative role of the public service in the overall machinery of government; and from my own perspective – using the concept of the 'common good' and 'subsidiarity' – where I advert to the implications of seeing the individual, be she an ordinary citizen or a public servant, as a consumer, a self-maximiser, with a consequent emphasis on services rather than service.

1.4 An alternative approach – The Common Good

The central claim of my thesis is that an alternative paradigm, a natural law based paradigm focusing on the common good and

the principle of subsidiarity, is richer and more apposite to the modernisation programme. I will be suggesting that there is a need for government to have some conception of the common good, a conception of '... what constitutes good human functioning in order to create and sustain the appropriate conditions which enable people to identify and pursue their own good' (Riordan, 1998, p. 56). I will suggest that the common good approach has more to offer as a philosophical base for the role of the state and of the public service as a part of the state apparatus.

I present here a particular, a classical/adapted, model of the common good. I will distinguish between three approaches to the common good: the individual-instrumental approach which sees the common good as the aggregate of individual goods; the intersubjective-practical approach which says that there are some goods that can be realised by individuals only in interaction with others, through certain cultural and social practices; and the teleological approach, which I embrace. The common good will be presented here as a means and an end, but not as a thing. It is a means inasmuch as it provides the space, the structure and the facilitation of the development of citizens. It is an end inasmuch as it embodies the development of citizens. My emphasis will be on the common good as a personalist/participatory phenomenon facilitating public servants, and indeed citizens, in deliberation.

My approach to the common good is situated in the Aristotelian/Thomistic model. However, I take account of standard criticisms of that approach, where it is seen as overly static and unresponsive to insights into the place of the cultural and the contingent in the formation of 'human nature'. My position takes account of the role of induction as well as deduction in the exploration of what is the common good. The

approach which I present is, as described by Martha Nussbaum, a 'thick vague' one, acknowledging that the constitutive elements of human life always turn up in specific and historically rich realisation. As an Aristotelian scholar she acknowledges that a 'thick' concept of the good is unacceptable in the context of a liberal society. Accordingly she opts for a 'thick, vague' concept – thick in that she lists people's purposes and ends in a range of areas of life, but in such a way that the formulation of the ends is vague, allowing for a rich variety of specifications' (Riordan, 1996, pp.122-3).

As individuals we live in multiple communities on a spectrum from the most local (perhaps the family) to the most global. We live simultaneously in many communities. Our communal identities overlap (Sowle Cahill, 2001, pp.384 ff). This is society, where multiple communities operate. Therefore the reality of the common good is complex. The common good is pursued on many fronts in a multiplicity of *civitates*. We live and operate in the wide context that is civil society. It is in civil society, in its various manifestations, that common good projects are pursued. The end of the state is just public order and the creation of a situation where flourishing, individual and group, can take place. I will argue that it is the role of the state to create the environment where, in subsidiary agencies, citizens can pursue their projects of the common good.

This concept of the common good, applied to the public service, values the person, promotes the flourishing of the person. In so doing it underpins the notion of a flourishing citizenship, and promotes the concept of the individual public servant flourishing personally, not managed instrumentally. Furthermore this perspective because it demands that consideration be given to what is the good of society, values the deliberative role of the

civil service and will be ever aware of the duty to consider the 'what' and not only the 'how'.

1.5 The principle of subsidiarity

Closely associated with and critical to the pursuance of the common good is the principle of subsidiarity. It is that principle which prevents an unbalanced notion of the common good from metamorphosing into a naive communitarianism or a doctrinaire welfare statism. It holds that no activity should be taken by a higher body, for instance the state, that can be equally successfully undertaken by a lower body, for instance the family or some form of local authority. Equally it holds that higher bodies should assist and create the possibilities for lower bodies to operate successfully.

In the section of the thesis introducing the principle of subsidiarity I am careful to stress that that principle can be understood in various ways. Its provenance is definitely in Catholic social teaching. However, today we can find this principle espoused as ever by the Catholic church, but also by the European Union where it has been developed as one of the corner stones of EU philosophy. But, and this needs careful consideration, it also can be interpreted in such fashion that it sits easily in the school of NPM. Obviously the meaning attached to subsidiarity will be different in each case. In the case of Roman Catholic teaching the principle is rooted in an anthropology that values the dignity of the individual and therefore values the role of the individual and *pari passu* of intermediate agencies between the individual and the state. In the EU it has no fixed meaning, though recent moves have attempted to make it a justiciable concept. In effect it means different things to different

people depending on the place they take on the continuum from Euroscepticism to a nuanced view of the appropriate competencies of the different levels within the union, national, international and local. From an NPM perspective subsidiarity can mean delegation, allowing for more efficient and effective performance – but seeing this through an instrumental lens.

Subsidiarity can be seen as: a politico-social criterion that should be used when devising governmental structures or allocating tasks as between layers of government. This view is evident in the Christian democratic tradition. It was the view that inspired mid-twentieth century Irish local government enthusiasts. Its theoretical basis is a mixture of Christian principles with a ‘small is good’ suspicion of big government. Subsidiarity can also be seen as a justiciable principle, the view that has evolved, and is continuing to evolve, in the EU. It can also be a nationalistic-siege- bound understanding. More appropriately, for me, it is best understood as a principle that propounds that individuals’ projects of the common good should be pursued in apposite but different settings. It is this latter view I espouse and apply to the public sector and its operations.

1.6 Catholic Social Teaching as a source for analysis of the concept of the common good and the principle of subsidiarity

As stated above I believe that an evolving corpus of thought is available in Catholic social thought that can enrich our understanding of the common good and of subsidiarity. In pursuit of that richness I move in two directions. First I explore Catholic Social Teaching, analyse its evolution and distil what I deem apposite and critical to the Irish public service modernisation programme. Then I dialogue with authors who write in either the natural law tradition or Catholic Social Teaching.

The genre of the papal encyclical has certain internal constitutive elements which define that type of communication. 'Among the essential constitutive elements have been the natural law and the law of grace, reason, faith, and a conception of the ultimate purpose of existence' (Gallagher, 1992, pp. 38-9). Further, any assessment of the church documents presenting Catholic social teaching must also be hermeneutically aware of the uses to which the documents were intended or were put. One of the major facets of the genre that has changed and which allows for greater insight into their subjects in the encyclicals is the move from reliance primarily on deductive procedures to an awareness that experience, contingent situations, cultural dimensions and so on have a bearing on insight and this often through the use of induction. Within the bounds of these hermeneutical considerations I explore three themes in the body of papal teaching: the workers/social question; the common good; and subsidiarity – while aware that Catholic social teaching is not static. It has gone through phases of change, more particularly post-Vatican II with the acceptance of the importance of human rights and of democracy.

The workers or the social question was the main pre-occupation of the first major social encyclical, *Rerum novarum*. Pope Leo XIII wrote in the context of the industrial revolution where workers, now industrial workers rather than agricultural workers, were being exploited. His approach was not to be significantly developed until the latter part of the twentieth century. The encyclical was published at a time when the pope felt obliged to chart a course between two 'solutions' being proposed, 'individualism' and 'socialism'. Specifically the pope wanted to oppose the contention that the classes in society were opposed to each other. To argue this case he uses a classical natural law ploy, the comparison of the symmetry of the parts of the human

body with the body politic. To each his allotted part in society. This can be to a twenty-first century reader a staid, conservative and even vacuous approach. But, reading it from the perspective of its own time, it was a significant achievement in that it ‘... laid a solid basis for the emergence of the concept of “social justice”’ (Dorr, p.51). It put commutative justice central stage in the ordering of society. Forty years later Pius XI in *Quadragesimo anno* continues following a middle course. It was not until the time of John Paul II that we see a significant breakthrough, away from the predominant capital/labour focus. Writing ‘post-socialism’, he was not as concerned with that aspect as his predecessors, though again stridently opposing the extremes of capitalism. But it is to two concepts of his concerning workers that I turn – the distinction between subjective and objective work and the distinction between the direct and indirect employer. These two distinctions are significant to my thesis and are I suggest significant for the role of the public service and its modernisation as presented in this thesis. The importance of subjective work as the prerogative of the worker and the importance of the conditions created by the indirect employer are highly germane to my thesis. They reveal an anthropological approach to work – for my purposes to public service work – that values the dignity of workers/public service workers.

The common good runs through the papal encyclicals but up to the time of John XXIII is presumed rather than explained. John, in section 60 of *Pacem in terris* says that the common good is chiefly guaranteed when personal rights and duties are maintained. Vatican II, in *Gaudium et spes* section 5, is more expansive and sees the common good as ‘...the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfilment’. John Paul II progresses the teaching by concentrating on ‘development’ over and above ‘economic

development'. While concerned with the injustice in the international arena in terms of economic development, he realises and stresses that there are other kinds of injustice and that, in solidarity with others, there must be a concern for a more holistic development. The body of papal teaching then on Catholic social teaching as regards the common good has moved considerably since *Quadragesimo anno* of 1891. It now does provide a broad Christian anthropology of human *telos* or flourishing. It does provide an ethos or vision to underpin development. It thus contrasts with the assumed anthropology which underwrites NPM and by extension the Irish public sector modernisation programme.

Somewhat akin to the treatment of the common good, subsidiarity as a principle is assumed rather than explained in the early encyclicals. It is most often used to inveigh against unwarranted state intervention. It is not until *Mater et Magistra*, with John XXIII, that we see a movement away from the suspicion of the state such that subsidiarity is presented in a way that sees an enlarged, but proper role for the state. With Vatican II there is further development. In *Gaudium et spes* the emphasis is on 'ready access to (their own) fulfilment' involving 'rights and duties with respect to the whole human race'. In section 35 this is repeated where it says with reference to the state that '...the norm of human activity is this: that in accord with the divine plan and will, it harmonise with the genuine good of the human race, and that it allow men as individuals and as members of society to pursue their total vocation and fulfil it'. We will see John Paul II take this further and teach that the dignity of the human person demands both economic and cultural development, and that denial of participation in public affairs is a denial of that cultural development.

I will argue then that in Catholic social teaching there has been a shift towards the person, with a concomitant demand that human freedom, equality and participation be recognised. This demands actualising oneself in terms of others, 'in a sincere giving of the self' (*Gaudium et spes*, 24, 925). I will compare this anthropology of Catholic social teaching with the anthropology of instrumental rationality of NPM.

In the final section of the corpus of the thesis I return to the criticism of Catholic social teaching which sees it rooted in a substantive view of human nature. I will suggest that this is a blinkered view of Catholic social teaching, one that presumes Catholic social teaching to depend on a neo-Scholastic moral theology. I will trace the renewal of Catholic moral theology from the mid-twentieth century and demonstrate that Catholic social teaching is not shackled as suggested. I give two examples of Catholic authors, Richard McCormick and Richard M. Gula, who demonstrate the renewed approach and I will also enter into more extended dialogue with two authors, Jean Porter and David Hollenbach. Porter specialises in Scholastic natural law theory; Hollenbach specialises in Catholic social teaching. I chose these two for specific reasons. Porter because, I will argue, she provides a balanced reading of the traditional Scholastic position on the natural law and in so doing corrects for the extremes of nineteenth and twentieth century neo-Scholasticism. I chose to explore the work of Hollenbach because he is primarily seized as a middle-level thinker with the issues of his own society, and in this way provides a refreshing narrative approach to the common good and to subsidiarity.

I have also chosen to dialogue with these two for another reason. As so-called 'revisionists', I visit their work to counter a common argument against the natural law based approach to the common good. It is the view that would claim that that approach

'... has come to seem an Enlightenment relic, naively isolated from cultural pluralism, economic globalisation and competing philosophical and theological interpretations of the human condition, especially those projected from other cultural situations', as Sowe Cahill (2002, p.325) describes it when dealing with Catholic social teaching.

I will argue that my dialogue with these two authors unearths: (1) an evolved view of human personhood and moral decision making apposite to Catholic social teaching; (2) a nuanced understanding of the concept of 'law' and a consequent nuanced understanding of the concept of 'natural law'; (3) a more theologically based understanding of the natural law than would be traditionally associated with Catholic social teaching – relevant of course to insiders only; (4) sound reasoning for the place of a common good based approach in a pluralist society – relevant to dialogue with outsiders.

The final chapter will summarise the thesis in terms of the material presented in the body of the work and suggest some lines of action that would attempt to embed the paradigm I suggest in the public service.

1.7 Summary – structure and logic of the thesis

The following chapters, 2-11, are presented in three parts and a conclusion.

Part1, chapters 2 and 3, investigates the issue which the thesis is addressing – inadequacies in the paradigm underpinning the Irish public service modernisation programme to date. It explores the international phenomenon New Public Management and its Irish manifestation, the Strategic Management Initiative, or as it has

been termed more recently the public service modernisation programme. My purpose here is to trace these two as they have evolved and to interrogate them as to their fitness to purpose. I will suggest that they have resulted in changes, specified and unspecified, anticipated and unanticipated. I acknowledge their success in introducing a focus on outcomes that has improved delivery of service. However, I will suggest that more profound changes, unanticipated ones, have taken place. The individual public servant is more likely now to be viewed instrumentally – a human resource. Internal motivation, trust and participation in decision making have suffered. Delegation of implementation to agencies is in danger of replacing decision and policy making at subsidiary levels. I will suggest that the paradigm used is responsible for these changes.

In Part 2, chapters 4-6, I will explore the possibilities in an alternative paradigm. I will analyse the natural law tradition, particularly its espousal of the concept of the common good and the principle of subsidiarity. I will show how this natural law tradition has, in its official Roman Catholic manifestation, changed significantly. I will also point to the need to distinguish between different conceptions of what subsidiarity means and suggest that it is necessary to distinguish it from the delegation of NPM. A particular preoccupation in this second part of the thesis is to demonstrate that Catholic social teaching has changed to such an extent that it can now dialogue on public policy matters in a framework supportive of modernity.

Part 3, chapters 7-9, moves beyond official Catholic social teaching and explores the developments since the middle of the twentieth century that have allowed thinkers within the Catholic social tradition to forge new dimensions and to dialogue with commensurable and indeed incommensurable interlocutors. I will argue that here is further reason to promote conversation between

a developing public management system and a developing Catholic social tradition.

Chapter 10, draws some of the emerging conclusions together and makes some proposals for action.

Part 1

A Description and an Analysis of the Irish Public Service Modernisation Programme 1994-2007

This part of the thesis focuses on the Irish public service modernisation programme and analyses it to discover how it has in practice impacted on its chosen agenda – a reform of the public service. The modernisation programme is set in context. Its provenance in a set of reform theories that have come to be called New Public Management which is traced in Chapter 2. In Chapter 3 the contention is that the Irish modernisation programme has taken on a dynamic of its own and that therefore to understand what has happened it is necessary to look beyond the objectives of the reformers and to look at both the anticipated and unanticipated results. The anticipated may not have turned out as expected and of course the unanticipated may have been profound.

Chapter 2

New Public Management – Analysis and Critique

Slowly, quietly, far from the public spotlight, new kinds of public institutions are emerging. They are lean, decentralized and innovative. They are flexible, adaptive, quick to learn new ways when conditions change. They use competition, customer choice, and other non-bureaucratic mechanisms to get things done as creatively and effectively as possible. And they are our future. (Osborne and Gaebler, 1993, p.2)

In our rush to steer, are we forgetting who owns the boat? (Denhardt and Denhardt, 2000, p.549)

2.1 Introduction

My thesis is a critique of the Irish public service modernisation programme and suggests a more appropriate paradigm for public service reform – a paradigm rooted in the related concepts of the common good and subsidiarity. At the outset however it is important to identify the paradigm that the modernisation programme has actually chosen. The chosen paradigm mirrors a general trend in OECD countries.⁷ That general trend is commonly referred to as New Public Management (NPM). This chapter describes and critiques NPM.

⁷ Austria, Australia, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.

At the outset I trace the trend toward NPM in the twentieth century and the preferment for a 'public management' to a 'public administration' perspective ['public administration' is also described]. I explore the reasons why NPM emerged at the time it did. I describe NPM in some detail, stressing that it is not a univocal concept – its meaning and intent differs from culture to culture and from administration to administration. The chapter continues with an exploration of the provenance of NPM, including a critique of the version of NPM peculiar to the USA, given the wide impact of that version beyond the USA. The theoretical sub-strata underpinning NPM are reviewed, as are the administrative mega-trends in which it is situated. The chapter also assesses NPM, asking does it deliver on its promises? Finally NPM is evaluated from a wider perspective – its implications for trust and internal professional standards, trust between the public and the public service, trust within the public service itself; in this context the traditional reliance on trust is contrasted with the metrically driven evaluation milieu which NPM engenders.

2.2 Public administration

Heretofore the system of government was generally referred to as 'public administration'. Properly understood that term encompassed the political, administrative and judicial arms of government⁸. However usage changed such that in common currency 'public administration' came to be applied to the administrative arm alone. Civil servants then were described as 'doing' public administration. In current literature it is sometimes referred as Old Public Administration (OPA). In this scheme of things the civil service was defined by the concept of 'service',

⁸ Hence the use of the term 'the administration'. Different 'administrations' could be contrasted and this envisaged the totality of the individual administrations.

service to the political arm of government and to the public. Its role was to

...impart expert policy advice to the minister; to play an independent disinterested role; to take a longer-term strategic view; to ensure efficient delivery of services; and to be the guardian of the public interest. (Byrne et al, 1995, p.7⁹)

The system was seen to be characterised by impartiality, integrity, collegiality and concern for the public interest. The American public affairs specialists Robert B. Denhardt and Janet Vinzant Denhardt tell us that NPM proponents describe OPA as having the following characteristics: politically neutral, valuing neutral competence; with a centralised bureaucracy for service delivery; operating top-down control mechanisms; closed; with efficiency and rationality as its prized values; and implementing but not creating policy (Denhardt and Denhardt, 2000, p.551-2).

NPM is seen by its proponents as an antidote to the weaknesses which it sees in the very strengths that the old approach prized. For instance, NPM criticises the centralised bureaucracy, the over-reliance on top-down control and the pre-occupation with rationality. NPM proponents contrast their approach with what they portray as the old sluggish formal bureaucracies plagued with excessive rules, bound by rigid budgeting procedures and personnel systems and pre-occupied with control (Denhardt and Denhardt, 2000, p551)

⁹ This quote is from a special issue of *Administration* based on a joint Masters thesis submitted to TCD by a group of Irish civil servants at assistant secretary level, i.e. the second level down of senior management. It represents an authoritative critique of the system prevailing at the time and an insider's view of the emerging reform in the Irish civil service.

In the second half of the twentieth century there was a shift in thinking about public administration such that management techniques and systems were gradually introduced into public administration.¹⁰ Management theory and skills gradually came to have a fixed place on the curricula of schools and departments of public administration in third level educational institutions.¹¹ Theory and practice from private sector management were lifted, adapted, to a greater or lesser extent, and applied to the work of civil servants. In the last two decades of the twentieth century there was a more radical shift. The term 'public administration' was gradually dropped in favour of the term 'public management'.¹² Research and literature became more and more available that dealt with management issues in the public service. 'Managing' was seen as proactive, delivering services. 'Administration' was seen as reactive to policy decided by the political system.¹³ Civil servants were seen to be managing the affairs of government. In its fully-fledged form this came to be what is now referred to as New Public Management.

In this chapter, and indeed throughout this thesis, my intent is to show that NPM has a more invasive effect than can be measured by merely looking for its 'results', or seeking to test its

¹⁰ Various approaches came and went. In Ireland for instance Management By Objectives was the approach favoured in the 1960s, the Programming, Planning and Budgeting System was in vogue in the 1970s and so on.

¹¹ In Ireland the Institute of Public Administration from its outset in 1957 placed heavy emphasis on management theory in its training courses. University College Dublin when it introduced a degree in public administration in the 1970s located it in the faculty of commerce. Today public servants pursue postgraduate courses in the School of Business Studies in TCD.

¹² A good example of the shift in language is the change of name made by the Irish Institute of Public Administration to its basic undergraduate programme. Students began to study for a Bachelor in Public Management rather than the Bachelor in Public Administration.

¹³ This perspective works more easily for obvious 'deliverables', for example social services, regulatory services, environmental services, infrastructural services and so on. It does not work as easily for the policy advice part of civil service work where the need is for deliberation and research in order to advise politicians.

contribution to 'efficiency' or 'effectiveness'.¹⁴ I set out to demonstrate that the more profound effect of NPM is its capacity to change the accepted discourse of the business of the civil service, be it labelled 'public administration' or 'public management'. This change of discourse, I suggest, has the capacity to, unwittingly, lead to a different perspective of government and of the relationship between the governors and the governed. I will suggest that the relationship between the government and its citizens (the discourse of public administration) is significantly different to the relationship between the government and its customers (the discourse of public management).

The quotations at the top of this chapter represent two ends of a spectrum of opinion regarding NPM. The first is an ideological and zealous example of the manner in which NPM has come into common currency and created a wave of academic exploration (it is a quote from the book that did most to popularise NPM in the US). The second represents a more cautious approach, coming of course some years later, acknowledging that NPM needs appraisal and that the values of the 'old' public administration cannot be unthinkingly rejected. The two positions can be seen as representing two poles, one which sees NPM as '... the only way to correct for the irretrievable failures and even moral bankruptcy

¹⁴ 'Efficiency' and 'effectiveness' are terms that are central to the discussion of management. 'Efficiency' is about doing things rightly. 'Effectiveness' is about doing the right things. For instance I may be very efficient when I set about writing this chapter. I use my time in the library well, planning in advance how I will use it. I save time by making use of electronic databases to source material. I use my personal productive times to tackle the most difficult elements of the task. And so on. However, all of this may prove to be ineffective if I am not guided by relevant reading, relevant resources. The end result will be ineffective if my analysis is faulty or if I have ignored relevant information or perspectives.

One of the issues I will be dealing with at a later stage (see 3.11 below) is a third element, beyond effectiveness and efficiency. There must be something to be effective and efficient about. I will be suggesting that here is an issue for NPM. The role of the civil service needs more rich consideration in this respect than it is given in NPM, I will contend.

in the “old” public administration...’(Hood, 1991,p.3), the other representing those who ‘... dismissed much of the thrust of NPM as a gratuitous and philistine destruction of more than a century’s work in developing a distinctive public service ethic and culture’ (ibid).

In the following sections I set out to describe in further detail the conditions that led to the emergence of NPM and I describe in more detail what it is.

2.3 The underlying shifts that led to NPM

NPM is largely an OECD phenomenon.¹⁵ In those countries, the late nineteenth century was a period of minimal government. A large number of public services which we today expect the state to arrange for were in that period in the charitable sector. Moving to the early twentieth century we see a shift. Focus moves from the individual to societal issues in economic and social matters. A legitimate role is recognised for the state. Also, it was recognised that the state could enter legitimate partnerships with the charitable and private sectors. This period culminated in the welfare state to a lesser or greater degree operating in OECD countries. However, as the state grew there emerged a view that the way the business of government was being done needed to be re-visited. The business of government was seen to have become all-pervasive and highly complex. The amount of taxes being levied needed to be monitored to ensure that it was well-spent. Indeed the view gained acceptance that there was a need to question whether the government needed to be in all the businesses it was in. For instance, should telecommunication

¹⁵ Not surprisingly developing countries are now having NPM solutions to their administrative problems (using administrative in the ‘holistic’ sense) exported to them from OECD countries. This is problematical given the culture-specific nature of NPM as implemented, as will be described later in this chapter.

systems be provided by the public or private sectors? A further question to be asked was whether the way the governmental system went about its business was appropriate. Were the tried ways of the civil service, inherited from a period when government activity was not so pervasive, appropriate to the changed business of late twentieth century government? To quote UK management specialists Osborne and McLaughlin (2002, p.9), what emerged was

... a trenchant critique of bureaucracy as the organizing principle within public administration, a concern with the ability of public administration to achieve the economic, efficient and effective provision of public services, and a concern for the excesses of professional power within public services and the consequent disempowerment of service users.

It was in this context that NPM emerged. However, as the twentieth century closed it was generally recognised, and continues to be, that we have in many countries moved to a further stage, what Osborne and Mc Laughlin call 'community government',¹⁶ (p.10). The planning and management of public services is now something to be negotiated between government and the community and private sectors. The key task for government becomes the management of the complex network of public service provision. 'Governance' becomes the key task of public management. This of course presents a new challenge, a challenge which this thesis will approach using central tenets of

¹⁶ This is a very specific use of the word 'community'. The emphasis is on the state working through local communities, NGOs, the private sector and so on. *Prima facie* this may seem to be the principle of subsidiarity in practice. It is not. The principle of subsidiarity is rooted in a respect for individual dignity, rooted in a specific anthropology. NPM reliance on smaller scale units of society is rather rooted in contractualist mode and in a dislike of state implementation of policy. In that view the state contracts with smaller units to implement its policies. In a subsidiarity perspective, the state, au contraire, facilitates the smaller units to pursue their own legitimate agendas.

Catholic social teaching and distinguishing between true subsidiarity and decentralisation and delegation a la NPM.

2.4 Approaches to and definitions of NPM

It is not accurate to speak of NPM as if it were the same phenomenon that appears in each administration where reform is put in train: according to management specialists Stephen P. Osborne of the University of Edinburgh Business School and Kate McLaughlin of the University of Birmingham ‘...critics have questioned the extent to which there is a single model of the NPM which can be deployed as a tool for comparative analysis let alone global reform prescriptions’ (Osborne and McLaughlin, 2002, p.11). A search through the management specialist literature reveals a range of understandings. It has been described as a recognisable term rather than a fully established concept (Barzelay, 2002, p.15, Professor of Public Management at the LSE). Dawson (Cambridge) and Dargie (Nuffield) (2002) put the position as follows

So for example, NPM might be characterized as reinventing government or entrepreneurship in the United States; as citizenship, decentralization and deregulation in a European, predominantly Nordic model; as contracting in New Zealand and as cost control measures in the UK. (p.39)

The term NPM does however now enjoy international recognition. It is variously used to describe: a ‘... pattern of reform of public management per se, as well as the associated growth of the pluralist state’ (Osborne and McLaughlin, 2002, p.10); a specific policy prescription; a set of ideas (closely related to liberalism); or an empirical reality as described by the

Australian management specialists Carroll and Steane (2002, p.197). Christopher Hood, the Oxford specialist in the study of executive government, sees it as combining seven different doctrinal modes: hands-on professional management; explicit standards and measures of performance; greater emphasis on output controls; a shift towards disaggregation and decentralisation of units in the public sector; a shift to greater competition in the public sector; stress on private sector styles of management; emphasis on greater discipline and parsimony in resource usage (Hood, 1991, pp4-5).

Carroll and Steane (2002, pp. 195-6) suggest that five criteria can be used to measure the extent of the acceptance of NPM in an administration

- the use of private sector management models and techniques
- commitment to a plurality of modes of service provision (business, NGOs, the public sector itself – with emphasis on cost, choice and quality in the mix of providers)
- a revised role for government, ‘steering’ not ‘rowing’¹⁷
- a strong belief in market or quasi-market mechanisms
- attempts to separate political decision-making processes from the management of public services.

Hood (1991, p.5) suggests

One way of interpreting NPM’s origin is a marriage of two different streams of ideas. One partner was the ‘new

¹⁷ This is a favoured contrast of many NPM writers. The person who steers the boat decides where it is going. The rower does the implementation work. NPM writers, when using this metaphor, insist that government must steer but not necessarily row. It can delegate the rowing function to the private sector, to NGOs and so on. This is a good example of what is known as a root-metaphor. I will elaborate on the role of root-metaphors when I am dealing with Catholic Social Teaching. See 6.2.5 below.

institutional economics' ... the other partner in the 'marriage' was the latest of a set of successive waves of business- type 'managerialism' in the public sector in the tradition of the international scientific movement.

The economics led to administrative reform doctrines based on the ideas of contestability, user choice, transparency and incentive structures. The managerialist tradition led to reform based on the ideas of professional management (as opposed to technical expertise), discretionary power, the development of an appropriate culture, and active measurement and adjustment of organisational outputs. Hood (1991, p.6) however contests whether such a marriage is possible and tends to the view that individual administrations will tend in their reforms to approximate to one rather than the other of these two approaches.

Christopher Pollitt, the British widely-published management specialist based at Katholieke Universiteit Leuven (2005), however, warns against the fallacy of thinking that every administration with an NPM thrust is moving in the same direction – with a kind of global model. He outlines what the elements of such a (non-existent) global model might be thought to be. It would be efficient, effective, e-nabling, high quality, citizen centred, transparent and participatory. He cautions that these headline concepts are just the beginning, not the end of the story. These headlines are not leading to identical solutions in different countries. There can be tension between these values – for example, between transparency and efficiency or between participation and effectiveness. For instance, he explains,

Even something as apparently concrete and technology-based as e-governance shows how very different priorities can lurk under the same label, so that (for example), the Australians and New Zealanders can place the emphasis

on electronic service delivery while the Nordics are more interested in promoting electronic forms of participation and local dialogue. (Internet article, not paginated)

The reality is that abstract management theories do not convey the complete picture of action on the ground. Each situation is, for instance, culture specific. Hence the importance of subsidiarity which values the local and the traditional.¹⁸ In fact there are many sources of difference which make international comparisons more interesting and more complex than a simple convergence model can account for. If we step behind the headlines, he says, we can ask: Where do these internationally popular ideas come from? What kind of political system oversees the reforms? What kinds of mechanism are given the task of, first, formulating reforms and, second, implementing them? What provisions are made for evaluation and democratic reporting of the outcomes of the reforms?

The aim of this chapter is to attempt to answer these questions by exploring the provenance of NPM (while acknowledging that it is not homogenous), and to critique it, using some recent research which looks at the phenomenon as it reaches what has been called its 'middle age' (Hood and Peters, 2004). But also, the wider aim of the thesis is to point to the difference between NPM and a common good/subsidiarity approach. More specifically, the aim will be to contrast the 'suspicious' anthropology of NPM theorists, who base their whole approach on a rational choice anthropology which sees all individuals as basic self-maximisers, and the anthropology underlying current common good/subsidiarity approaches which in contrast is based on

¹⁸ The importance of difference, as respected by subsidiarity thinkers, particularly those who see themselves as revisionists, is important here. See Chapters 7,8, and 9 below.

respect for the dignity of every individual and a vision of a participatory society.

In the following section the rise and development of NPM is considered.

2.5 The provenance of NPM

The approach adopted here to charting the provenance of NPM is five-pronged. First, the question is posed as to why this approach has come to prominence and why it has attracted such a following – why now? Second, the views of Osborne and Gaebler (1993) are outlined, because their book has had such a wide influence, particularly in the USA. Third, the theoretical sub-strata of the movement are presented. Fourth, administrative ‘mega-trends’ which provided the context for NPM are outlined. Fifth, the question of administrative values and variations in the implementation process is posed. Preferred administrative values will bias a system in one direction or another.

The environmental conditions that facilitated the emergence of NPM

Why has NPM come to have so much acceptance? Hood (1991, pp. 6ff) suggests four possible reasons. First, it falls into a cycle whereby new management fads gain acceptance. Isomorphism sets in. One thinks of the different approaches to management that have been in common currency at different stages over the last fifty years (Management by Objectives, Planed Programmed Budgeting, Zero-Based Budgeting, and so on, come to mind; each had its day(s) in the reform sun). A second, similar, explanation would posit that there is, particularly in the USA ‘... a recurring cycle of euphoria and disillusion in the promulgation of simplistic and stereotyped recipes for better public

management'. Hood posits a third possibility, a view that sees a Hegelian attraction of opposites. On the one hand a German tradition of state-led economic development by professional public management. On the other, the Anglo-Saxon tradition of liberal economics, allied with a concern for matching self-interest with duty in administration, that has its roots in utilitarianism. A fourth, and in Hood's view more promising, explanation sees the rise of NPM as a response to a set of special social conditions developing in the long peace in the developed countries since World War II and the unique period of economic growth that accompanied it. The conditions which may have proved fertile for the rise of NPM would in this explanation include: changes in income level and distribution; post-Industrialism and post-Fordism serving to remove the traditional barriers between 'public sector work' and 'private sector work'; a shift towards a new 'machine politics' which gave more power in policy making to professional party strategists over the experience of the voice of bureaucracy; a shift to a more white collar heterogeneous population, less tolerant of 'statist' and uniform approaches to public policy.

Sandford Borins (2004) suggests that three catalysts for change must be in evidence for NPM to set in: economic pressures, high level political commitment and a set of ideas to shape change.

2.6 Re-inventing government : The USA model

No review of the provenance of NPM would be complete without reference to the 1993 work by Osborne and Gaebler¹⁹, *Reinventing Government. How the Entrepreneurial Spirit is Transforming the Public Sector* (RG). It was a seminal work and perhaps more than any other popularised and promulgated some

¹⁹ David Osborne, a state representative from Kentucky, was the principal author. Ted Gaebler is in private business but was previously a city manager.

of the main approaches of NPM. RG was written in the context of severe criticism of government in the USA in the 1980s – criticism in academic circles and in popular opinion. The authors set out to look at changes that were happening in different parts of the American administration, and thereby arrived at the ‘Reinventing Government’ brand of NPM. The authors’ view of the prevailing administrative system was that it was designed to overcome corruption at the beginning of the twentieth century in American government²⁰. They conclude

In making it difficult to steal the public’s money, we make it virtually impossible to manage the public’s money. (p.14)²¹

RG suggests that there are three ways to tackle the poor performing bureaucracy that is the public sector. The first two are traditional – cut spending or increase taxes. RG presents a third way. In this mode government is envisaged not as providing services, but rather ensuring that services are provided – by whoever is best placed to do that (pp.24-30). Government facilitates the energies of smaller groups – communities, schools,

²⁰ A shadowy figure named Boss Tweed roams through the pages of this book. He was a ‘Tammany Hall’ type politician noted for corruption in government and for politicising decisions to favour his re-election. Indeed Osborne and Gaebler claim that electioneering dominated politics and hence the need to bureaucratise. They show an unspecified deep suspicion of politics and politicians in the USA. Repeatedly they call for protection against inequitable lobbying, short-termism, vote garnering and policy decisions made to influence large voting groups.

²¹ The implication of this quotation is that the systems designed for public service decision making are overly concerned with being risk-averse. The focus is on so-called ‘inputs’, the amount from the public purse that is allotted to any purpose. The concern is to ensure that no public money goes astray. Accountability is focused on where the money was spent. Not enough focus is put on how the money was spent. The ‘outputs’ are not accounted for. The authors are strongly of the opinion that public service systems are designed for probity at the expense of effectiveness. In other words, public officials’ hands are tied by regulations. The consequence, they argue, is both inefficiency and ineffectiveness.

families, neighbourhoods, voluntary organisations²². In other words – words that have become a slogan in NPM circles since they were put forward by RG – government steers rather than rows (p.30). A steering organisation can choose the best rowers, the most competitive rowers. They argue for the role of a third sector, neither public nor private. Not necessarily non-profit. Not necessarily voluntary. The third sector would see the rise of privately owned organisations set up to meet public or social needs. Privatisation however is one, but not the only, answer. And, steering must always stay with government.

Osborne and Gaebler take their readers through a series of chapters where axioms are illustrated by stories, enabling them to then present recommendations for action based on this evidence. They call for community-owned government, competitive government, mission-driven government, results-oriented government, customer-driven government, enterprising government, anticipatory government, decentralised government. But nowhere do they present a theory of government or provide a rationale that would encompass these different demands. Their view it seems to me is methodologically flawed. The following paragraph illustrates the slogan-driven nature of their proposals

²² This sentiment echoes the subsidiarity principle which I will be presenting as a more apt foundation for public service reform than NPM. However, caution is warranted when assessing the so-called similarities between subsidiarity and NPM – see footnote 10 above. The subsidiarity principle is grounded in a view of society and the way responsibility, power and accountability should be dispersed, in a view giving primacy to the inherent orientation towards fulfilment in work. RG is not rooted in any coherent theory. Rather, it is mesmerised by individual instances where government processes were imaginatively altered leading to success. The stories recounted in the book – and this is the preferred methodology of the book, to recount stories – are invariably of popular heroes and mould breakers. It is difficult if not impossible to take issue with any individual one of them. However, it is more difficult to see them as anything other than a collection of stories, selectively chosen and used as foundations for principles, but in the final analysis lacking any over-arching approach other than sloganeering for the re-invention of government.

Community-owned government ensures that communities serve their own members rather than having service delivery organisations serving their clients²³. *Competitive government* sees monopolies broken and the real needs of customers served. 'The important distinction is not public versus private, it is monopoly versus competition' (p.79). *Mission-driven government* transforms rule-driven government. 'The first task is to scrape off the dead weight of accumulated rules, regulations and obsolete activities' (p.114). *Results-oriented government* funds outputs not inputs. 'If you can't see success, you can't reward it' (p.148). 'If you can't reward success, you're probably rewarding failure' (p.149). *Customer-driven government* meets the needs of the customer, not the bureaucracy. *Enterprising government* earns rather than spends (here they have in mind charging for services and rewarding the public service entrepreneurs who levy the charges by bonuses and by giving them the freedom to decide how income so earned should be spent in the service of the public). *Anticipatory government* prevents rather than cures. *Decentralised government* allows us move from hierarchy to participation and teamwork. Decentralised institutions are more flexible, more effective and more innovative.

It is difficult, perhaps impossible, to take issue with much of what is propounded in the above paragraph, at least *prima facie*. Given the promises presented, the solutions trumpeted, there is no competition between NPM, a la Osborne and Gaebler, and the sluggish machine that is OPA. But, is this enthusiasm warranted?

²³ The peculiar use of 'community-owned government' here is typical of the catch-all approach of the authors. For them 'community-owned government' is one where the 'community' (town, county or whatever unit of government) does for itself rather than has things done for it. This of course flies in the face of their 'rowing and steering' slogan where they say it is important to steer when appropriate and to delegate rowing to others as appropriate. Sloganeering leads them to propose modes of government as universally normative when of course different modes are apposite to different demands.

Is NPM a la Osborne and Gaebler warranted? I suggest not. I see their perspective falling into the category described by Hood and Peters (2004, p. 268) as

Descriptive mapping ... largely based on fairly casual empiricism, particularly in the form of observations of the developments in the United States, the United Kingdom, and antipodean countries...

However, where is the evidence for long term success? And, indeed, what should we define as success? These issues are returned to below when the impact of NPM is addressed.

2.7 Theoretical sub-strata

The Irish public administration specialist Richard Boyle (1995) suggests that there are four different theoretical sub-strata to the various brands of NPM: public choice theory, agency theory, transaction cost analysis, and managerialism.²⁴

2.7.1 Public choice theory

The underlying premise of public choice theory is that individuals are self-interested maximisers.

... in the absence of the market mechanism public representatives and bureaucrats pursue their own interests ... rather than the public interest. There is a need therefore in the public service for mechanisms to promote consumer interest (Boyle, 1995, p.5)

²⁴ These sub-strata are overlapping and find expression to greater or lesser extents in the particular brand of NPM that operates in a given administration

The public choice theorists take the individual as the basic unit of analysis. They presuppose that individuals are self-interested, rational, adopt maximising strategies, and act accordingly. Working on these assumptions they disapprove of monopoly, which they also see as a characteristic of the public service. Competition, in other words the market, is the better form of service provision (Boyle, 1995, p.6). Public choice theory

... proposes a minimal role for the state, with the discretionary powers of politicians and agencies limited and with citizens having maximum freedom from state coercion ... privatisation or private contracts should be used wherever possible. (Byrne et al, 1995, p.50)

The implications of this are five-fold. (1) The optimal organisation is small scale. Larger organisations enable budget maximising for self-promotion among bureaucrats. (2) Employment contracts rather than secure tenure is the preferred option. Security of tenure does not facilitate competition. (3) Monopoly is eschewed, multiple providers preferred. Where possible the public service should not be a direct provider. Competition between providers is preferred, even between the public and private sectors. (4) Funding of public services should be related to charges. Market mechanisms should apply. (5) The private sector should be used for service delivery where possible. It is there that true market conditions apply (Boyle, 1995, p.6). Boyle (p.7) suggests that public choice theory risks distortion by over-emphasising self-seeking. Quoting Dumshire *et al*²⁵ he concludes

²⁵ Dumshire, Andrew, Keith Hartley, David Parker and Basil Dimitrou (1988) 'Organisational status and performance : a conceptual framework for testing public choice theories', *Public Administration*, Vol. 66.

Public choice theory is strong on *a priori* reasoning but short on empiricism.

2.7.2 *Agency theory*

Agency theory rests on a different assumption. It assumes that economic activity is grounded in contracts. It seeks to understand the relationship between the principal (who delegates work, typically the employer/superior) and the agent (who performs the work). It assumes that political life can best be represented as a series of contracts between parties.

The first party, the principal, enters into a contract with another party, the agent, by which the agent agrees to undertake various functions on behalf of the principal in return for an agreed reward. Consequently, considerable importance attaches to the negotiation and monitoring of contracts to ensure that services are being provided by the agent to the quality, cost and timeliness standards required by the principal. This is also referred to as the purchaser/provider split (de Laine, 1999).

In common with public choice theorists, assuming self-interest, agency theorists identify a problem in the principal-agent relationship as their interests diverge. 'Like public choice theorists, agency theory assumes that individuals are opportunistic and contracts must carefully protect the principal from the agent' (Byrne et al, 1995, p.51). To meet this problem, organisations need to have recourse to contracts and information systems. Contracts specify what the agent will supply to the principal. Information is constantly gathered to verify the

delivery. Organisations need to invest in information systems to control opportunism (Boyle, 1995, pp. 7-9).²⁶

2.7.3 *Transaction cost analysis*

Transaction cost analysis is a related theory, which adds the dimension of putting a cost on the monitoring of contracts. Self-interest is again an assumption here.

It suggests that the maximisation of value is achieved by the reduction of transaction costs ... organisations aim to reduce their transaction costs by substituting hierarchies (control of suppliers/customers) with markets in order to reduce uncertainty and vulnerability to opportunism (Byrne et al, 1995, p.51)

2.7.4 *Managerialism*

Managerialism works from the premise that it is critical to pay utmost attention '... to an organisation's mission, personnel and customers' (Boyle, 1995, p.10). It postulates that there is one generic approach to management – be it public or private sector.

Concepts such as shifting from input to output control, a devolution of management control with new accountability measures, a break-down of large bureaucratic structures and the adoption of private sector practices such as short-term labour contracts, performance incentives, mission statements and concern

²⁶ The authors in Byrne et al (1995) seem to have scarce regard for this approach and declare : 'Proponents... believe it to be a revolution in terms of public sector organisation, while others deem it trivial, dehumanising and failing to recognise the effect on the contract process of the unequal distribution of power within organisations and society in general'.

about corporate image etc, are all hallmarks of this approach. (Byrne et al, 1995, p.52)

Managerialism is underpinned by three principles: decentralisation, deregulation and delegation. In this context decentralisation is about managers actively managing rather than administering set processes to pre-established rules. Central control is strategic, not specific (Boyle, 1995, p.13). Deregulation means the abolition of centrally imposed regulations that constrain line managers (ibid, p.14). Delegation demands the clear allocation of tasks to identified sub-units or externally contracted agencies.

2.7.5 Administrative 'mega-trends'

Many authors link the rise of NPM with what Hood (1991, p.3) outlines as four mega-trends in public administration: (1) a trend in the late 1980s to slow down or reverse government growth and spending. The intent was to limit both spending and staffing; (2) a shift towards privatisation of public services – the emphasis was on moving service provision away from the public service; (3) with the ever-increasing pace of information technology development, a trend towards the automating of services; (4) the emergence of an international agenda increasingly focused on general issues of public management, policy design, decision styles and inter-governmental co-operation.

2.8 Administrative values: variations in implementation and conflicting goals

Any attempt to capture the nature of NPM must focus on the administrative values that underpin a system of administration. Hood (1991, pp.11 ff) suggests that there are three broad

categories of administrative values, 'sigma' values, 'theta' values and 'lambda' values.

Where sigma type values prevail, primary stress is on efficiency and goals. Success is characterised by frugality, failure is waste, control is on output, slack is low, goals are fixed and information is costed and segmented. Where theta type values prevail, honesty and fair dealing is paramount. Success is rectitude, failure is malversation (unfairness, bias, abuse of office), the currency of success is trust and entitlements, control is on process, slack is medium, goals are often incompatible and information is structured. Where lambda type values are in the ascendancy, success is resilience, failure is catastrophe, the currency of success is security and survival, goals are emergent and multiple and information is a collective asset. Redundancy of resources (extra resources for caution's sake), diversity of resources (to protect against failure) and robustness (use of greater amount of resources than strictly needed) apply.

These three overlap. Hood suggests that any two of the three may co-exist but that it is probably impossible for all three to co-exist. If this be the case, it has significant implications for NPM, where sigma type values pre-dominantly apply. Great stress is placed on efficiency and goals but maybe at the expense of the theta values of fair dealing and honesty and the lambda type values of resilience and security (Pollitt and Bouckaert, 2000, pp. 9-10). Or as Hood (1991, p.15) puts it

If NPM is a design for putting frugality at the centre stage, it may be at the limit less capable of ensuring honesty and resilience in public administration

Others suggest that NPM may have a bad effect on the achievement of social justice. For instance Harrow (2004) says

that there may be a slipping of equity because of ‘... an altered shift in preference among citizens generally towards competitive behaviour and individualist responsibility’ (p.147). However, the same author (pp.148-149) refers to an alternative argument, that NPM incorporates emphasis on social justice values since its emphasis on service, openness and accountability gives a renewed focus on what is going on and why; the use of competition helps fairer social distribution, and in a more efficient and effective way. Evidence to support this latter argument is hard to come by. And, furthermore, it is by no means an easy task to point to a particular piece of efficiency or effectiveness and claim unequivocally that it is the outcome of any discrete amendment to policy or operations. [As Pollitt (2002) comments: ‘... the achievement of more effective (as distinct from more efficient) government is hard to demonstrate’. Even where effectiveness is achieved it is hard to be certain to what it should be attributed (p. 289)]. On balance, the position that sees a change in public preferences seems more plausible. This reflects a change in public discourse as well as change in administrative discourse – both of which may be the more lasting outcomes of NPM, and to which I will return later.

Schedler and Proeller have produced a useful table schematically outlining the various elements of NPM (to which I have added examples from the Irish setting in the following table)

Element	Characteristics/objectives	Examples
Organisational Restructuring	Delegation Reduction of hierarchies	New agencies e.g. Education Welfare Board
Management instruments	Output orientation Entrepreneurship	Performance agreements Performance pay
Budgetary reforms	Closer to private sector financial instruments	Cost accounting Balance sheets

		Profit and loss statements
Participation	Involvement of the citizen	Customer panels
Customer orientation	Service delivery re-engineering	One stop shops Egovernment
Marketisation/privatisation	Reduction of public sector Competition	Public Private Partnerships

Schedler and Proeller do advert to the problem of how a single reform concept could encompass this broad range of challenges. Their response is that the particular tool set that a government chooses for its reform model is defined by the political circumstances it faces (p.165). They also point out (pp. 169-170) that NPM ideology tends to cluster in certain types of administration. Specifically, they suggest that Anglo and German countries seem to embrace it more readily. France shows little NPM rhetoric in its administrative reforms of the 1990s. In Germany there was dissatisfaction with the traditional bureaucratic system of local government. The New Steering Model (so-called) in local government concentrated on reform of internal organisational structure – internal management contracts, decentralised responsibility, product based budgeting, cost accounting. More and more it focused on personnel management and non-market instruments of competition like benchmarking (Schedler and Proeller, 2004, p.172). In Ireland the reform movement was driven primarily by the senior civil service influenced mostly by the managerialist mode (see Chapter 3).

Pollitt (2005) suggests that academic research indicates that different features of different political systems tend to lead to

... different selections, interpretations and implementations of reforms in one country as against

another ... Thus, in the UK, agencies are introduced as a way of strengthening management and *reducing* political interference, whereas in the Netherlands they are promoted as a *more* politically accountable form of organization than the previously popular ZBO (self-managing organization)

More generally, reforms in highly consensual political systems such as those in Denmark or the Netherlands usually have to achieve a much higher degree of cross-party acceptance than is needed in two party majoritarian systems like the UK or the USA.²⁷ This tends to moderate the more extreme and ideological types of reform.²⁸

Pollitt also claims that the actual national processing of reform ideas varies considerably. In some countries, such as the Netherlands or Sweden, '... reform ideas are typically tried out and developed in a series of expert working parties or committees which commonly involve outside experts as well as civil servants'. This contrasts with other countries, perhaps not as consensual in their approaches, with a process mainly in the control of top civil servants and politicians and which is fairly closed (France, for example).

One of the major contextual elements that determines the nature of the process in any administration is the politico-administrative culture operating there. The Irish civil servants who undertook a major study of NPM in 1995 (Byrne et al) identified the influence of politico-administrative culture in the various

²⁷ In the USA the Reinventing Government model was championed by President Clinton and Vice-President Gore and driven by Gore. Commentators suggest that it became associated with the Democrat policy and therefore failed with the change to the Bush administration.

²⁸ Page numbers not available for these quotations; they are taken from the Internet version of the paper.

administrations they visited – particularly the contrast between neighbouring Australia and New Zealand. Pollitt (2005) gives an interesting example. Citing a study of the performance management of executive agencies in four EU countries he reports that though all had performance indicators (PI) – sometimes quite similar ones – the way these were regarded and treated did seem to vary somewhat.

Basically, in the more consensualist and corporatist countries such as Sweden and the Netherlands, PIs were used in a more ‘soft’ negotiative fashion, whereas in the UK they tended to be used more punitively, in the form of league tables and organizational sanctions.

A final issue raised by Pollitt (2005) is worth noting here, the extent to which reform programmes are centralised and the extent to which they become associated with some central agency.²⁹ He refers to the extremes. For instance ‘... countries like the UK and New Zealand, where the promulgation and monitoring of reforms is highly centralized’.³⁰ As against the countries where local and/or regional authorities have constitutionally-protected autonomy and can try out their own reforms, such as the Nordic group of countries and Germany ‘... exhibit high levels of local freedom to diverge from the nationally-favoured reforms’.

²⁹ This is an issue to which the chapter on Irish public service modernisation will return, noting the role of the Department of Finance, the Department of the Taoiseach and some specialist agencies working under those departments.

³⁰ Interestingly, these are countries where the drive for NPM was driven by political ideology, the Thatcher government in the UK and a radically reforming Labour government in New Zealand.

2.9 NPM in perspective after some decades of implementation – its self-set goals and its un-anticipated effects

Hood and Peters (2004) have coined the phrase ‘the middle aging of NPM’. They look at paradoxes that emerged

... outcomes and developments that were unexpected, unintended, or contrary to received belief, particularly but not only in the form of unanticipated negative side effects. (p.269)

The concentration on production produced a number of anomalies. It led to a productivity approach being applied to areas of public service where observable products were not available.³¹ In effect what ensues is a blurring rather than a clarifying of managerial responsibilities. Perhaps more damning is the view of Hood and Peters that over-commitment to a productivity model merely results in isomorphism and conformity, rather than radical innovations that would deviate from what other organisations did (ibid, p. 270). Indeed they

³¹ For me this is one of the more regrettable consequences of NPM. The old adage ‘knowing the cost of everything and the value of nothing’ comes to mind. Equally it leads to a mentality that only what can be counted counts. This pitfall is aptly summarised in a 2001 UK Public Management Association report

Such a regime (performance incentivising) indeed might well encourage those subject to it to treat means as ends, to treat, for example, educational deprivation as a matter solely of test scores and attendance records, rather than the involvement of families in the educational process, or to judge the police solely in terms of law enforcement rather than on the wider basis of community safety; or to judge the national health service by how successful it is in curing illness rather than in preventing it. A regime of incentives provides too many incentives to cut corners, to dispose of difficult problems by dumping them on to some other department. Schools, for example, could improve their position in the league tables by excluding difficult students.’ (Bogdanor, 2001 p. 14)

suggest (p.272) that the emphasis on process control remained while a new bureaucracy of evaluation was added. They also point out that in many cases which they studied they found a tendency for

... one country's broad vision for change to be translated into something quite different when it passes to another level of organisation or different cultural environment. (p.273)

In summary they conclude that NPM reformers are prone to a one-size-fits-all isomorphism, suffer from historical amnesia and are ideologically opposed to learning from experience³²(p.278). An equally worrying comment comes from Taylor (2004, p.111) when she suggests that NPM has brought with it an audit culture with a performance management approach best described as 'tick and bash' indicators. Specifically she says '... a new set of professions gained ascendancy in the public sector – the auditor, the accountant, the legal adviser, the contract manager' (p.111).

Harking back to comments at the beginning of this chapter noting that NPM cannot be seen as the same in all its manifestations, equally it is important to note what Pollitt and Bouckaert explain

We share the view ... that management changes in the public sector cannot be satisfactorily understood as some set of free-floating generic phenomena. Instead they need to be interpreted as one element in a broader shift of political problems and responses. In short, public management is always part of the broader agenda of public governance. (p. 2)

³² They instance the continued loyalty to the strategic planning model in spite of successive failures of that model as a result of the ambiguities of politics and legislation (p.273). This conclusion does not bode well for the Irish public service reform programme which is heavily reliant on that model.

In other words, reform does not happen in a vacuum, the sheet presented is not a *tabula rasa*. It is important to note that we are dealing with *reform*, acting in the context of something already in place. Politico-administrative systems are *sui generis*. They each bear within themselves the hall-marks of the culture and history from which they emerge. Accordingly the outcome of any intervention to change will depend on the nature of the politico-administrative system in which action takes place. Not only are there these local variations, there is also the issue of whose agenda is being pursued when reform is pursued.³³ This is equally the case where evaluation of success is in question. Certain questions always need to be asked. Who is pursuing this evaluation? Why is this evaluation being pursued? In other words, reforms must be understood in terms of the various interests that promote or come into play in them. Reforms are

... Processes of debate to which different participants may bring, first, different objectives (including the achievement of symbolic purposes)³⁴ and, second, different frameworks and standards for identifying and accepting relevant evidence. (ibid, p.17)

Pollitt and Bouckaert (2000) in their comprehensive review of reform initiatives stress that it is not enough to look at reform instruments. It is also necessary to take account of the context in which the intervention takes place. There is not, for instance, just one type of administrative regime, even within a single state.

³³ Perhaps a good example here is the EU and its various institutions. Any reform pursued will take a different path depending on the institution fuelling it. If the Commission pursues reform, the likelihood is that a bureaucratic but European perspective will be operative. If the Council pursues reform, national perspectives will dominate. If reform is pursued by the Parliament politico/social perspectives are more likely to hold sway.

³⁴ Here the authors have in mind for instance the demand on politicians to be seen to be in charge and to make and announce initiatives.

Hope (2004) describes it as a process of refraction (i.e. through the prism of the particular country's laws, culture, political imperatives and so on). Furthermore not all parts of the public administration system meet the 'image' of befuddled bureaucracy so happily invoked by NPM proponents. And, harking back again to the notion that it is *reform* of something already in place, there is the danger that a process will be initiated in a context where it cannot be expected to thrive. On this point Hood (1991) notes

... NPM assumes a culture of public sector honesty as given. Its recipes to some degree removed devices instituted to ensure honesty and neutrality in the public service in the past ... The extent to which NPM is likely to induce corrosion in terms of such traditional values remains to be tested. (p.16)³⁵

Pollitt and Bouckaert (2000) conclude that for some people evaluation of NPM revolves around the record of decisions; others look for hard evidence. But, interestingly, yet others see the most important outcome as the growth of a new community of discourse.³⁶ In this context it is interesting to note that the community of discourse emanates from a limited elite of white Anglo academics and management consultants. The following lengthy quote from Chris Pollitt makes this point

In effect there is now an international community of public officials, key academics and some consultants – a community which often communicates and meets, and in which new ideas are shaped, labelled and placed on the agenda. I have never seen an estimate, but my guess is

³⁵ Hood also suggests the possibility that what he terms 'consultocrats' preaching NPM in developing and Eastern European countries may be doing so against a background where the traditional public service ethos is not embedded.

³⁶ This will be the trend identified in the Irish administrative system in Chapter 3.

that this network probably numbers less than 200. It is overwhelmingly male and Anglophone, which does give the resulting agenda a certain 'angle'. The reforms on the agenda may not have been the original creations of people in these networks, but the networks are crucial to their dissemination and achievement of fashionable, 'accepted' status (Pollitt, 2005).³⁷

2.10 The implications of NPM for the concept of service: trust, care, loyalty and internal motivation

The immediately preceding sub-section has queried NPM on whether it has delivered its promises. But NPM can also be queried at a deeper level. Has it changed the public service qua service? Michel de Laine (1999, Internet not paginated), consultant to the Economics, Commerce and Industrial Relations Group of the Parliament of Australia, suggests that the need to maintain appropriate ethical standards when implementing NPM has not been given sufficient attention. For me the issue here is whether traditional public service values have continuing relevance and whether they are, if valued, cherished, protected and promoted in an NPM environment. In 1995 the then Secretary General of the Irish Department of Finance listed what he described as the traditional attributes and qualities of public servants, namely, integrity, equity of treatment and probity (Hurley, 1995, p.26). This list, I believe, can be added to, to include impartiality and indeed the desire to provide public service as a value in itself. As de Laine sees it the challenge facing practitioners and policy makers alike is the need to distil the ethical principles from the civil service cultural environment

³⁷ This is a quote from a presentation which he made in Dublin to civil servants in the Department of the Taoiseach.

– in other words, separate the principles from the way in which they are practised – and determine whether they have continuing relevance (one is tempted to use the baby and bathwater metaphor). In other words there is a need to keep the professional ethic of public service to the forefront. Something may be lost when responsibility is reduced to a set of contract-like documents and auditable statements. For many public servants, there is a sense of unease that the willingness to make extra efforts in the spirit of that service may be diminished because of change. A cherished value, that of providing a public service, a prime motivator in itself, may be unwittingly dislodged. This can also be expressed in terms of the common good. The traditional perspective was that the public service was a constant in the administrative system, a constant that guarded the common good.³⁸

De Laine highlights further shifts. He cautions that in the process of moving from a public monopoly to market-driven services, government's public accountability is replaced by contractual relationships. Issues concerning the quality of the service may move from the ballot box, where they used to be when the provider was a government entity, to the courts, where disputes over contract are adjudicated. The problem, as some writers see it, is not with the paring of some expenses from public budgets but with the abdication of the government's responsibility for the welfare of its citizens, which can result when public services are contracted out. These concerns are especially real in social justice terms; the people most in need of the broader welfare role of government (not just social security) are those least likely to be able to challenge its non-provision.

³⁸ Anecdotally the civil service is often called the 'permanent government' guarding the interest of the people regardless of which political party is in power. Indeed one of the arguments used to defend the permanency of civil service appointments is the need to ensure that civil servants are immune to political interference in their duties.

Opponents of the welfare state often call it the 'nanny-state'. They would have in mind the state as it has developed in OECD countries since the end of World War II. For such critics the state has become over-dominant, and accordingly too big and too inefficient. NPM can 'fix' this. But the alternative, the so-called 'minimalist' runs the danger of leaving us with a polity without citizens, a market-state replacing the nation-state.³⁹ Sturgess (1996, pp. 59-63) painting a rather dark picture comments:

Government in the future will look ... more like Benetton. When Luciano Benetton comes to work in the morning, he does not walk into a knitting mill and spend the day supervising row after row of machines. He walks instead into an office and contemplates a pile of contracts. The vast bulk of Benetton's garments are manufactured, distributed and sold under contract. All that Benetton owns is what he needs to own in order to add value.

A related issue that needs to be reflected upon in this context is trust. The NPM approach, with its public choice, agency and contestability assumptions, has a particular approach to what it calls 'accountability'. It seems to attempt to replace trust with measurability. The individual public servant supplies a service to a customer, knowing that the efficiency and effectiveness of that service is subject to transparent measurement. In contrast, a more traditional approach would have expected the citizen to be able to put trust in a government service as impartial and fair. This is of course to view the individual civil servant through two different anthropological frames. In the NPM perspective we have an anthropology that views the civil servant as a self-maximising bureaucrat, needing to be controlled and prohibited from entering

³⁹ See Chapter 3 where I develop the concept of transition from a nation-state to a market-state.

unwarranted fields. It is also an instrumentalist approach. On the other hand the traditional approach views the civil servant as a valuable individual, a servant of the state. It allows for self-motivation to satisfy internal motivators and does not have the instrumental approach that only values tangible 'produce'. I will of course in following chapters be claiming that a common good approach fits more easily with the service notion.

In the 2002 BBC Reith Lectures the philosopher Onora O'Neill (2002) treats of the dilemma regarding trust in public life. She suggests that

Every day we also read of aspirations and attempts to make business and professionals, public servants and politicians more accountable in more ways to more stakeholders. But can a revolution in accountability remedy our crisis of trust? (Lecture 1, p.1)

She talks of 'our new conceptions of accountability, which superimpose managerial targets on bureaucratic process, burdening and even paralysing many of those who have to comply' (Lecture 1, p.5). O'Neill sees the new accountability and control mechanisms having a most definite effect. But, her damning conclusion is

In theory again the new culture of accountability and audit makes professionals and institutions more accountable for good performance. This is manifest in the rhetoric of improvement and rising standards, of efficiency gains and best practice, of respect for patients and pupils and employees. But beneath this admirable rhetoric the real focus is on performance indicators chosen for ease of measurement and control rather than because they measure accurately what the quality of performance is. (Lecture 3, pp.4-5)

2.11 New Public Service – an emerging alternative?

In the early 2000s we see an alternative model being propounded, described as New Public Service (NPS)⁴⁰. This approach is based on a particular assumption

The government belongs to its citizens. Accordingly, public administrators should focus on their responsibility to serve and empower citizens as they manage public organisations and implement public policy (Denhardt and Vinzant, 2000, p.549).

Using the metaphor of Osborne and Gaebler's *Reinventing Government*, Denhardt and Denhardt insist that

The emphasis should not be placed on either steering or rowing the government boat, but rather on building public institutions marked by integrity and responsiveness. (p.549)

Or, again: 'In our rush to steer, are we forgetting who owns the boat?' (p.549)

These authors suggest that public entrepreneurship and neomanagerialism '... threaten to undermine democratic and constitutional values such as fairness, justice, representation, and participation' (p.550). They suggest that the contrast should not be between NPM and old public administration (where NPM will always win). They accept the need for modernisation but suggest

⁴⁰ What follows here is an extensive description of NPS, as presented by Denhardt and Denhardt (2000).

that the contrast should be between NPM and NPS. They see NPM, in its assumption of a normative model, going beyond the call to run government like a business. And it does this because not only does it espouse business techniques but also business values (p.551).

They point to theories of democratic citizenship. NPM uses a model where the relationship between the citizen and the state is one where government exists to ensure citizens can make claims consistent with their self-interest by guaranteeing certain procedures and individual rights. Following the communitarian philosopher Michael Sandel⁴¹ they offer a different view, where citizens look beyond self-interest to the larger public interest, adopting a broader and longer-term perspective which requires a knowledge of public affairs, a sense of belonging, a concern for the whole, a moral bond with the community. Here administrators will see citizens as citizens rather than merely as voters, clients or customers, and will seek greater responsiveness and a corresponding increase in citizen trust⁴².

They also refer to the rebirth of interest in the idea of community and civility, typified by Robert Putnam⁴³. This model sees the need for an active set of 'mediating institutions' that can give focus to the desires and interests of citizens and also prepare them for action in the larger political system. Government can facilitate this civil society.⁴⁴

⁴¹ Sandel, Michael (1996) *Democracy's Discontent*, Cambridge MA: Belknap Press.

⁴² The language of the common good is not used here, but the concept seems to me to be embedded there.

⁴³ Putnam, Robert (1995) 'Bowling Alone', *Journal of Democracy*, 6 (1), pp.65-78.

⁴⁴ Again, we find here a commonality with a theme which is treated in Chapter – subsidiarity. The language used is different, but there would seem to be a confluence of intent.

The third stream to which Denhardt and Denhardt have recourse is what they call discourse theory. Even in the 1960s and 1970s alternative approaches to management and organisation were pursued, seeking to fashion public organisations less dominated by issues of authority and control and more attentive to the needs and concerns of employees and citizens. Discourse theory, in more recent times, they would suggest, realises that governance must be based on sincere and open discourse among all parties, including citizens and administrators. They claim that there is considerable agreement that enhanced public dialogue is needed to reinvigorate public administration and to restore a sense of legitimacy to it (1995, p.553).

Building on these developments, Denhardt and Denhardt suggest the following six-fold agenda for public service reform, contrasting their's with the NPM approach.

Government should serve rather than steer: '... the role of government is transformed from one of controlling to one of agenda setting, bringing the proper players to the table and facilitating, negotiating or brokering solutions to public problems' (p.553).⁴⁵ This first prescription of theirs accords well with the principle of subsidiarity. However a crucial factor here is why government should be seen in this way. NPM can equally subscribe to this prescription, but for reasons of control not for reasons of facilitating the pursuit of the common good.

The public interest should be the aim, not a by-product. Vision setting is not for elected leaders alone. It is also for administrators and citizens with widespread dialogue. Government should facilitate this dialogue, but also ensure that

⁴⁵ The established, and continuously evolving, partnership programmes pursued by the Irish government would be seen by some as meeting this requirement.

solutions arrived at are in the public interest, consistent with democratic norms of justice, fairness and equity. In pursuit of community and societal interests, public administrators need to engage with citizens and with one another so that they can come to understand each other's interests and accept a longer range and broader sense of community and societal interests – this in contrast to a process where administrators respond to disparate voices by debouching on compromises (p.554). This approach resonates with the concept of 'intellectual solidarity' espoused as one of his principles by David Hollenbach in the context of the pursuit of the common good (see Chapter 9).

Their third prescription can also be viewed as espousing a common good approach inasmuch as it views government as facilitating, not necessarily implementing the development of citizens. Government alone, they note, cannot implement a vision. Consequently the government should think strategically but act democratically. Open, responsive, accessible government operates to serve citizens and to create opportunities for citizenship. Significantly, and in stark contrast to NPM, they advocate a service for citizens, not for customers.

Government serves more than the immediate client, including clients of the future and those not seeking an immediate service.⁴⁶

Accountability is not simple. 'Public servants should be attentive to more than the market; they should also attend to statutory and constitutional law, community values, political norms, professional standards, and citizen interests' (p.555). This view is broader and more nuanced than an 'accountability' relying

⁴⁶ The need to provide for citizens of the future is brought into sharp focus by the climate change issue.

primarily on metrics. But I think it can be further enriched by adding the element of accountability to self.

In the new public service which Denhardt and Vinzant envisage, people not productivity would be valued; ‘... shared leadership, collaboration and empowerment become the norm both inside and outside the organisation’ (p.556). Citizenship and public service would be valued above entrepreneurship. Here we see an echo of the view I expressed earlier that one’s chosen anthropology will determine one’s approach to the public service.

2.12 Summary

The modern public service has its provenance in the nineteenth century. From the mid-twentieth century onwards its fitness for purpose was questioned. As the business of government became more complex, academic and practical interest in the application of private sector managerial concepts to the public sector grew. In the closing decades of the twentieth century this focus was radicalised into a movement that came to be termed New Public Management (NPM).

NPM as practised in different countries will have unique features in each administration – indeed one of the dangers in transferring NPM prescriptions from one administration to another is the trap of missing the cultural specific context. Nonetheless it is possible to describe its features in broad outline. Generally it embraces one or more of the following

- hands-on professional management
- explicit standards and measures of performance
- greater emphasis on output controls
- a shift towards disaggregation and decentralisation of units in the public sector
- a shift to greater competition in the public sector

- stress on private sector styles of management
- emphasis on greater discipline and parsimony in resource usage (Hood, 1991, pp4-5).

Further, it is possible to use the following criteria to measure its extent in any administration

- the use of private sector management models and techniques
- commitment to a plurality of modes of service provision (business, NGOs, the public sector itself – with emphasis on cost, choice and quality in the mix of providers)
- a revised role for government, ‘steering’ not ‘rowing’, a strong belief in market or quasi-market mechanisms
- attempts to separate political decision-making processes from the management of public services (Carroll and Steane, 2002, pp. 195-6).

NPM can be viewed as having delivered mostly in terms of efficiency – less in terms of effectiveness because its focus is on the ‘how’ rather than the ‘what’. However, at this juncture, given that it has been embedded in a range of administrations for a considerable period, it is possible to take a more over-arching view of its ramifications. That over-arching view suggests some significant un-anticipated effects. A one-size-fits-all pattern is discernible. Ethical and trust issues may not have been given sufficient consideration. The management so extolled by NPM may ignore, at its peril, that there is a wider issue – what is to be managed? What is there to be efficient and effective about?

However, a fuller evaluation of NPM needs to look beyond the narrow confines of immediate deliverables. It needs to consider more than mere tangibles. NPM must also be seen as a transformer of the very nature of the public service. It has

unanticipated side effects. It has led to an instrumentalist view of the individual public servant by placing that individual in the framework of an anthropology that does not value the dignity of the individual.

At the opening of this chapter I described my overall task to be one of critiquing the NPM approach of the Irish public service modernisation programme – and of suggesting that the common good/subsidiarity frame work would be better suited to the purpose. I have in this chapter begun that process by describing NPM, analysing its provenance and its philosophical underpinnings and evaluating its performance. But, more than that I have tried in this chapter also to evaluate NPM by critiquing it internally and beginning to contrast it and its anthropology with that enshrined in the concepts of the common good and subsidiarity.

Chapter 3

The Irish Civil Service Modernisation Programme

A morality that believes itself able to dispense with the technical knowledge of economic laws is not morality but moralism. As such it is the antithesis of morality. A scientific approach that believes itself capable of managing without an ethos misunderstands the reality of man. Therefore it is not scientific. Today we need a maximum of specialised economic understanding but also a maximum of ethos so that specialised economic understanding may enter the service of right goals. (Ratzinger, 1986, p. 199)

The vocabulary of SMI/DBG reflected a technical (public management) view of the public service delivery. It was about securing efficiency gains in a business context where policy and purpose were considered to have been already thought through, and could therefore be taken as a 'given'. (PA Consult, 2002, p. 101)

3.1 Introduction

This chapter focuses on the current modernisation programme in the Irish civil service, dating from 1994 when what came to be known as the Strategic Management Initiative (SMI) was

introduced.⁴⁷ The literature used and the prism through which the analysis is refracted is that of management theory in the main, with some reference to historians and political scientists. The objective is to identify the rationale for that programme and thereby identify its nature – which will lead me to situate it in the family of NPM type programmes. My broader intent is to demonstrate that the evolving modernisation programme has had impacts on how the public service conceives of itself and its relationship both with government and citizens such that there is a danger of losing some of the crucial elements in the system for promoting the common good. My view is not that the modernising has not had some positive effects, but rather that it has, because it is rooted in an NPM approach, become blind to values heretofore central to the public service in Ireland. It is questionable, for instance, whether a whole-of-government approach has been maintained; whether a ‘non-trust’ environment has been created; whether the civil service has unwittingly changed its perspective on its own role; whether the consumer has been set centre stage at the expense of the citizen. I will further contend that, as suggested in a review of the programme and summarised in the second of my opening quotes at the start of this chapter, the modernisation programme became entangled in one view of accountability, a metrically driven view.

In order to understand the impacts, anticipated and unanticipated, of the modernisation programme, it is necessary to examine what it is that is being reformed. As stressed in Chapter 2, it is a *reform* programme. Before proceeding then to the main objective

⁴⁷ A further major move in public service renewal is planned for the near future, following on a recent review of the Irish public service by the OECD. This thesis is however a critique of the reform programme to date. Indications are that the initiatives likely to emerge in the near future will be in the vein of what has happened since 1994, but also focusing on the structure of the public service. See footnote 74 below for details on the 2008 OECD Report.

of the chapter – a critique of the modernisation programme as it has evolved – a number of introductory issues are dealt with.

First, the provenance of the system and its relationship to its UK predecessor is examined. This will reflect back to the distinction made in Chapter 2 between NPM and OPA. The Irish model at the foundation of the state in 1922 was very definitely in the OPA mould. The system was inherited from the UK and therefore has the main hallmarks of what is described as the Westminster model.

Second, the evolution of the state from 1922 onwards is described showing how it responded to different perceived needs presenting themselves. The emerging state in 1922 presented different needs than the economically thriving state of the 1990s. Needs provoke responses. The responses, and the originators of the responses, are described as are the implications of the provenance of those responses. This section concludes with the suggestion that the current modernisation programme is a response to a perception that the dominant demand from the electorate now is for quality services.

Third, the legislative and accountability features of the Irish system and the consequent implications for how the system works are charted. This, again, enables us to see the issues that are perceived to be in need of modernisation.

Fourth, the chapter looks at various attempts at reform from the foundation of the state up to 1994, these attempts providing further insights into the nature of the system and the issues that the current modernisers are addressing.

3.2 The provenance and core elements of the Irish governmental system

The Irish civil service is a legacy of British rule in Ireland⁴⁸. The British civil service in its modern format is a late nineteenth century⁴⁹ creation. It is commonly referred to as the Westminster model, where the civil service is accountable to ministers, they to parliament and it to the people. The role of the civil service in such a system is

... to impart expert policy advice to the minister; to play an independent disinterested role; to take a longer-term strategic view; to ensure efficient delivery of services; and to be the guardian of the public interest. (Byrne et al, 1995, p.7)⁵⁰

⁴⁸ Since 1800 Ireland had been ruled from Westminster. The Act of Union of 1800 abolished the Irish Parliament but retained the executive. Strangely, that executive became known as the Irish government. It was headed by the Lord Lieutenant, the Chief Secretary (the minister with parliamentary responsibility for Irish affairs) and the Under Secretary (the most senior civil servant). It was this system, modified to adapt to the size and needs of the new state, that was the legacy to the incoming government in Ireland in 1922.

⁴⁹ Most commentators agree that the Westminster model emerged following the Northcote-Trevelyan report of 1854 into the British civil service. At the centre of this ideal are the notions of a merit based, politically neutral, professional career service. Three characteristics of the civil service were laid down in the 1854 Northcote-Trevelyan report:

Permanence – Civil servants do not change when ministers or governments change, they bring stability and continuity allowing new ministers to take up office easily and the process of government is disrupted as little as possible.

Neutrality – Civil servants must be politically impartial if they are to stay in office while governments change. Therefore civil servants must not take part in any political activity, although they may vote in elections.

Anonymity – Politicians are elected and therefore must take the decisions. They must also take the credit or blame for policies. Civil servants must remain anonymous in the sense that they should not be held publicly accountable for their advice or for policy.

⁵⁰ I am referring here to a special issue of the journal *Administration*. It was compiled by a group of assistant secretaries from the Irish civil service as part of a post-graduate research project. While not an official document, it had wide repercussions and was widely seen as representing the views of the

The model was revised at the turn of the nineteenth and twentieth centuries to prevent corruption and fraud, by making it difficult for any one individual to make financial or policy decisions in isolation (Byrne et al, 1995, p.8). Furthermore, according to the Irish historian Ronan Fanning in his classic history of the Irish Department of Finance, the Great War of 1914-18 had ‘... ruthlessly exposed the weaknesses of the British civil service ... it had revealed, above all, the need for a more homogenous, centralised and efficient civil service’ (Fanning, 1978, p.7)⁵¹. The intention was to create a strong sense of accountability, in the sense of honest stewardship of the public’s money and resources. It fostered values of impartiality, integrity, collegiality and concern for the public interest. A uniform civil service was established under the control of the Treasury⁵². One author has described this kind of system as

...based on the ideal of the abstract, autonomous and monolithic state which is situated above special interests so that it can defend an objectively defined general interest. The civil servant is the incarnation of this opinion, he (sic) carries the continuity of authority. He has to take care that the common interest⁵³ comes first,

senior civil service on modernisation. I will be referring to it extensively in this chapter.

⁵¹ It is curious at this point in time to reflect upon the language used by Fanning in describing the reforms of the early twentieth century. Some of the ideals of the reform movement which he describes – uniformity and homogeneity for example – are precisely those facets of the civil service which New Public Management set about replacing (see Chapter 2 on New Public Management above).

⁵² From that reform came the model of a government department as we know it today in the Irish civil service. It is a hierarchical system with a secretary (later changed in Ireland to secretary general), assistant secretaries, principal officers and assistant principal officers. It gave a critical role to establishment officers (later to be named personnel officers and later still human resources officers) and to accounting officers (this role was assigned to the secretary of the department).

⁵³ This term ‘common interest’ as used by the author here should not be confused with the ‘common good’. Common interest here is more likely to

preceding private or other interests in society
(Hondegheem, 1985, quoted in Mc Namara, 1986, p.10)

Another source suggests that this kind of system

... may lead to a strong sense of accountability, in the sense of honest stewardship of the public's money and resources but perhaps weakens the sense of personal responsibility for the consequences of one's actions.
(Byrne et al, 1995, p.9)

This has been a constant issue of discussion and is of course at the heart of the NPM criticisms of OPA.

The civil servants, then, who inherited the structure of government at the foundation of the Irish Free State in 1922 inherited a model that was new, quite centralised and strong on accountability and integrity. But there were other major developments in the Irish civil service shortly before the new state came into being. In the spring of 1920, Lloyd George's Westminster government '... found the Irish executive at Dublin Castle sadly defective. The government's attempts to remedy this state of affairs led to sweeping changes in the Irish administration' (Fanning, 1995, p.10). So serious was the situation perceived to be that an investigation was launched under the aegis of the head of the British civil service, Sir Warren Fisher. The government of Ireland he declared

be what is otherwise referred to as the 'public interest'. The authors here are senior civil servants and most likely use the term 'common interest' in a colloquial sense common to their profession. They would see themselves as guardians of this so-called 'common interest' in the context of governments coming and going.

... strikes one as almost woodenly stupid and devoid of any imagination. It listens solely to the ascendancy party ... and it never seemed to think of the utility of keeping in close touch with opinions of all kinds. (Quote from Lloyd George's papers – F31/1/33 – Fanning, 1978, p.11).

A hand-picked team headed by Sir John Anderson and Alfred Cope was dispatched to Dublin Castle. Fanning (1978, pp.12-13) reports that the outcome of this initiative was crucial for the incoming new government of 1922 and the transfer of power. At this remove, what we can infer is that the Westminster model, with its emphasis on the differing, but balancing, roles of politicians and civil servants was thoroughly embedded in the new state, and as Fanning describes was further strengthened by the fact that many of the British reformers stayed with the new state to assist in the earlier years.⁵⁴ Ireland then inherited what I called in Chapter 2 an OPA (Old Public Administration).

3.3 Functions of state action and their implementation since 1922

The structures then were put in place as the state was founded. As circumstances would change, adaptations would be made to meet newly perceived needs. The performance and processes of the inherited governmental system developed in the following years in response to the demands made on it by the new state. In what follows I examine those changes in an attempt to understand what the establishment of the day saw as their role, leading to an examination of who in the late twentieth century prescribed the appropriate role for the public service. In other words, I propose here to contextualise various stages of that

⁵⁴ Fanning is quite fulsome in his description of the inheritance

... the provisional government inherited an administrative machine which had been thoroughly overhauled by some of the best brains in the British civil service. (Fanning, 1978, pp.12-13)

development to exemplify what was asked of the governmental system and how it reached the stage in the late twentieth century when the modernisers focused their analytical tools on it.

The American political scientist Richard Rose (1976) describes three functions of the modern state – (1) defining activities, things that all states undertake as soon as they are established, and include areas such as the protection of the territory of the state, a police force and judicial system, issuing a currency, taxation and so on; (2) mobilisation of physical resources, roads, railways, environmental infrastructure, supports for economic development and agriculture; (3) providing social benefits. Only the first of these three necessarily falls to the state. The mobilisation of resources and the provision of social benefits are handled in different ways in different states, these activities sometimes falling to the private sector or to non-governmental organisations of one kind or another.

Ireland 2022. Towards One Hundred Years of Self-Government (Callanan, 2007)⁵⁵ uses the above categorisation and describes the four functions⁵⁶ (a fourth is added to the Rose classification) of the evolution of the Irish state. The period 1921 to 1932 was one of consolidation, mainly one of defining activities with some mobilisation of resources. 1932 to 1957 is presented as a period of nationalist activism during which government pursued economic autarky and attempts at national self-sufficiency and invested increasingly in mobilising physical resources. The

⁵⁵ This was a research project of the Institute of Public Administration tracing the development of the Irish public service over the history of the state and creating scenarios attempting to visualise what the public service needs to be at the hundred-year mark, 2022.

⁵⁶ The functions are of course overlapping. Some are pursued constantly, some intermittently. In the description in this section of this chapter the intent is to show that the state was preoccupied more prevalently with some functions at different stages of its development, responding to the perceived needs of the time. Hence the reference to 'stages'.

period from 1957 to the mid-1980s is seen as one of economic development when there was ‘... increasing exposure to new social, cultural and political influences, and ultimately paving the way to membership of the EEC and increasingly adopting approaches based on *providing social benefits* through the state as well as through voluntary and private organisations’. *Ireland 2022. Towards One Hundred Years of Self-Government* describes the fourth phase, from the mid-1980s to the present time, as one of economic crisis and rejuvenation. This period was

...marked by strong growth levels, rapid increases in employment, increased economic prosperity and disposable income for a sizeable proportion of the population, a healthy budgetary situation, and a reversal of the historic route of emigration and a demand for the importation of labour. A mix of public policies in various fields, and demographic factors, made an important contribution to this favourable turnaround. (p.19)⁵⁷

These stages made different demands on the governmental system. In the first stage, for instance, basic structures such as a police force and governmental agencies had to be put in place. This demanded strong decisive and pretty immediate responses both from the political and administrative arms of government. The second period, 1932-57, saw a protective state developing, with government securing the identity of the state during the Second World War and establishing the republic. In the third phase, 1957 to the mid-1980s, a new breed of politician and civil servant emerged – freeing themselves from the introverted

⁵⁷ One year later, the research was concluded in 2007, the authors might wish to revisit their analysis as Ireland seems now to have entered a further stage characterised by economic and fiscal turmoil.

mindsets of the previous stage and building the economy, conscious of the demands on a small open economy.⁵⁸

The governmental system is currently adapting, in the fourth stage described above, to what it sees as the current needs of the state. It is to the demands of this latter stage of development that the current public service modernisation programme addresses itself. There is a view that the expectations of the public have greatly increased in recent years. The American constitutional theorist Philip Bobbitt suggests (Bobbitt, 2002) that we have moved from a ‘... “nation state”, where the legitimacy of the state is based on its claim to being responsible for the welfare of the nation, to a ‘market state’, where the legitimacy of the state is based on maximising the opportunities of its citizens’ (*Ireland 2022. Towards One Hundred Years of Self-Government*, 2007). It is in attempting to address this historic shift that governments have turned to the New Public Management movement for inspiration. As suggested in Chapter 2, acceptance of the need to maximise the opportunities of its citizens as the primary need to which government should respond is based on a particular anthropology, one that sees the primary characteristic of the individual as a wish to self-maximise. The Irish response seems to fall into this category. However, again as emphasised in Chapter 2, responses are not homogenous. Following the Leuven based public administration specialists Pollitt and Bouckaert (2004, pp. 94-99), we can see three different categories: the *maintainers*, such as Germany and the European Commission, who have adopted a generally conservative approach to lightening bureaucracy; the *modernisers* such as Finland, the

⁵⁸ One of the most significant and widely commented upon developments of that era was highlighted in 1958 when the government of the day allowed the publication, under his own name, of a blueprint for economic recovery authored by the Secretary of the Department of Finance, Ken Whitaker. Perhaps here we see the harbinger of more centre-stage activity of civil servants as would become the case in the 1990s when the role and function of the civil service was being reviewed.

Netherlands, Sweden, Belgium and Italy, who believe in a large role for the state but acknowledge the need for fundamental reforms; the *marketisers* such as Australia, New Zealand and the UK who believe in the introduction of more competition within the public sector through large-scale contracting out, contractual appointments, more open recruitment, and greater use of private sector tools. John Murray (2001, pp. 8 and 10), the Irish business studies theorist, has argued that Ireland best fits within the category of an active 'moderniser'. The other defining characteristic of the Irish venture is its progenitors – the public service itself. The Irish modernisation programme which began in the mid-1990s was public service inspired and public service driven.

3.4 Accountability in the Irish governance system: legislative basis and practice

The Irish civil service is a creature of legislation. Its organisation, the recruitment system, the accountability procedures, and so on, are based in legislation. If one is to understand the ethos of the Irish civil service, one must understand how it is framed by the relevant legislation. Two pieces of legislation are crucial to the accountability measures governing the civil service, and therefore to the behaviour of civil servants, the Ministers and Secretaries Act 1924 and the Comptroller and Auditor General (C&AG) Act 1993.

Shortly after the foundation of the state, the key piece of legislation that governed the new civil service was passed – The Ministers and Secretaries Act 1924. Under its provisions the heads of departments are appointed by government, and ministers appoint other staff. A key element of this Act was its introduction of the notion of the 'corporation sole'. The minister so defined is the legal personality of the department. This means that all

actions or decisions taken in a civil service department, by any civil servant, are deemed to be undertaken in the name of, and with the authority of, the minister. It is a strong accountability feature. It is the minister who answers to parliament, through debates in parliament, through communication with the media and so on.

This is the statutory position. However the practice is more subtle. Everyone knows that the minister cannot in reality take every decision, however minute. The reality is that ministers are seen to be responsible for major decisions, and certainly for policy decisions. However, a case of tension between a minister and a civil service head of department arose in 2005 which pointed to the changed circumstances that have come about gradually since this 1924 legislation was passed. In an investigation of illegal charges being levied on elderly residents of nursing homes by the Department of Health and Children, the issue of whether it was ministers or senior civil servants who were at fault arose. No definitive conclusion was arrived at, but it was the civil servant head of the department who was obliged to step aside from his post. An Oireachtas Committee (Report, 2005, p. 11) commented

The Ministers and Secretaries Act, 1924, established the legal basis of Government Departments. It was necessary that each department have a legal personality and the Act found this in making the Minister the 'Corporation Sole'. This legal device was fully congruent with the political doctrine that, in a democracy, the administrative system must be subordinate to the political system. However, the growth in the scale and scope of government activity, and

the changing political landscape have inevitably complicated this relatively simple picture.⁵⁹

The difficulties in separating administrative and political responsibility are discussed by Jonathan Boston, the New Zealand public sector theorist, in the following manner

Some people seem to assume that if Person A is responsible for Z, then Person B cannot also be responsible for Z. Hence if a departmental chief executive is responsible for the management of a department, then a minister cannot be responsible ... But such a view is nonsense ... Within the public sector, shared responsibility is the norm, rather than the exception. Cabinet ministers are *collectively* responsible for what the government decides ... ministers are *politically* responsible (to parliament and the public) for what their departments do, while chief executives are *managerially* responsible for the operations of their departments. Necessarily these respective responsibilities overlap a good deal; they cannot be precisely delineated (in Boston, J. (1996) 'Accountability and Responsibility: the impact of recent public sector reforms on administrative conventions', paper prepared for CAPAM/NZIPA Regional Colloquy, Victoria University Law School, Wellington. Quoted in Boyle, 1998, p.22)

However, a close reading of the above reveals the difficulty of 'delineating', because in effect Boston here is guilty of an *idem*

⁵⁹ Another case arose in 2007. The Minister for Transport found himself facing public ire over a decision by the previously publicly-owned air transport company, Aer Lingus, to abandon its flight schedule from Shannon to London. It transpired that while he was ignorant of the impending decision by the company, some of his civil servants were aware. An internal enquiry followed and the minister accepted publicly that the secretary general of his department was not culpable even though she had not brought the issue to his notice in as timely a fashion as she might have.

per idem explanation. To tell us that the cabinet is collectively responsible, the politician is politically responsible and the manager is managerially responsible reveals little if anything.

What is important for our purposes here is to note how this somewhat vexed question overshadows the issue of responsibility as between ministers and civil servants. Even among civil servants themselves there is a view that this part of the legislation

... tends to make civil servants overly cautious in decision-making or in proposing policy changes. Issues tend to be examined against the yardstick of what the minister will think – this can in fact restrict the range of options presented to the minister to those which civil servants think the minister will find most acceptable. (Byrne et al, 1995, p.25)

The programme of modernisation accordingly sets itself the task of making civil servants more 'accountable'. We see here a 'refrain' that will occur and re-occur throughout this chapter – the desire to create a more 'accountable' (but also more influential in the process) civil service, while, I would suggest, not being mindful of the demands of democratic exigencies.

The other major piece of legislation which governs the civil service is the Comptroller and Auditor General (C&AG) Act 1993, which is an updated statute going back to legislation dating from 1886.

Accountability has an internal and an external dimension. Internal administrative accountability concerns the accountability of civil servants to their own administrative superiors. But, with great stress being laid on it, external administrative accountability, effected by the Department of Finance and the

C&AG are central. Though the minister is the legal personality of the department and takes all responsibility, there is one exception. Legislation specifies that the accounting officer, usually the civil service head of the department, is specifically accountable to parliament, through its Public Accounts Committee, for expenditure by the department. This provision leads to a position where 'inputs' and the processing of them become focal, due process is demanded at all times.⁶⁰

Up to recently the C&AG was solely concerned with financial matters. However, the 1993 Act extended the remit into the area of management effectiveness or value for money (VFM). The then C&AG made it clear at the time of the implementation of this Act, in a letter to accounting officers, that he would be insisting that each department have

- clear statements of its objectives and the criteria to assess performance in relation to these objectives
- well-defined responsibility for ensuring periodical critical scrutiny of performance and for the initiation of appropriate corrective action if warranted
- management information systems capable of delivering reliable and timely data to underpin the system of performance review

⁶⁰ NPM criticises this concern with 'inputs' and demands more attention to 'outputs', and down the line to 'outcomes'. Inputs can be taken to refer to the financial and human resources made available to a particular task (for instance teacher time and grants to students), outputs to the targets set for the task (for instance, the number of students who complete a given examination successfully) while outcomes would refer to the final impact of the policy (for instance the education level of a given population or area and its impact on the life of that group). These distinctions are very much in vogue in administrations that have adopted a NPM approach. The measurability of outputs if not outcomes, which are notoriously difficult to measure or indeed attribute to any one initiative, is deemed to be more important than controlling the use of inputs.

- adequate staff training and access to expert advice needed to enable the department to meet its performance review obligations. (Byrne et al, 1995, p.23)

Traditionally, non-financial accountability has not been strong in the Irish civil service. It has been diffuse, with a ‘... lack of formal, systematic specification of performance objectives and targets in many areas’ (Byrne et al, 1995, p.22). The most recent modernisation programme, as we will see in the course of this chapter, is heavily concerned to redress this perceived lacuna by insisting on measurability and the embedding of so-called ‘business plans’ in each department.

3.5 A history of stasis – Reforms 1922-85

The civil service, its organisation and systems, remained largely untouched from the foundation of the state to 1969⁶¹. In the words of a group of senior civil servants

... no major changes have been made in the basic structures and operating principles of the Irish civil service since the foundation of the state. (Byrne et al, 1985, p.46)

In 1969 the Report of the Public Service Organisation Review Group (popularly known as the Devlin report) was published. Its

⁶¹ There was an attempt to review the system in the 1932 when the Brennan Commission sat to review the workings of the civil service. However, the findings of that commission were unremarkable and did not result in any action. Murray (2001) sums up the approach of the commission thus: ‘While generally satisfied with what it observed, it embodied a view that the state could play a more active role in economic and social development’.

central thrust was the desire to have government more focused on policy. It proposed the formation of executive agencies, to be known as Aireachts, which would not be part of the day-to-day business of the departments. Accordingly the minister would not be answerable to the Dáil for detailed actions. It proposed the establishment of a Department of the Public Service, with its own minister, to oversee the implementation of its policies.⁶² Each department, within its Aireacht, would have four specialist units – organisation, personnel, finance and planning. The intent of this central proposal of the Devlin Report was to change the corporation sole provision.

Despite large investment of resources to progress implementation, little real progress was made⁶³. Thereafter, there was little progress in the 1970s or early 1980s. The two most important initiatives of that era were the creation of the Ombudsman in 1984 and the appointment of a Top Level Appointments Committee, to recommend appointment to assistant secretary and secretary levels based on merit.

⁶² That department was created and operated for a number of years but was eventually subsumed in the Department of Finance (from which it had originally been hived off).

⁶³ It is commonly thought that the Devlin proposals were doomed to failure because the Irish political culture is such that no politician, minister in this case, will be satisfied to be primarily focused on policy and leave implementation to civil servants in the operational sections of departments. The clientism of the Irish political system, it is suggested, inevitably pushes ministers towards detail. The centrality of clientism has been the received wisdom since the publication in 1963 of the seminal article 'Going about persecuting civil servants' by the TCD political scientist Basil Chubb; a wide literature is available on this feature of Irish public life, see for instance O'Halpin, Komito etc. However, perhaps not surprisingly given their role as modernisers, a counter view is put forward by the senior civil servants in Byrne et al (1995):

The perceived unwillingness of ministers to 'give up' responsibility for day-to-day administrative matters is widely quoted as a major stumbling block to any major structural change in the relationship with their departments. However, in the interviews which we conducted for this study, the position of the minister as corporation sole was not seen by anybody as a major impediment to public sector reform (p.25).

Appointments to secretary level were for the future to be for seven years only.

3.6 Proposed reform derailed by economic problems – 1985 White Paper

Though the Department of the Public Service continued to operate, no major attempt to intervene significantly in the operations of the civil service were proposed until 1985. In that year a white paper, *Serving the Country Better*, was published. It concentrated on management in the civil service and called on each department to have: clear statements of aims and objectives; and specific results stated in advance of action. It recommended decentralisation of power, both from the central powerful departments (most specifically the Department of Finance) to line departments and within departments. It placed particular emphasis on greater responsiveness to citizens' needs and to a more efficient, courteous and prompt service.

John Murray, the TCD based management specialist who has done considerable research on the Irish public sector modernisation programme and will be referred to widely in this chapter, sums up the fate of the white paper thus

The White Paper *Serving the Country Better* was produced in 1985 with a major emphasis on addressing concerns about the inherent contradictions in the governing doctrine of Ministerial responsibility. It proposed the establishment of executive offices. However, by the mid and late eighties very difficult economic and fiscal challenges absorbed the attention of the political system and public service reform had largely been abandoned by 1987 as a political priority. The

Department of the Public Service was disbanded and the Department of Finance resumed the functions it had before 1973. (2001, p.4)

Two main outcomes came from this initiative. The concept of 'management' was put on the agenda for the public service and there was a cultural re-focusing on the need to serve the public as clients and customers (Byrne et al, 1995, p.47), a theme that would feature strongly in the major push of the 1990s. However, speaking of attempts at reform pre-1990, the senior civil servants who contributed to Byrne et al (1995) summarise as follows

One rather suspects a lack of courage by all parties to espouse and manage necessary fundamental changes to the present system. (p.48)

3.7 The Strategic Management Initiative (SMI) : A civil service-led modernisation programme, focusing on measurement and services to customers

The official programme to modernise the process of government now (2008) is encapsulated in the following phrase from the dedicated website dealing with this process

The purpose of the modernisation programme is to achieve an excellent service for the Government and for the public as customers and clients at all levels, building on the good service that is provided at present.(Bettergov.ie, 2006)

This objective, with its emphasis on 'the public as clients and customers' and on 'service', has taken shape over the period since 1994 when the Irish public service modernisation

programme took a giant step forward. A movement began which was to take root in the public service over the following decade.

In February 1994 the Taoiseach, Albert Reynolds TD, invited ministers and secretaries⁶⁴ of departments to a meeting where he outlined a strategic management initiative (SMI) for the civil service. All civil service departments, he announced, would henceforward be obliged to produce strategy statements. He identified three areas that would be addressed by the production of strategy statements: the contribution public bodies can make to national development; the provision of excellent service to the public; and the effective use of resources. He also announced that a Co-ordinating Group of Secretaries would lead the process.

Accounts of the start of the SMI process invariably trace it to this announcement by the Taoiseach. However, there is a more nuanced view which would suggest that there was a growing sense of a need for what they termed a more strategic view among some senior civil servants preceding that announcement. A network of assistant secretaries, the second level of seniority, had been meeting under the auspices of the Civil Service Training Centre, an internal division of the Department of Finance. The members of this network were thinking along strategic lines. The fact that the SMI over the next decade was totally driven by the senior civil service, rather than by the political establishment, would suggest that the original launch by Taoiseach Reynolds was a political endorsement of an existing mood rather than a fresh political initiative. The first major review of the SMI (PA Consulting Group, 2002) concluded

⁶⁴ Heads of civil servants were referred to as 'secretary' at that time. They were later designated 'secretary general'. This thesis will use the title applying at the date of the publication being cited.

...we observed only limited evidence of a political involvement in – or contribution to – the evolution of a Strategy Statement. (p. 86)

This view of the provenance of the modernisation programme fits more easily with the ‘moderniser’ description attached to the programme by Murray (see above). It also fits with the more technocratic as opposed to political tone and ethos of the whole process as it evolved.

The Co-ordinating Group produced a set of guidelines for strategy statement preparation and by late 1994 a first set of strategy statements had been prepared by most departments. These statements followed a classical line, reporting on the process used, the mission of the department, the strengths, weaknesses, opportunities and threats in the environment, the goals of the department and objectives for divisions.

In 1995 the then head of the public service section of the Department of Finance, John Hurley (1995, pp.25-26), presented a paper early in the SMI process which pointed to the types of modernisation that the Department of Finance envisaged. He stated that the SMI had emerged in Ireland because of the influence of the cost of public services on the economy, the ever-increasing demands for new services, public expectation of improved standards and accountability and the pace of change in society generally. Interestingly, Hurley also adverts to internal pressures that were evident at the time. He reflects the concerns of sections of the senior civil service and of management in the Department of Finance for modernisation. His 1995 paper pointed to: a perceived need for better focus in direction; a need to prioritise; awareness of deficits in feedback, analysis and performance information; short-termism; barriers to good personnel and financial systems and the need to advance

information technology in the civil service. This Department of Finance inspired paper also showed awareness of the dangers that could unwittingly be visited on reform⁶⁵

... we will need to ensure that any changes that may be introduced do not weaken the traditional attributes and qualities of public servants, namely, integrity, equity of treatment, probity, etc. (p.26)

The SMI was to be introduced on a phased basis, Hurley announced. Phase 1 would involve all civil service departments in preparing strategy statements. Phase 2 would move to the translation of those strategy statements into specific strategies and associated measures of performance. Hurley envisaged the measuring of performance in the SMI thus

Performance measurement is crucial to any dedicated process of strategic management ...The SMI is designed ... to place more emphasis on measuring results and assessing outcomes, and thus to make it easier to frame future actions, policy etc, on the basis of experience rather than conjecture. (p.30)

He emphasised that increased responsibility and accountability would lead to an increased emphasis on performance and its measurement, with many implications for existing personnel management practices and policies. This latter point is crucial to an understanding of the modernisation programme. Measurement would become key. Indicators at department, section and even individual level would become the focus.

⁶⁵ Hurley here exhibits the traditional loyalty of the senior civil service to the values of the Westminster model bequeathed to the Irish civil service at the foundation of the state. The notion of being the guardian of the public interest is central to this set of values.

Besides performance measurement, Hurley (p.38) also describes another concept that would be central to the Irish modernisation programme in the following years.

Ultimately, however, reform will be largely meaningless unless it focuses firmly on the needs of the customer of public services, and the demand from taxpayers for improved quality within existing costs. (p.38)

This issue, 'quality customer care' as it came to be labelled in the modernisation programme, merits further analysis. By 1997, the government had launched a major 'Quality Customer Care Programme'.⁶⁶ Individual departments and offices promulgated their own policies on customer care. For instance, *The Code of Practice* (Department of Finance, for the whole civil service); *Charter of Rights* (Revenue Commissioners); *Guide to Schemes and Services* and *Charter of Rights* (Department of Agriculture and Food); *Charter of Rights for Hospital Patients* and *Shaping a Healthier Future* (Department of Health and Children); *Better Local Government* (Department Of the Environment and Local Government) and a range of documents from the Department of Social and Family Affairs.

A further central initiative on customer care was taken in July 2000 when the government announced that its Quality Customer

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It demanded that each government department/office would

- Set out clearly details of services which are to be provided and how departments and offices are structured to deliver their services.
- Specify the standards which have been set out for delivery of these services.
- Detail the arrangements for getting in touch with departments and offices by telephone, letter and personal visit.
- Explain the arrangements for consulting with customers on services provided.
- Outline the arrangements for monitoring and review on a regular basis and for reporting on the achievement of service delivery targets. (Humphreys, 1998, p. 32)

Care programme would be enhanced to take account of quality service standards, equality/diversity; physical access to public buildings; information to customers; timeliness and courtesy; complaints; appeals; consultation and evaluation; choice in service methods; official languages equality; better co-ordination; and a focus on what it called the 'internal customer' (Boyle and Humphreys, 2001, p.29).

3.8 The SMI – legislative consolidation of the technocratic process and the metamorphosis of the language of public service

In 1996 a document was published that was to have a significant impact on the progress of the SMI. Its authors were the so-called 'Co-ordinating Group of Secretaries', effectively the administrative heads of government departments acting collectively. It was delivered in response to a request from the Taoiseach but in effect was a copper-fastening of the technical approach which pervaded the process. This report, *Delivering Better Government* (DBG), set out a range of initiatives to enhance service quality, accountability, transparency and freedom of information. Its objective was to ensure that the civil service was efficiently and effectively managed to achieve the objectives set for it by government. The central thrust of the report was stated as 'the achievement of an excellent service for the Government and for the public'.

This document became the blueprint for developments in the SMI in the immediately following years. Given that, it is important to note again that it came from the senior civil service. In other words, the Irish reform programme was a top down driven initiative, but from the administrative, not the political, top. The views expressed by the senior study group of civil

servants to whom I have referred above (Byrne et al, 1995) are a further pointer to the civil service view being the driver of change. They said that, on the one hand, theoretical models provide coherence, but that there was a need in their view to avoid rigidity. In their view, while

... the theoretical frameworks – public choice theory, agency theory, transaction cost analysis and managerialism – which provide the theoretical underpinning for the reforms in the jurisdictions studied ... provide some useful insights into the aspects of the operation of public services ... we consider it sensible to avoid a rigid adherence to any of those theoretical frameworks. Instead we would favour a more pragmatic and selective approach, aiming to marry harmoniously the best of the new and old values and approaches (p.132)⁶⁷

⁶⁷ They took this view because, they argued, the theoretical models in question are ‘... based on premises which ignore or misrepresent significant differences between the public and private sectors and important elements in the motivation of civil servants’ (p.132). This approach mirrors that reflected in the quote from Hurley (1995) above. There was an acceptance of a need for change, but a pragmatic acknowledgement of the need to retain the best of the old. The implementation in the following years does not reveal a continuing focus on the retention of the old.

The eschewal of theory would not be untypical of the Irish civil service. The senior service that evolved from the foundation of the state was populated with solid middle class men (certainly in the early years) for the most part with secondary education. As a class they tended to be suspicious of theory. Brian Cawley of the Irish Institute of Public Administration suggests that the Irish public service regarded pragmatism benignly because there was a legacy from ‘... an education system that discouraged the speculative and reinforced the natural bent towards the practical, the un-intellectual, the non-speculative’ (here quoting the first director of that Institute from the 1960s).. He also says that there is a less benign view of that pragmatism, that it leads to a near-sighted and ad hoc approach, failing to provide any intellectual scaffolding or sense of vision to support the public service reform process. However, it could be claimed that in the case under discussion here the senior civil service did of course actually embrace a new theoretical framework, a ‘pick-and-mix’ framework drawing as suited their purposes on the various philosophical underpinnings of NPM.

DBG then from a civil service perspective argued on social and economic grounds. It had an eye to the well-being of the citizen and coherence of society. It took account of the importance for national competitiveness of the work of the civil service. It identified six key areas: delivering a quality customer service; reducing red tape; delegating authority and accountability; introducing a new approach to human resource management; ensuring value for money; and supporting change with information technology.

DBG sketched the conditions necessary for achievement of its vision. It envisaged a new management structure and new approaches to human resource management, a performance management system, reform of the financial management system and effective use of information technology. DBG on reflection must be viewed as a technical, perhaps even technocratic, report which further enhanced the direction of the modernisation programme towards a 'government as service provider' perspective. In its administrative-driven thrust it was, unwittingly I would suggest, changing the operating theory underpinning the relationship between government and people. In such a view the common good must yield to the strongest interests.

As the SMI process moved on it took shape in legislation, in an initiative on customer care (referred to above) and in a revised approach to regulation.⁶⁸ Along the way the language in common currency changed.

⁶⁸ Bureaucracy and 'red tape' were the bêtes noires of the approach to NPM espoused by Osborne and Gaebler (1993, See Chapter 2 above). Not surprisingly therefore we see attempts to tame these bêtes noires in the Irish modernisation programme. In 1999 a policy paper on regulation was published – *Reducing Red Tape : An Action Programme of Regulatory Reform*. The following specific actions were proposed.

- Each department and office would consult with customers and interested parties on regulatory reform.
- Each department would thereafter list legislation and identify scope for consolidation, revision or repeal.

Murray (2001, p. 9) believes that ‘...legislative change broke the overt

resistance to devolved power and accountability in one clean sweep’. It is indeed true that a number of legislative Acts underpinned the progress of the SMI. Among the most important of these would be: *The Public Service Management Act, 1997*

It placed the onus on government departments to produce strategy statements on a statutory basis; *The Freedom of Information Act, 1997*, which provided a legal right to the public to access official and personal information held on official files⁶⁹; *The Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997* giving committees increased powers and accordingly more access by parliament to public servants⁷⁰; *The Ethics in Public Office Act, 1995*. This applied to both Oireachtas members and senior public

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- Each department would ensure that the views of its customers/users were taken into account in the review of the quality/quantity of legislation in force.
 - All memoranda for government would be checked by reference to a standard Quality Regulation List.
 - A High Level Group was to be set up to oversee deregulation..
 - A Central Regulatory Reform Resource Unit was to be established in the Department of the Taoiseach. (Boyle, 1999, p.3).

This process was taken a step further in 2004 with the publication of a white paper – *Regulating Better*. By this time the government was promoting the use of regulatory impact analyses (RIAs) when new legislation or regulation was being contemplated. RIA the government saw as an evidence-based decision tool, having four major facets: quantification of impacts; structured consultation with stakeholders; evaluation of alternatives to regulation and alternative types of regulation; and, full consideration for down-stream compliance and enforcement issues (Boyle, 2005, p.1).

⁶⁹ This was a ground-breaking piece of legislation which brought a greater deal of transparency to a system that was by nature secretive. The Act was amended a few years later, with charges for discovery making the process expensive, in some cases prohibitively so. Anecdotal evidence would suggest that there is little doubt but that civil servants themselves wished to have the Act amended. Their view was that journalists, in particular, were using the Act for ‘trawling’ purposes – asking very general questions with no particular objective, but then following up with specific questions prompted by the ‘trawled’ information.

⁷⁰ Here we see the parliamentary arm involved; some years later a relevant parliamentary committee was constituted – the Joint Committee on Finance and the Public Service.

servants. Under the Act they are obliged to declare their business interests.

3.9 Change of discourse

It is also important, in attempting to understand the development of the SMI, to look at the language it uses and the intent of that language, the implications that the change of discourse has for a change of focus. This is done, hereunder, by looking at the language and themes of some of the policy documents emerging from individual government departments.

In April 1995, under the broad banner of strategic management initiatives, the Department of Agriculture, Food and Forestry launched a *Charter of Rights for Farmers*. It described a series of specific targets for improvements in the speed and efficiency of the services provided to farmer clients (sic) (Department of Agriculture and Food, 2002). This charter, hailed as the first quality assurance scheme to be introduced under the aegis of the SMI, was joined by the *Charter of Rights for Hospital Patients* produced by the Department of Health. In December 1995 the Social Welfare (Charter of Rights) Bill, was published. The charter initiative was seen as a forward development in 'client service provision' in the civil service. This is an interesting development, also pursued in other jurisdictions, in that it offers customer guarantees not citizen rights. It is also a strange use of 'customer', in that customer implies choice of provider. I can chose between food stores. I cannot chose between environmental heritage protectors.

The health area provides another illustration of the changing language and perception. In describing the steps necessary to improve the General Medical Services in the Irish health system, the Department of Health and Children says in its 1998 strategy

statement that it will, among other steps: 'develop initiatives to ensure consumer awareness of the benefits that flow from measures to control the cost of drugs' (Department of Health and Children, 1998). There is no doubt that we are consumers of health services. Yet, the mind-set that thinks in terms of 'consumers' rather than 'patients' does seem to have value-change implications. Health has become a service in this mind set. It is a short step to move from a focus on 'health' to a consumer-oriented focus on 'wellness'.

The 'market' as a regulator of business is a prominent motif in NPM. Large elements of what were previously state-supplied services have been privatised to allow market conditions prevail. The state-sponsored body sector in Ireland has been profoundly impacted by privatisation and marketisation. Air travel and telephone systems are the most obvious ones. The electricity and postal markets are gradually being opened up to competition. On 1 December 1998 the market in telecommunications was fully liberalised with the ending of Telecom Éireann's voice telephone monopoly (Boyle et al, 1999). Consumers have benefited. Market conditions have led to improvements in services. But, there is an assumption that the market is the best vehicle through which to provide public services. And this is patently not the case. The core issue is whether a market-type approach is appropriate to the service at issue. There is also the matter of how relevant market organisation is to different parts of the public service. The state-sponsored utilities sector is very different to the welfare, health, or justice areas, for instance. It would be fatuous to suggest that justice, for example, or health, should be provided in the same manner as air transport.

'Competition' has been another pervasive motif. This has generally been welcomed on the state body side of the public service, mainly through privatisation. Boyle et al (1996) state:

'Competition was the dominant theme in the commercial state-sponsored sector in 1995. In response to demands for competitiveness there has been financial and management restructuring in some state sponsored bodies'. In October 1996, the National Economic and Social Council published the then latest of its policy reports, *Strategy into the Twenty-first Century*. The council reiterated what it saw as being the elements of a consistent policy, namely macroeconomic growth with low inflation, competitive and fair incomes and structural adjustment to improve competitiveness. The council endorsed the social partnership model and stated its belief that 'public policy is most effective when social actions are responsible for ever-improving competitiveness and social inclusion' (Boyle et al, 1997). There is no pause to reflect that sometimes competition can be the enemy of social inclusion.

Strategy into the Twenty-first Century called for a review of state bodies to identify the nature of the market and the scope for increased competition, the appropriate regulatory regime and an outline of policy choices for specific bodies. Competition does lead to improved performance. Evidence of this abounds. However, there is also a need for co-operation. Other motivators are needed. Take the case of child care services in Ireland. This is what is referred to as a 'cross-cutting' issue. It calls for concerted and co-ordinated action from a number of state agencies. It has remained an intractable issue for over thirty years. This was recognised in the late 1990s by the creation of a Minister for Children whose brief ran across three government departments.

The programmes for government negotiated between the government and the social partners also display the use of this language. Two examples are given here from the 2002 programme for government. It says: 'We will build a greater culture of review of public spending by publishing regular

evaluations of key spending programmes. As part of this, each Department will publish key indicators for each major programme against which progress will be assessed. The National Development Finance Agency will ensure that public projects are developed to maximise value for money'. And again: 'We will keep the public finances in a healthy condition and we will keep down personal and business taxes in order to strengthen and maintain the competitive position of the Irish economy'. The emphasis is on evaluation, key indicators, value for money, lower taxes, competition in the economy – but all as part of central government's remit and as part of a 'national agreement'. The language quoted in this paragraph is from agreements made in private negotiations between the government and its partners at national level. This is very close to the corporation state. Central elites, from the state and its agencies and from the major interest groups in society, meet and agree public policy. No place here for parliament, not to mention a place for subsidiary players at local levels.

3.10 Current plans to further the NPM agenda in the Irish public service

Most reform initiatives '... typically begin with much fanfare, (and) after a decent interval, most just fade away or are displaced by the next wave of reform' (Alvarez-Antoninez et al, 2008). Some fear that this could happen in Ireland and that the modernisation programme has lost impetus. However, there are signs that the impetus is to be re-invigorated and directed further to an NPM agenda.

Alvarez-Antoninez et al (2008)⁷¹ provide a useful insight into the path that is likely to be chosen. They cite an OECD report

⁷¹ The authors are all senior Irish public servants.

Modernising Government: The Way Forward (2005) which suggests that the key issues now are ‘... more open government, a focus on public sector performance, reforms to accountability and control, reallocation of resources in response to change, the introduction of market type mechanisms and reform of the public employment systems’. They themselves see three of these as central to the next steps in Ireland: organisational structures, including market mechanisms and agencification; accountability systems, including the link to performance measurement; and leadership in the civil service, focusing on recruitment, reward and development. This seems to me to suggest that further steps towards NPM measures are in store – particularly in steps one and two. I therefore spell out hereunder what is implied by these first two steps.

Under organisational structures Alvarez-Antoinez et al have three key themes in mind. (1) Department/agency relationships: here what they have in mind is a move away from so-called centralised government bureaucracies, freeing operational managers from politically oriented government departments, adopting private sector practices, including market mechanisms, in specialised agencies with delegated powers. When the authors turn their minds to accountability systems and the link to performance management, they conclude that our existing systems have generally proven effective in providing for democratic monitoring and control of public administration and avoiding misuse of concentration of power and providing assurance of propriety⁷². But they further conclude

However there can be no doubt that our accountability systems have not been focused on performance

⁷² They note that this contention is increasingly being questioned – surely an understatement given that there are numerous tribunals of inquiry currently examining alleged deficiencies in public accountability.

improvement. They are more focused on process than outcome and have some important, negative side-effects, including acting as disincentives to innovation and risk-taking.

Their alternative is to suggest that Ireland adopt performance budgeting systems (PB) as is the practice in 'NPM countries'. It would seem then, judging from the disposition of this group of senior public servants, that the future is for more NPM.

A more official move can also be reported. The last Irish Taoiseach, Bertie Ahern TD, invited the Organisation for Economic Co-operation and Development (OECD) to undertake a major review of the Irish public service (*IPA Newsletter*, 2007).⁷³ It will be the first study of its kind to be undertaken by

⁷³ This report was published in April 2008. The review proposes a significant number of recommendations, including the need to overcome what it calls traditional barriers in the public sector to produce a more integrated public service, which will better deliver for citizens. This, it says, includes more coherent approaches to policy making and delivery and also greater mobility for staff across traditional sector boundaries. The review makes a number of recommendations in the area of human resource management including delegation and individualisation of pay levels and the establishment of a Senior Public Service. It also examines issues of performance management, the relationships between departments and agencies under their aegis, e-government, and financial and budgetary reform.

he report has already been acted upon. The government has set up a review body with the following terms of reference: to prepare for consideration by the government, a comprehensive framework for renewal of the public service, and to recommend, in particular, how best to secure:

- an overarching policy for an Integrated Public Service, that enables increased flexibility, mobility and staff development; and supports the competencies and practices necessary for new networked ways of working within and across the broader public service;
- the basis for determining the contribution which a Senior Public Service could make to an integrated and cohesive public service;
- a set of criteria to inform the way in which the business of government is structured and organised, with a strategy to enable necessary changes to be planned and implemented successfully;
- the benefits of greater use of shared services across all sectors of the public service;
- an appropriate framework for reviewing the establishment, operation and governance of state agencies;
- a strategy by which e-government delivers coherent and citizen-focused services, and more closely supports greater efficiency in administrative processes;

the OECD. The review was intended to benchmark⁷⁴ the public service in Ireland against other comparable countries, and to make recommendations as to future directions for public service reform.

Announcing the review, the then Taoiseach said:

The government is investing unprecedented levels of resources in public services. But problems remain – mainly with delivery on the ground and maximising return on investment. We want the OECD to examine rigorously the connections between the investment decisions that are being made at the cabinet table in Government Buildings and delivery on the ground around the country in the key areas and issues affecting ordinary people. (*IPA Newsletter*, 2007)

The OECD review referred to here is one of four initiatives announced by the then Taoiseach. Together they present even more strongly as coming from the NPM family of solutions. The other three are: a system of organisational reviews for public service bodies, better performance indicators including aggregate

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- an implementation plan, specifying the tasks, and responsibilities necessary for the successful implementation of the renewal agenda, including the ways in which the principle of partnership with public servants and their representatives will be applied.

The agenda then likely to emerge from this report if action is taken on it will extend the avenues travelled heretofore in the NPM approach. But the assumptions seem to remain the same. The terms of reference described in the above paragraph are of a kind with the objectives pursued heretofore.

⁷⁴ Benchmarking studies attempting to compare public administration in different countries are difficult. There is an issue as to whether the indicators used to represent the quality of public administration really capture what public administration is about (Boyle, 2007, p.1). There is also a query over the data used for comparison purposes. Is this a comparison of like with like? Is the data used not merely a 'snapshot' of an administration in time? As Boyle (2007) concludes, 'The "state of the art" of measuring public administration performance is not at a stage where precise judgements can be made'(p. 9).

indicators to show the combined impact of spending in particular areas and a leadership programme to ensure that leaders are fully developed at all levels in the public service in the coming years. Initiatives one, two and three are of a kind, NPM in provenance, majorly concerned with comparisons of quantitative data. The leadership initiative is for review when it is further articulated.

3.11 Evaluations of the modernisation programme

The Irish public service modernisation programme can be evaluated, or critiqued, from two perspectives. First, it can be critiqued from the perspective of the reformers themselves, a managerialist perspective. I will first present hereunder a critique from that perspective, using a report specifically commissioned to look at the programme and an evaluation by TCD business specialist John Murray. The second line of critique which I present looks at the modernisation programme from the perspective of political science, assessing the impact on the role of government in society. In later chapters I will return to critiquing the modernisation programme from the perspective of the common good. However, overall I will be suggesting that the reform programme neglects to provide for the centrality of deciding what is the good of society. It is strong on ‘how’ the public service as an arm of the state should operate. It is weak on ‘what’ the public service as an arm of the state should be focusing on.

3.11.1 Managerialist evaluations

3.11.1.1 A technical solution to a non-technical issue

The government commissioned a review in 2001, which was published in 2002 – *PA Consulting Group*, 2002 (hereinafter

referred to as PA). On its opening page PA presented the following statement

Our overall finding is that the civil service in 2002 is a more effective organisation than it was a decade ago. Much of this change can be attributed to SMI/DBG. However the implementation of the modernisation programme is not yet complete.⁷⁵

While on the face of it this might be seen as an endorsement of the SMI process, it is perhaps more useful to explore the more nuanced findings of the report in its body. PA seems to have come to two broad conclusions. First, in embedding managerialism, PA suggests that SMI has been successful. However, in a 'whole-of-government'⁷⁶ context, PA is less sanguine and, intentionally or not, seems to end up damning with faint praise.

On the managerial front, the report concludes that SMI has '... introduced a managerial tone into the civil service which rightly focuses on managerial actions and organisational processes required to deliver results within a given policy framework'

⁷⁵ This quotation appeared time and again in various publications in the following months and years. It tended to be interpreted rather naively as an endorsement of SMI.

⁷⁶ 'Whole-of-government' is a concept that is current in public administration literature. It seeks to convey the concept that effective government needs to balance the various elements in the governance project. There are political, administrative, policy, accountability, cross-cutting, and so on, elements to the governance project. PA (2002) sees whole-of-government as encompassing three elements:

- governance – the manner in which parliament exercises its oversight responsibilities
- policy making – the manner in which ministers interpret the programme for government
- public management – the manner in which civil servants implement the policy concerns of ministers.

The opposite to 'whole-of-government' is probably disaggregated government. Other authors refer to 'whole-of-government' as 'joined-up' government. The concern also is that there is a danger that individual government departments or agencies can retreat into themselves (often referred to as a silo mentality), forgetting the need for an over-arching vision of government.

(p.84). It suggests progress on seven fronts. (1) The civil service is more open and transparent, not least because of the introduction of the Freedom of Information Act (see footnote 69). (2) A customer service culture has taken hold. (3) The performance management system is embedding.⁷⁷ (4) Partnership groups are working well and an equality of opportunity agenda has been set. (5) Financial management has improved and a management information framework is in train. (6) National and economic development have been enhanced. (7) Work has begun on simplifying regulations.

Progress then has been made, according to PA, on what it describes as the outward looking themes of openness, transparency, accountability, quality customer service and regulatory reform. On the managerial front it suggests that the next phase of implementation needs to focus on the more inward looking components of human resource management (HRM) reform, financial management and information management systems management (p.3).

PA is careful not to attribute too much to SMI: ‘... it would be imprudent to attribute to it each and every aspect of observed organisational change’ (p.83). Nonetheless, in complimentary tone, it concludes that ‘... the civil service has mapped out a transition path from a traditional administrative culture towards a more overtly managerial one ...’ (p.83)⁷⁸.

⁷⁷ The Performance Management Development System (PMDS) was taken to a more advanced stage in 2005. Under an agreement negotiated with the trade unions, performance evaluation, against agreed indicators for each individual, is now a factor in promotion and annual salary increments. (See Civil Service Conciliation and Arbitration Scheme, 2005).

⁷⁸ Here again we see evidence of the provenance and content of the SMI – an administratively inspired and managed process, biased towards a managerialist approach to the business of government. Another source (Boyle and Humphreys, 2001) describes this situation thus

... while there has been continuing political support, the modernisation programme has been and continues to be largely

It is when PA zooms out and takes a more over-arching view that we see a somewhat different conclusion.

SMI/DBG presented a programme of public management reform rather than a whole of government reform. (p.5)

Murray's (2001) analysis here is even more explicit.

These latter [whole of government issues], as noted from the very outset by SMI and DBG, are increasingly the pivotal policy issues facing society and government. It would appear that the matter is being sidestepped rather than confronted. A crisis of identity may lie in waiting in both traditional 'center' departments [Departments of Finance and Taoiseach].(Internet publication, not paginated)

The PA Report is critical of the SMI process inasmuch as it (SMI) assumes that a policy framework can be taken as 'given' (p.84). It says that it is not clear that an equivalent focus to that given to managerial issues has been given to '... the dynamics governing the evolution of policy, and the manner in which ministers and civil servants can most effectively interact in shaping such policy and in considering strategic options for implementation' (p.84). In summary, PA sees the SMI process as having pointed the civil service towards a managerialist path, but queries the strength of the process in terms of policy formulation in a whole-of-government context. The following two quotations convey this two-sided conclusion.

driven by the administrators themselves. The degree of meaningful political engagement with public management issues has remained relatively limited. (p.79)

First, on the managerialist focus

The vocabulary of SMI/DBG reflected a technical (public management) view of public service delivery. It was about securing efficiency gains in a business context where policy and purpose were considered to have been already thought through, and could therefore be taken as a 'given'. (p.101)

Second, on the whole-of-government focus

Our observations lead us to believe that there is not always sufficient alignment between political intent, strategy development, business planning and service delivery. Consequently, Ministers may on occasion feel distanced from aspects of the day-to-day business of their Departments/Offices, while civil servants may believe that they are struggling with an ambiguous policy direction. (p.86)

Murray (2001) believes that the SMI process is typical of the modernising approach⁷⁹. He notes specialisation in structure in the range of new agencies and offices that have been created. Networks and markets are beginning to partially supplant traditional hierarchies. Decentralisation of authority and accountability '... is a central theme of SMI, now enshrined in legislation and the attack on scale is reflected in the beginnings

⁷⁹ See above where the distinction between those administrations that maintain the status quo, those that wish to modernise, those who set out to marketise, and the minimalists is described as outlined by Pollitt and Bouckaert (2000).

of a process of 'agentising'⁸⁰ of traditional activities and functions'. He also points to the introduction of a performance management and development system (PMDS). He notes that 'Like all modern reform programmes the SMI was top-down in conception and initial impetus. Driven particularly by the administrative elite and with varying degrees of active engagement by the political elite it came from the center'. As noted above, and commented upon by PA (2001), this was a process driven by the administrative elite, with little evidence of political input. Or, as Murray (2001) says

It was top-down, but with a secure footing across the top management and leadership cadre of the administration. Its scope was wide – the civil service, followed by extension to the public service. Aspects of the reform were quickly embodied in statute and while few new organizations were immediately created, the SMI provided an umbrella under which new offices and agencies have since been established, accepted and implemented.

Contrasting the Irish process with the more radical marketising initiatives, Murray (2001) points out that there has been very limited substitution of markets and networks for traditional hierarchy. Furthermore, though the early pace was fast, it has

⁸⁰ What has come to be known as 'agencification' has progressed even further since Murray wrote his piece. Agencies, in this context, are generally described as organisations which are at arm's length from their government departments or ministers but do carry out public functions. McGauran et al (2005) report that there are 601 agencies in Ireland and that 59 per cent of them have been established since 1990. In the 1990s, 224 of them were created; with a further 138 so far in the 2000s (p.42). [The classification of agencies by McGauran et al is questionable – for instance they classify local authorities, which are provided for as part of the governance system in the Constitution, as agencies, but yet do not include all local authorities. Nonetheless, their findings point to a definite trend towards agencification in Ireland.] In the final months of 2008 this issue of agencification has become a political one. Politicians, government and opposition, are calling for the abolition of 'unnecessary' quangos (quasi governmental non-government organisations).

been slower in recent years. He (2001, p.10) sees the Irish programme as 'of a piece with the generality of reform' internationally.

It aligns with the practice of modernizer states, typically North European, with a strong reform agenda, a radicalism tempered by consensus building and a desire for more than minimal government. In aspiration at least, it might be positioned at the more active and comprehensive boundary of this cluster of countries and reform movements. ... While perhaps more active than the norm among 'modernisers', Ireland is hardly more radical.

Instancing the less radical nature of the Irish programme, he claims

The avoidance of significant attention to outsourcing and of focused analysis of the true 'core business' of Departments may signal lack of creative thought or just a failure of nerve to date.

In summary, Murray (2001, p.11) believes that, at the time he was writing, the process had been successful in terms of delivery of quality services, reducing red tape, regulatory reform and open and transparent service delivery. He rated it unsuccessful in terms of quality service in relation to policy advice and decision-making processes, and tackling cross departmental issues.

3.11.1.2 Neglect of internal motivation and trust

The metric approach, with an over reliance on the measurement of indicators, outputs, outcomes has equated statistics with experience. The quote from Onora O'Neill in Chapter 2 is worth

recalling in this context. 'But beneath this admirable rhetoric the real focus is on performance indicators chosen for ease of measurement and control rather than because they measure accurately what the quality of performance is (Lecture 3, pp.4-5)'. She may be somewhat gratuitous in describing the indicators as chosen for 'ease of measurement'. However, she has hit a nerve here and, as suggested in Chapter 2, a 'tick and bash' mentality is invited. Exclusive concentration on statistics or metrics also poses the danger that indicators will be chosen not for ease of measurement but because there is prior knowledge that they will in fact be achieved. Strategies are then doomed to be 'history written in the future tense'.

3.11.2 Evaluations from a political science perspective

3.11.2.1 A changed understanding of the role of the civil service

However, it is possible to evaluate the public service modernisation programme from a broader perspective than those adopted by PA and Murray. That broader perspective, the perspective of political science, issues from a consideration of what the civil service is, what role it should play in the governmental system. As suggested above, the Irish Westminster type system is a creation of the late nineteenth century. It provided for a professional highly educated civil service.⁸¹ It is from that civil service that professional advice came to ministers in government. In other words, a central role for the civil service, if not the dominant role, was to contribute to the deliberative function of government. The Irish Institute of Public Administration based political scientist Frank Litton (2006; cf

⁸¹ The early Irish civil service was populated mostly by those educated to second level; third level education was a rare commodity at the time. Today the senior ranks would be for the most part educated to third level.

also Litton and MacCarthaigh 2007) suggests that a crucial balance in government is between deliberation and responsiveness. There was a time when politicians provided both, responding to those who elected them and deliberating in parliament. The political arm of government typically continues to be the one which provides the responsiveness. Politicians are by their nature sensitive to the electorate and see themselves as responding to that electorate. However over the course of the twentieth century parliament came to be dominated by the party political system. Party whips determined the activity of parliament. Deliberation at the political level was weakened. Consequently the deliberative role of the civil service became more crucial.

In the Irish system this had two consequences (Litton, 2006, p.185). The relationship between ministers and their civil servants was ‘...imbued with a sense of fittingness or mutual obligation arising from a shared social vision and commitment to the welfare of the nation’. Further, the work that brought civil servants into close contact with ministers was more valued than the overseeing of the delivery of services to the public.

But this model of government, where there is some equilibrium between responsiveness and deliberation, such that democracy can flourish, seems to have presented a need for re-appraisal, in the view of the modernisers, when confronted with the changes that have taken place in Irish society generally. If we have moved towards a market state⁸², where the state sees itself as

⁸² Philip Bobbit (2002, *The Shield of Achilles: War, Peace and the Course of History*, London: Penguin) describes the state nation, the nation state and the market state. State nations based their legitimacy on their capacity to forge the identity of the nation. The nation state gets its specific character ‘... from its claim to be responsible for the welfare of the nation. The market state claims support on the basis that it maximises the opportunities of its citizens’ (Litton, p.182).

maximising opportunities for the citizen, what of deliberation now? What of the ideal of a balance of deliberation and responsiveness – the democratic ideal?

Litton suggests three possibilities other than the democratic ideal.⁸³ Survival politics dominates when responsiveness is dominant and deliberation weak – this is coming to be the more dominant mode, more particularly when issues are media driven. Brokerage will be the chosen mode when issues are decided upon by civil servants and interest groups behind closed doors – typically when the issue is one of interest only to the interest group – here there is little responsiveness or deliberation. Administrative leadership takes over on technical issues that are not media sensitive – deliberation will be high and responsiveness weak.

The market state invites an ever-increasing reliance on survival politics. Issues need to be resolved efficiently and effectively. Consumers need to be satisfied. The Irish modernisation

A group of senior Irish public servants (Alvarez-Antoinez et al, 2008) have recently presented an interesting view of what they perceive the Irish public to be demanding of the civil service. Their view would seem to bolster the perception that we have entered the market state. Adverting to the public's expectations they say

...the first issue for the civil service is ensuring delivery of the types of services that the public wants. The second is the manner of delivery or customer service quality. Finally there is the perceived efficiency of delivery and the integrity and impartiality of the delivery mechanism.

Equally they see politicians making similar demands

Politicians in particular, in their quest for greater responsiveness, want a civil service that not only generates ideas and develops policies, but one that, having developed a policy, can effectively and efficiently 'operationalise' it.

The phrase '*not only* generates ideas and develops policies' (emphasis mine) seems to me to belittle the deliberative role.

⁸³ Here Litton is drawing on Campbell, C. and Wilson, K. (1995) *The End of Whitehall: Death of a Paradigm*. Oxford: Blackwell.

programme, in NPM mode, seems to me to be responding to that development. It is attempting to provide a managerial technical answer to the changed demands on the system.

A major question remains to be begged. 'Efficiency and effectiveness, the mantras of the programme, are not ends in themselves. There is always something that has to be done efficiently and effectively' (Litton, 2006, p.191).

3.11.2.2 A changed understanding of the place of the citizen

Viewed in isolation it would be churlish to cavil and suggest that improvements in service and communication between government and people is not important or desirable. However it cannot be viewed in isolation. It must be viewed in the context of how the relationship between government and people should be ordered. The customer care route promotes 'customer' as the focus of government as opposed to 'citizen'. This is a profound shift. The concept of citizenship is not necessarily superior to that of customer. Indeed, the notion of citizenship is itself worthy of examination. It can for instance be a concept that allows the exclusion of non-citizens. The participative notion of citizenship may be lauded, though it may be more idealised than practised in effect. Nonetheless, if the concept is marginalised, ceding to the more market-linked concept of customer, we may de-value the polity.

It is worth briefly visiting the concept of citizenship itself. It is not a static concept – and indeed it can have both inclusive and exclusive facets, as is demonstrated in Ireland by the influx of immigrants. Riordan (2003), citing the work of the American sociologist Michael Schudson, uses the US experience to demonstrate the evolution of the notion of citizen in a polity. In

its foundation stage, citizenship in the US was the prerogative of white, male, adult, property owners. Today it would be more accurately described as a universal rights-based concept.

A similar path could be traced in other polities. Add to this evolving situation the complexities of early twenty-first century political life and 'citizen' becomes even more difficult to tie down. I have rights (and responsibilities) which are not based on the Irish constitution, or statutes. International treaties and legislation (EU) are the provenance of some of my citizen rights. Further, some of the principal citizen activities – voting, serving on juries, for instance – are seen to be in peril by commentators.

If then the emergence of a consumerist-based polity is to be critiqued and a more appropriate citizenship-based one suggested, there is a need to spell out a little more what is meant by citizenship. The Irish political scientist Anthony O'Halloran (2003)⁸⁴ states that we need a holistic concept of citizenship. In modern democracies citizens are generally conferred with political, civil (constitutionally based), economic and social (statutory based) rights (p.20). Civil and political rights owe their origins to the liberal and democratic traditions respectively (p.21). Economic and social rights are generally credited as coming from the social democratic labour movement. The understanding is that civil and political rights are meaningless without economic and social rights. (p.21). If I have political and democratic rights but am the victim of social exclusion by virtue of my social and economic status in society, it is unlikely that I will either be capable of or wish to exercise the constitutional and democratic rights. Furthermore, if my concept of my place in

⁸⁴ I chose to use O'Halloran here but of course he reflects a growing emphasis on rights theory of which there is a wide literature, not to mention the array of United Nations declarations most notably The Universal Declaration of Human Rights (1948) and The Covenant on Civil and Political Rights (1966).

society is of an individual with rights that I am entitled to from the state, equally it is unlikely that I will exercise my constitutional or democratic rights in any full way. 'Citizenship in this holistic sense provides individuals with the opportunity to become full and pro-active members of their respective polities, economies and societies' (p.21).

As I will further elaborate in Chapters 4 and 5, viewed from the perspective of the common good, citizens are enabled to develop themselves in a state which recognises the dignity of individuals and subscribes to the principle of subsidiarity. Viewed from the customer perspective the state becomes a provider of services – a consumerist perspective – having passive consumers with an expectation of rights without reference to duties.

3.12 Summary

From 1994 onwards, after a seventy year period of minimal change, a modernisation programme has been introduced to the Irish public service. It is an NPM-type initiative. It is of a kind with what is described as a modernising agenda – not as market-driven as for instance New Zealand or the UK, mainly focused on managerial initiatives. This has driven the public service towards a focus on indicators, to a pre-occupation with services to be delivered efficiently to customers. From the perspective of the modernising senior civil service which has driven the programme of reform it has been successful on three fronts. Outward-looking initiatives focused on effectiveness, efficiency and transparency have been successful. The civil service is more managerially focused. It is more conscious of quality service.

However, that evaluation, I am suggesting, is blind to a larger picture. First, a whole of government focus has not been embraced. It has presumed policy to be thought out. It has

presumed the givens about what to be efficient and effective about. Second, it has run the risk of producing a 'non-trust' environment, devaluing trust and internal motivation. Third, it has, unwittingly, effected a change in the balance that the civil service sees in its own role. The deliberative imperative has been downplayed at the expense of the productive imperative. Fourth, it has run the risk of morphing the understanding of the place of the citizen in the polity, and devaluing participation, by overbalancing to an emphasis on the citizen as consumer.

Equally important, I believe, the reform programme neglects deliberation on what a good society might be, unwittingly accepts an anthropology which sees people as individualistic, instrumental self-maximisers, and thereby has the potential to thoroughly embed an ethos in society that will not promote the common good.

In order to take my critique further I propose in the following chapters to explore an alternative paradigm to that of NPM, one based on the concepts of the common good and subsidiarity, in the mode of Catholic social teaching, as more appropriate to defining the role of the state and, *pari passu*, the role of public servants.

Part 2

Catholic Social Teaching: The Common Good and the Principle of Subsidiarity

This part of the thesis presents two concepts from Catholic social teaching as the foundations of an alternative paradigm to underpin a public service modernisation programme – the common good and the principle of subsidiarity. These two are core concepts of Catholic social teaching, but have however appeared in other contexts and in other narratives, in political philosophy, in political parties, more notably the principle of subsidiarity which has been embraced by political thinkers and which has been given prominence in European Union structural development.

The first objective then of this part of the thesis, in chapters 4 and 5, is to focus on these two concepts as they have developed and to differentiate the Catholic social teaching understandings of them from alternative understandings. The second objective, pursued in chapter 6, is to focus on official Catholic social teaching and to describe and analyse the changes that have taken place in that corpus. Most notably, papal teaching has taken on board principles of modernity and is more in harmony with modernity than it would have been in the early twentieth century. This will pave the way for further exploration in Part 3 of developments beyond the official position.

Chapter 4

Common Good Theory

Any modern state is so involved in the provision and regulation of goods and services that decisions about the good life and what is central to culture are pervasive. (Honahan, 2000, p.86)

It is possible to hold that constant features of human existence shape the development of morality to some degree, while still arguing that fully developed moral codes are social constructs. (Porter, 2001, p.120-1)

4.1 Introduction

I have critiqued the Irish public service modernisation programme as rooted in the instrumental rationality paradigm of late twentieth century NPM with its methodological individualism, its blind spot for the role of sociability in self-realisation and its lack of interest in the political expression of human solidarity and the democratic process of citizens deliberating. Because it is rooted in this anthropology it is, I suggested, a paradigm which does not adequately allow for the place of the citizen in society. Equally this anthropology is applied to individual public servants who are therefore seen as needing to be controlled and evaluated. Its reliance on metrics does not allow for concern for others, trust, loyalty, the imagination, the unmeasurable nor the transcendent. It does not

allow for internal motivation, for the fact that an individual public servant might want to perform well because she perceived that to be the 'right' thing to do. I query its unquestioned competitive framework. NPM does not have a view of society – an end or vision for the society being served. It is a technical, quantitatively based approach without consideration for human hopes and desires. Indeed its instrumentality lies precisely in its inadequate and limited concept of what constitutes development or flourishing. In this chapter I set out an alternative paradigm for the conduct of affairs in society. I outline a common good approach to public affairs. This is an approach I will be suggesting that can take account of the unmeasurable, the imagination, trust, loyalty, concern for others – all of which we intuitively know to be realities of our daily lives and indeed crucial features of our humanity.

I will be suggesting that there is a need for government to have some conception of the common good, a conception of '... what constitutes good human functioning in order to create and sustain the appropriate conditions which enable people to identify and pursue their own good' (Riordan, 1998, p. 56).⁸⁵ There is a growing appreciation of public responsibility for social outcomes. In the words of William M. Sullivan, Professor of Philosophy at La Salle University, USA: 'This development represents a moral interpretation of social interdependency' (1990, p.161). Because we collectively can and do affect individual life chances, then we collectively must assume a

⁸⁵ Patrick Riordan is an Irish Jesuit philosopher teaching at Heythrop College. In his 1996 book he usefully outlines the wide range of meanings that can be attributed to the 'common good' in various theoretical models. It can be virtually denied; equated with the facilitation of private interests; equated with some restricted good of a community such as internal and external security or the protection of property or enforcement of contracts; viewed as the utilitarian summation of private interests under the heading of general welfare; or it can be '... a comprehensive vision of human fulfilment articulated as a good for any human person, and therefore a good common to all' (p.154).

responsibility to do so in an equitable manner, and one that leaves open the chance of participation.

But there is more to the common good than a basis for distributive justice. I will be further suggesting that 'Without a concept of the common good only quantifiable benefits distributable among discrete individuals can be considered part of the human good' (Honahan, 2000, p.75). Life chances are also a matter of justice as recognition, not just of justice as quantifiable distribution. Citizens are recipients of recognition. I have already in the preceding chapter alluded to the need for deliberation on the ends that the state should pursue. Or, in other words, the need for the civil service as an arm of the state to see itself having a primary role in deliberating on what the state should be about, of what is the good of society. In this chapter I will suggest that a common good perspective facilitates this part of the role of the public service.

Following the Irish political philosopher Ieseult Honahan (2000), and the American moral theologian David Hollenbach, I will not be suggesting that it is the role of the state to create the common good of individuals. In the classical debate between liberals and communitarians one side sees the individual as supreme; the other promotes the community as prior. I will be following the line described by the mid-twentieth century French Roman Catholic philosopher Jacques Maritain: the common good is '... neither the mere collection of private goods, nor the proper good of the whole ... which sacrifices the parts to itself; it is therefore common both to the whole and the parts in which it flows back and which, in turn, must benefit from it' (Maritain, 1947, p.24). I will be suggesting a middle way which sees the role of the state as creating the conditions in which individuals can pursue their projects of the common good in the multifarious locations of civil society.

4.2 Approaches to the common good

First I look at different approaches to the common good. Honohan (2000) outlines three different approaches.

The individual-instrumental approach sees the common good as the aggregate of individual goods. This is the approach usually adopted by liberal theorists who do not reject the common good. For instance the philosopher John Rawls in his classical work *Theory of Justice* sees the common good as certain general conditions that are in an appropriate sense equally to everyone's advantage. However this approach does not entail recognition of shared goods and indeed often even denies their possibility. The goods that are enjoyed are enjoyed by individuals. Sometimes this interpretation of the common good is stretched to mean the good of the overwhelming majority. This often finds expression in the concept of the 'public interest', implying an aggregate of individual interests, usually of a material kind.

The intersubjective-practical approach argues that there are some goods that can be realised by individuals only in interaction with others, through certain cultural and social practices.⁸⁶ The individual can only attain full self-expression through a common culture. This is held to be one of the 'central common goods'. 'For individuals to realise their most deeply held values there must be social practices that embody these values' (Honohan, p.81). This approach is still focusing on individuals achieving the good, but emphasises the interconnectivity of individuals. It would claim to have a more complex understanding of what it is to be human. It acknowledges that cultures grow and change. It concedes that '...the forms and relative importance of language, customs, settlement patterns, expressions of belief and relations

⁸⁶ This is the approach favoured by Honohan.

with smaller-scale and larger communities change over time' (p.82). Effectively, it is more accurate for Honohan in this approach to the common good to talk of common goods, as she indeed does. 'Communities and their interpretations of the common good will not always be in harmony with one another' (p.83). Honohan claims that this approach is Aristotelian inasmuch as it accepts that the common good is central and that human fulfillment requires a political community. But it breaks with the classical Aristotelian perspective because it does not assume a single determinate good. Rather it assumes the creation of the common good inter-subjectively. It is a civic republican approach which sees citizens shaping the common good. This approach I find more cogent than the individual instrumental approach; it does have some appreciation of commonality. Nonetheless, I do have problems with it. First with its relativism. It gives no basis for a universalisable ethics. Second, it is over-optimistic on the capacity for communities to 'create' their own common goods. Third, I have difficulties with its implication that larger collectivities – municipalities or states for instance – are unlikely to have a shared common good, are more likely to be a collectivity of communities with differing common goods. It seems to me that, though it has attractions, it is not a true common good approach.

The third approach described by Honohan is the more classical and more commonly understood view of the common good – the teleological approach. In this view the common good is identified with specific human ends or purposes, common to people because of their similar nature. In her view this typically Aristotelian conception of the common good is embodied in the Irish constitution. In this tradition, she suggests, the state is not only concerned to provide public order and protect individual rights but is concerned with the moral (sic) formation of

citizens.⁸⁷ For Honahan this conception is problematic in that there are many different accounts of what are the purposes of human living.

For me, Honahan does not give due emphasis to developments within the teleological position. For instance, she says that it is

... an approach based on assumptions that are not unproblematically accepted today, when we recognise that there are many different accounts of what are the purposes of human living.(p. 77)

But this critique does not take account of developments of recent years in the teleological approach. It does not allow for the way in which the classical teleological approach to the common good has taken account of historical consciousness and the way this approach has taken on board the place of contingency in the affairs of humanity. In what follows I trace this development – and subscribe to this concept of the common good.

The teleological approach is associated primarily with the Aristotelian-Thomistic tradition. At its root is an anthropology which understands that human beings become ‘right’, that is to say developed, ‘... not only in human freedom and autonomy, but when they are freely in right relation with others in the pursuit of human development’ (Naughton et al, 1996, p.221).⁸⁸ Elsthain (1995, p. 104) says ‘Rights are grounded in an

⁸⁷ This may very well be a valid interpretation of the Irish Constitution. However, I doubt if it could be argued cogently that the state today attempts to morally form its citizens.

⁸⁸ The authors referred to here, Michael Naughton, Director of the John A Ryan Institute for Catholic Social Thought at the University of St. Thomas, St. Paul, Minnesota, Helen Alford OP, Dean of the Faculty of Social Sciences at the Pontifical University of St. Thomas, Rome and Bernard Brady, Associate Professor of Theology at the University of St. Thomas, collaborate in a project devoted to the promotion of the principles of Catholic social teaching in business, and heavily influenced by the Thomistic natural law school.

ontology of human dignity, but this dignity of the self cannot be dehistoricized and disembodied from the experience of human beings as creatures essentially, not contingently, related to others’.

In this tradition the common good is both an intermediate and a final good⁸⁹. In other words, the common good creates the conditions whereby people can pursue their goods, but it is also the outcome of individuals and communities pursuing their goods. The common good is the condition and the result of human activity in community (Alford, 2006, p. 247).

Alford (2006, pp.247 ff) gives a helpful outline of the Thomistic understanding of the common good. First she deals with ‘goods’. A good is both the object of some being’s desire and the perfection of some being’s nature. In Aquinas’ view no one acts except to try and realise some good, but we may be mistaken about what is good for us. So, there are true and apparent goods. A distinction can also be made between instrumental and inherent goods. Instrumental goods enable us to pursue other goods, for example, all kinds of technology. Inherent goods are desirable in themselves, such as peace, justice, self-esteem⁹⁰.

⁸⁹ ‘Good’ here is understood in a Thomistic sense. St. Thomas linked ‘goodness’ and ‘existence’. For him, existence is a good, a participation in the existence of God. In principle there are objectively some things that are good for us because of the kind of beings that we are. ‘Our understanding of what is good and bad may develop over time, but that will be a result (we hope) of a deepening perception of what human beings are, even if both history and many present-day situations provide examples of how mistaken ideas can be widely spread and distort our understanding of what is good’ (Alford, 2006, p.247).

Another useful category to identify at this stage is ‘public good’. A public good is nonexclusive in consumption, i.e. benefits cannot be limited to the person who pays, e.g. a public road; it is also non-rivalrous, i.e. use of it does not impede others from using it. Public goods are an example of ‘externalities’, i.e. benefits which arise from a private exchange, but which cannot be confined to those who are party to the exchange.

⁹⁰ It is not always so easy to categorise. For instance ‘health’ is both an inherent and an instrumental good.

Next Alford outlines the distinction between common and particular goods. Some goods are ‘naturally’ common, shareable⁹¹ – justice, knowledge, clean air for instance. Some are obviously more particular, classically land and money.

Using her analysis of the nature of ‘good’ and the nature of ‘common’ we can proceed to understand better the relationship between our activities, the goods they produce and the common good. The common good is made up of various goods produced at different levels of the community – goods of the person, family, business, village, town, communities, state and ultimately international organisations. But at all levels there is an ordering; ‘... instrumental goods are generated as bases for the development of inherent goods, and ... the use of particular goods needs to be directed toward the common good’ (Alford, p. 249). The implication of this, of course, is that the pursuit of inherent goods is primary and not something to be pursued after instrumental goods have been achieved.. Inherent goods should govern the pursuit of instrumental goods. Government, for instance, cannot pursue economic development and afterwards rectify injustices created along the way.

To return to the definition of the common good outlined above: ‘the condition and the result of activity in the community’. The common good manifests itself as the ‘condition’ insofar as instrumental goods are pursued – these will often be ‘public goods’; it manifests itself as the ‘product’ insofar as inherent goods are produced.

The classic teleological approach outlined above has tended to be marginalised in recent decades. It is a common good paradigm

⁹¹ The use of ‘common’ here seems quite colloquial and imprecise when compared with the use of ‘common’ in describing the ‘common good’, no less by Alford herself than others.

that relies on 'nature', reason and universal law and as the Christian ethicist Lisa Sowle Cahill (2002, p.325) reports '... has come to seem an Enlightenment relic, naively isolated from cultural pluralism, economic globalisation and competing philosophical and theological interpretations of the human condition, especially those projected from other cultural situations'. Some of its critics would see it as stressing the community at the expense of the individual. But, as Sowle Cahill herself notes, it is possible to develop the teleological approach in such manner that it can take account of the fault lines of classicism.⁹² And this in the context of prevailing liberalism. Scholars like Jean Bethke Elshtain, a political philosopher at the University of Chicago Divinity school, argue for a development of the common good approach in the context of a prevailing liberalism.

Perhaps, just perhaps, there is a distinction to be made between how we are compelled to talk, given the dominant rhetoric of individualism, and how, in fact, we act as members of families, communities, churches, neighbourhoods. (1994, p.159)

⁹² Although I proceed here to develop an approach to the common good which attempts to be true to the classical teleological approach while allowing for 'place', 'setting' and 'context' in describing roles or positions, I am nonetheless aware that this approach will not find favour with many schools of theology. For instance a feminist theology that would see the concept of common good as a gendered one. Maura A. Ryan (1996) remarks

To argue that we can or ought to act out of concern for the common good presupposes, after all, that we know what is good for persons generally (i.e., what is conducive to human flourishing) and that it is possible to envision a social order which serves the good of all, not just of some. Recent developments in feminist theory render such claims at least *prima facie* problematic. (p.122-3)

This is an example of the problem created when 'power' is ignored when the rhetoric of the common good is being used. This rhetoric can be a cloak for the interests of some, those who have the power to set the agenda in society. Riordan (1996) suggests when common good rhetoric is misused it runs the risk of alienating people, for instance people on the margins of society, such as the unemployed or lowly-paid, might be reluctant to set aside their private interests for the sake of the so-called (my interpretation) common good (p.155).

In what follows I will explore these developments.

The teleological common good approach described above is heavily reliant on deduction. Alford for instance in the 2006 article cited devotes most of the article to categorisation and analysis of abstract concepts. Other common good scholars have placed emphasis on induction. For instance Martha Nussbaum (1990) describes what she calls a 'thick, vague' conception of the good. It begins from an account of what it is to be human. She draws on story-telling and myth-making imagination rather than the scientific intellect in identifying the characteristics of a human being. She

... offers a list of characteristics which are based on the commonness of myths and stories from many times and places, stories explaining to both friends and strangers what it is to be human rather something else. The account is the outcome of a process of self-interpretation and self-clarification that makes use of the story-telling imagination far more than the scientific intellect. (p.217)

The list we get this way is open-ended. Like all Aristotelian lists, she says, it is a list of what we know so far. It is important here to notice that she describes this theory of the common good as 'thick, vague'. It is thick insofar as it is universal, but vague in that it is designed to admit of plural specifications. The constitutive elements of human life always turn up in specific and historically rich realisation (pp.234-5).

Lisa Sowle Cahill (2002) provides us with another insight into the inductive approach to identifying the common good. She suggests that significant commonalities in human experience do give rise to common perceptions of justice and injustice across

cultural boundaries, especially when specific issues are at stake (p.332). Sowell Cahill is acutely aware that we are talking here about practical reason in the natural law sense. The natural law which points to the common good is not learned by deduction alone. We learn by reflection upon our own and our predecessors' desires, choices, mistakes and successes. Moral judgements because they are in the realm of practical reason are action bound. They are discovered experientially, inductively; '... moral "truth" is found not in apprehension as such, but in judgement leading to action' (2002, p.338). David Hollenbach uses different language to point to a similar conclusion. He suggests that we can have a global ethic or common morality but that it does not have to be because of agreement on common speculative ideas. Rather it will be because of common practical ideas. It will not be based on the affirmation of one and the same conception of the world, of man, and of knowledge. It will be based on the affirmation of a single body of beliefs for guidance in action.

Now I turn to the role of the state as to the common good.

4.3 The common good perspective on the role of the state

As individuals we live in multiple communities on a spectrum from the most local (perhaps the family) to the most global. We live simultaneously in many communities. Our communal identities overlap (Sowell Cahill, 2001, pp.384 ff). This is society, where multiple communities operate. Therefore the reality of the common good is complex. We pursue the common good on many fronts in a multiplicity of *civitates*.⁹³ Hollenbach expresses it thus: 'The common good is [therefore] an ensemble of goods existing on multiple scales, just as human relations are of

⁹³ This issue is closely connected to the principle of subsidiarity which I treat of at length in the next chapter.

different kinds and sizes' (2003, p.50). We live and operate in the wide context that is civil society. It is in civil society, in its various manifestations, that we pursue our common goods. True, the state has an over-arching role but not a role of primacy. The end of the state is a just public order and the creation of a situation where flourishing, individual and group, can take place.

It is not for the state to be the maker of the common good. Rather the state should create the conditions in which the common good can be pursued. The state creates the conditions whereby the mediating institutions of civil society nurture both rights and responsibilities (Elsthain, 1995, p.98). Riordan (1996) sums it up thus

... the political system commensurate with a thick, vague conception of the good would be designed to ensure that citizens receive the institutional, material and educational support that is required if they are to become capable of functioning in each sphere according to their practical reason. (p.124)

4.4 The common good as a critical perspective on the Irish public service modernisation programme

What then of the Irish public service modernisation programme? In what ways is the common good approach apposite to conceptualising a model for the public service? As I described in Chapters 2 and 3, the Irish modernisation programme is based on a rational instrumental approach. It assumes that the most successful path to efficiency and effectiveness depends on clear specification of indicators of outputs and outcomes and the measurement thereof for evaluation purposes. It was my contention that the ethos thus created does not allow for trust, loyalty, commitment or internal motivation. The common good

as a guiding principle, I now suggest, makes for a more efficacious guiding paradigm.

First, because it values the person and because it promotes the flourishing of the person, its starting point is one where it expects individuals to be oriented towards performing well. It does not assume that all are self-maximisers who must be controlled. It promotes the view that the state should create the conditions to facilitate the individual to pursue his/her internal ends so as to flourish.

Second, because it sees a positive role for the state, it will see the government creating the environment where its 'servants', the public service, are to be enabled by government to perform well, and not merely evaluated by government in a context of performance management. It would promote the view that the conditions should be put in place to allow the individual civil servant to flourish qua civil servant in the pursuit of their common good of developing and growing in their work. Trust and loyalty would be conditions to be promoted to this end.

Third, a common good perspective allows for the centrality of the deliberative role of the civil service. A common good approach demands that consideration be given to what is the good of society. It will fall, accordingly, to the civil service to value this part of its role and to be ever aware of the duty to consider the 'what' and not only the 'how'.

Fourth, because it is an anthropology that values the individual in community, it is more likely to respect the individual citizen and more likely to foster structures that favour citizen participation. The structure traditionally associated with the common good approach is one rooted in subsidiarity, the issue to which I turn in the next chapter.

Chapter 5

The Principle of Subsidiarity

Subsidiarity is a theory of and for civil society that refuses stark alternatives between individualism and collectivism.
(Elshtain, 1995, p. 106)

Is there any longer the possibility for the existence of multiple civitates not wholly dependent upon or brought into being by the state? (Elshtain, 1995, p.159)

The res publica is much larger than the sphere of government. It includes all those communities and institutions that form the rich fabric of civil society. It also includes all those public forms of discourse, conversation and argument that constitute a culture.
(Hollenbach, 2003, p.148)

5.1 Introduction

In the last chapter I outlined my understanding of and approach to the 'common good'. I suggested that it should be seen as means and end. As means, it mediates individual and social cooperation in framing a just society, enabling people pursue their personal development. As end, it is that development. I further contended that resort to this approach would enrich the Irish public service modernisation programme, for those who work in the public service and for citizens interacting with it.

I now want to look at a principle that is related to the common good. I want to propose that the common good must be promoted according to the principle of subsidiarity. It is that principle which prevents an unbalanced notion of the common good from metamorphosing into a naive communitarianism, without an adequate concept of state and legality.

The two – common good theory and the principle of subsidiarity – complement each other. On the one hand, common good theory grounds practice in a shared view of the good, or, for the purposes of this thesis, in a shared view of how the purpose of the state and of society should be explored. The principle of subsidiarity, on the other hand, recognises that pursuit of the common good will always take place in a specific context. It demands that that specificity be respected. Or, for our purposes here, it demands that the state understand that its role is a facilitating one, facilitating ‘lower’ communities to act for themselves, and ultimately including facilitating the individual to pursue his or her proper ends.

The principle of subsidiarity has been espoused in a number of contexts and is therefore open to multiple interpretations. In later sections of this chapter I will be adopting a specific understanding of the principle. Before doing so I want to draw particular attention to the three more common loci in which the principle is used – Catholic social teaching, political philosophers, and European Union political debate.

5.2 The principle of subsidiarity and its multiple provenances – Roman Catholic social teaching; political philosophers; and the EU

5.2.1 Roman Catholic Social Teaching

The particular provenance of the principle of subsidiarity in Catholic social teaching is well known.⁹⁴ For some the emergence of the principle is attributed solely to Roman Catholic social teaching. For instance, Wilke and Wallace (1990), political scientists writing of the principle of subsidiarity in a European Community context, suggest that it was the Roman Catholic Church which gave subsidiarity its classical formulation. It is true that the principle does figure prominently in Catholic social teaching and for this reason I will treat of it more extensively when looking specifically at Catholic social teaching (see Chapter 6 below).⁹⁵

Suffice it at this juncture to summarise and say that the social teaching of the Catholic church does enshrine a principle of subsidiarity. It did so originally in a particular context – the desire to tread a middle course between individualism and socialism. It is based on the natural law tradition, but not solely on that tradition. Indeed the theologians Coleman and Baum (1991) believe that it lies in ‘a view of the world as pregnant with the presence of God; in an understanding of the objectivity of moral values and deep concerns for protecting the family, religion and God’s purposes for creation; in a sense of unity between the secular and the sacred, their nexus in God’s ubiquitous presence’ (1991).

⁹⁴ It was not however an exclusively Catholic position and was embraced by other Christian dominations. See 5.2.2 below.

⁹⁵ I will return to this theme in Chapter 6 where I deal more extensively with the common good and the principle of subsidiarity as they evolved in official Catholic social teaching. My purpose here in this chapter is to acknowledge the multiple provenances of the concept and to debouch in the end of the chapter on an understanding of subsidiarity rooted in an anthropology that is based on the dignity of the human person. This is important because the understandings of ‘subsidiarity’ in common currency are based on different anthropologies and, perhaps more importantly, on different political agendas.

This perspective on subsidiarity starts from the dignity of the individual, originally interpreted as a consequence of *imago Dei*, and believes that the individual's purpose or end is properly pursued in inter-relationships with others, and insists that the individual is best served when individual ends are pursued in the 'lowest' possible community. Accordingly what can be best achieved in the family, for instance, should be pursued there. The local community, the town, the school, the county, as appropriate, will be the proper loci for the pursuit of different common goods. Equally higher communities, more particularly the state, should enter the frame when a lower community is not fit for a particular purpose. In a globalised world the principle can also be invoked when discussing the relationship of the state to international bodies.

5.2.2 *Political philosophers*

The principle of subsidiarity developed independently, in parallel to the Catholic tradition, in the political domain. Political scientists and thinkers have over the last two centuries propounded concepts similar to that of subsidiarity. The nineteenth century philosopher J.S. Mill believed that there were many tasks of government that should not be performed by central government alone, but should be shared by central and local government, local authorities having the 'compensatory advantage of a far more direct interest in the result' (quoted by Wilke and Wallace on p.14, from *Representative Government* (1861), London: Parker Son and Bourn, p.282).

We find similar considerations propounded by the French philosopher Proudhon in his major work, *The Principle of Federation*, first published (in France) in 1868. Proudhon insists on 'the sovereign character of their (the different levels of government) components, the political societies, with respect to

the decentralization and federalization of the states ... Each level should benefit from a dispersion of the jurisdictions, thus allowing different levels to assume the responsibilities appropriate to them.' (Wilke and Wallace, p.14)

In the Netherlands, Abraham Kuyper, politician⁹⁶ and theologian, in 1880 formulated his doctrine on 'sphere sovereignty'. Society and its particular facets were clearly defined 'sovereignties' through which God's will-power and authority granted sovereignties to the state, the church, family, school, science and the arts. These units were responsible to Him. Each facet of society would have a defined territory of initiative and action. The state was not to interfere here. The national government would intervene as intermediary in the case of confrontation between the social units.

In Ireland there was a school of thought which strongly promoted the subsidiarity concept in the 1960s and 1970s. T. J. Barrington, the most noted author on local government structures of his day in Ireland, claimed that the principle of subsidiarity became operational when one considered governmental systems and structures. He saw subsidiarity as unavoidable given the trend towards more extensive government. He claimed that 'the point about the principle of subsidiarity is that bigness has to demonstrate that it is best; one must not take this for granted' (1976). This was an 'anti-big-government' position promoted by the Institute of Public Administration in Ireland in the 1960s and 1970s.

In 1980 the Christian Democratic Appeal (CDA) was formed in the Netherlands – a fusion of Roman Catholic subsidiarity and Calvinist 'sphere sovereignty' thinking. Subsidiarity was

⁹⁶ He was prime minister from 1901-1905.

considered a relatively opportunistic guideline, aimed at achieving political efficiency. Sphere sovereignty in balance with it saw that, through God's will power and authority, sovereignties were granted to the state, church, family, school, science and the arts. Fusing the two, the CDA propounded a 'responsible society' where the socio-economically strong paid attention to the needs of the weaker.

The 'social climate' relies on society's actors and on their responsibility to maintain and promote specific norms and values. The national government does not need to intervene. Its task is to encourage these social foundations to develop and to strengthen their independence. (Wilke and Wallace, p.19)

5.2.3 *The European Union*

It is then not surprising that we find the subsidiarity principle emerging somewhat later in EU affairs. The understanding of subsidiarity in the European Union (EU) is also in common currency. Here we see a more political nuance and indeed multiple interpretations – the position of the German Länder separating themselves from the federal state, the Eurosceptic position attempting to downgrade the powers of the Union in contrast to those of the member states, the Christian Democrat position and the newly emerging position which would see the principle justiciable in EU legislation. I explore these interpretations here for two reasons. First, these are interpretations in common currency and I want to show that there is a significant difference between them and the understanding I myself wish to espouse. Second, because I want to contrast the political nature of these understandings with the more ontologically based understanding which I propose.

A draft treaty of the European Union was introduced to the European Parliament in 1984 (the so-called Spinelli initiative, named after the President of the Parliament who promoted it). It introduced the language of subsidiarity proposing

... to entrust common institutions, in accordance with the principle of subsidiarity, only with those powers required to complete successfully those tasks that they may carry out more successfully than the States acting independently.

This of course echoed provisions in other constitutions. The tenth Amendment to the US Constitution proclaims

The powers not delegated to the United States by the Constitution or prohibited by it to the States are reserved to the States exclusively, or to the people.

Article 30 of the German Federal Government Grundgesetz claims

The exercise of governmental powers and the discharge of governmental functions shall be incumbent on the Länder in so far as this Basic Law does not otherwise prescribe or permit.

The concerns of the German Länder are long standing in their resolve to preserve their powers as against the federal government. This was a point well taken by Jacques Delors, the Commission President, and in spring 1988 he met representatives of the Länder in Bonn to address those concerns. Subsidiarity was part of the language used at that meeting.

In 2004 at an Intergovernmental Conference of the European Union, the member states agreed a draft treaty for the Union.⁹⁷ The draft treaty stated that the actions of the Union shall be governed by the principles of conferral, subsidiarity and proportionality.

ARTICLE I-11

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the member states in the Constitution. Competences not conferred upon the Union in the Constitution remain with the member states [1-11,2]. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the member states, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. [1-11,3] Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution [1.11-4]

There is a nine-article protocol attached to the draft treaty dealing with subsidiarity and proportionality, where it is stated that

The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the

⁹⁷ The treaty was later rejected by referenda in France and the Netherlands but, with its substance largely intact, later put forward in the Lisbon Treaty. This was rejected by the Irish electorate in a 2008 referendum, but is still on the agenda of the Union for ratification.

principle of subsidiarity by a European legislative act, brought in accordance with the rules laid down in Article III-365 of the Constitution

Article 111-365 says that

The Court of Justice of the European Union shall review the legality of European laws and framework laws.

But also, significantly in the context of the principles of subsidiarity and proportionality, says that

Any natural or legal person may, ... institute proceedings against an act addressed to that person or which is of direct and individual concern to him or her, and against a regulatory act which is of direct concern to him or her and does not entail implementing measures.

The provenance of this formalisation of the principle of subsidiarity in the EU Draft Treaty bears some exploration. It was not a straight-forward development. By the early 1990s three strands of thought were emerging within the European Community combining to push agreed thinking towards the concept of subsidiarity

- the fears of over-extension, i.e. that so many competencies were being demanded of the Community that it would fail to deliver, particularly in the context of future enlargements
- the anxieties of the German Länder to promote a new interest in defining the boundaries of the Community's power to act, and
- the traditional concern to retain the 'rights of the member states themselves in relation to the collectively exercised

powers of the Community as a whole' (Wilke and Wallace, p.5).

The fears about incursion into national competencies was typical of the British approach to the Community. Sir Leon Brittan, a British Commissioner, in a speech to the Conservative Group for Europe on 11 October 1990 described subsidiarity as an '... ugly word but a useful concept ...', which if inserted in the Treaty would '... have a substantial psychological effect as well as provide a legal test against which to judge the acceptability of any proposal'. He saw it as '... a categorical declaration that the Community should interfere only where it was genuinely useful to do so. It would make it clear that the evolution of the Community is not some never-ending conveyor belt carrying us forward inexorably'.

Subsidiarity was seen by others as a solution to a different problem. In an ever-globalising polity, where does the role of the nation state end (or begin)? Is it possible to have a globalised *demos*? Some are committed to the strength of 'democracy in one country'. They would fear that the process of European integration devalues democratic decision making in the nation-states without creating alternative options for transnational political control. The German political scientist Peter A. Kraus (2003. pp.665 ff.) talks of the fear that '... important decisions that affect a growing number of social and economic policy issues are made at the European level, and thereby, some of the central links between liberal democracy and the welfare state are being weakened. Market integration is accomplished with no corresponding efforts at social and political integration' (ibid). They suggest that there are no socio-cultural foundations to support what might be described as a push towards a European *demos*. On the other hand what can be described as a 'post-nationalist' view would like to '... overcome the idea of the

homogeneous nation-state by deliberately refraining from any attempt to establish a congruent relationship between culture and political society' (ibid). They see the lack of a common cultural identity as an opportunity to build a novel and truly 'civic' type of *demos*, a *demos* which transcends culture and reflects nothing but the collective consent emanating from shared moral values.

The political scientist John Peterson, summarising the political understandings of subsidiarity, has concluded: 'Broadly speaking three competing ideologies of subsidiarity may be identified'(Peterson, 1994, p.118). There is the Christian democratic version associated with Catholic social teaching, believing that '... small social groups should be autonomous and sovereign in a pluralist society, yet united in a common morality which stresses duty and harmony'. There is the ideology based on German federalism which argues for specific definitions of powers at different levels of government. And there is the ideology, more typical of the British viewpoint, which assumes a more narrow definition of subsidiarity, which sees the EU acting only when necessary to ensure free movement of goods, people, services and finance, and not interfering in the affairs of the member states.

The concept of subsidiarity then as it emerges in final shape from the long debate in the EU is a heavily political concept – perhaps better described as criterion rather than principle. Allan Dashwood (2004), the European Law expert, suggests that the Convention which prepared the draft treaty was heavily aware of this and therefore gave teeth to the subsidiarity principle by reinforcing the pre-adoption scrutiny of legislative proposals, by formally involving national parliaments in the process.⁹⁸ 'After

⁹⁸ This role for national parliaments remains in the Lisbon Treaty, the successor of the Constitutional Treaty, which is now before the member states for ratification.

all, national Parliamentarians are the ones whose law-making powers are liable to be curtailed by a decision that a certain matter be regulated at Union level, so they ought to be alert to possible infringements of the principle.’

Because the debate was political and confused (sometimes deliberately so), drawing on very different definitions and understandings of subsidiarity, it is not easy to be specific about the nature of the concept or principle as proposed. It is not a legal or constitutional term. Wilke and Wallace stress that in essence subsidiarity is a socio-political term, not a legal or constitutional principle. In their reading of the Christian social literature and discourse,⁹⁹ subsidiarity is not a self-standing concept, but a guideline to be applied in combination with other relevant principles of social action, such as stewardship or justice. In summary, in the political discourse which we have just looked at ‘subsidiarity’ has a doubtful credibility. As so espoused, although it does take cognisance of different national traditions, there is some doubt as to whether subsidiarity is a sufficient criterion to provide an unambiguous guide on its own.

5.3 An ontologically-based understanding of subsidiarity rooted in natural law

I now move to the understanding of subsidiarity that I espouse. It is anthropologically based, rooted in an understanding of the dignity of the human person.

There is a tension between the role of the individual and the role of the community in which that individual lives. Classical liberalism would make the individual prime, it being the role of the state to foster and protect the rights of individuals. Classical

⁹⁹ I stress ‘in their reading’ because they are political scientists not theologians.

communitarianism, on the other hand, would make the community prime. The principle of subsidiarity, which I analyse in this chapter, focuses on the individual acting in community. Following the American political philosopher Jean Beth Elshtain it

...focuses on the mediating institutions of civil society, in a way that, ideally, nurtures both rights and responsibilities; that sees persons as irreducibly social; and that locates such persons in the overlapping relationships, public and private, of civil society. (Elshtain, 1995, p.98)

Thus understood, Elsthain distinguishes nine elements to the principle of subsidiarity.

(1) It sees the person as the origin and purpose of society. (2) It recognises the essential sociality of the human person whose self-realisation is achieved through social relations – the principle of solidarity. (3) Social relationships exist to provide help to individuals, but is not to supplant self-responsibility; it should augment it. (4) ‘Higher’ communities exist to perform the same subsidiary role towards ‘lower’ communities. (5) Communities must enable and encourage individuals to exercise their self-responsibility and larger communities must do the same for smaller ones. (6) Communities are not to deprive individuals and smaller communities of their rights to exercise self-responsibility. (7) Subsidiarity serves as a principle to regulate inter-relations between communities. (8) It is a formal principle that can be embodied only in particular communities and circumstances. (9) It is a universal principle grounded in a particular ontology of the person (Elshtain, 1995, pp.105-6).

The principle of subsidiarity and the concept of the common good are closely linked. The common good, according to the

principle of subsidiarity, should not be something removed from the individual. Indeed subsidiarity prevents the common good from being seen as an existence independent of private concerns or the basic rights of individuals as citizens and thus turning into a social ideology or a pre-modern type of communitarianism. Subsidiarity when coupled with the common good prevents it from being static as in its classicist presentation. The common good's objective of enabling individuals to attain fullness of life in political community remains, but it is concretised. And this is done subsidiarily, reflecting the ever-active choices of free individuals.

There is a danger that subsidiarity can be misunderstood and seen as an ally of NPM, where decentralisation and the promotion of agencies is promoted.¹⁰⁰ But subsidiary is neither a libertarian principle nor an endorsement of neo-liberalism. Rather it encourages '... active participation in multiple forms of human association' (Hollenbach, 1994, p.331). The principle is threatened when any single social institution gains the power to control the whole of human life.

It is important to stress that subsidiarity is not just a principle of liberty. It is a more comprehensive criterion and can only be properly understood in the context of the common good. Christopher Wolfe, the American political scientist says 'Because of its context in the common good it supports a view of human life that harmonizes the individual and the communal aspects of life more easily' (Wolfe, 1994, p.92).

¹⁰⁰ At a recent conference (Rome, 5-7 October 2006, entitled 'The Good Company Conference, Catholic Social Thought and Corporate Social Responsibility', a German theologian, André Habisch of the Catholic University of Eichstatt, suggested that the theoretical sub-strata that underpin NPM – agency theory, principle-agent theory, transaction cost analysis and so on – fit with the principle of subsidiarity in a globalised economy. This to me is not only to mis-understand the principle of subsidiarity, but also to unwisely ally it to the altogether different anthropology which underpins NPM.

5.4 Summary : Discussion

I have explored a range of different understandings of the concept of subsidiarity – theological, philosophical, political legal and theological. I have done so to emphasise that there are these varying understandings and that they can differ fundamentally. Notwithstanding these differences, the word ‘subsidiarity’ is used with unconscious interchangeability of the various meanings. I am at pains therefore here to stress the conceptualisation of subsidiarity that I espouse and in the following paragraphs to describe how I see it as relevant to the Irish public service modernisation programme.

An appraisal of the different strands which I have presented in this chapter leaves us with four different approaches to the principle of subsidiarity.

There is a view which sees subsidiarity as a politico-social criterion that should be used when devising governmental structures or allocating tasks as between layers of government. This view is evident in the Christian democratic tradition. It was the view that inspired mid-twentieth century Irish local government enthusiasts. Its theoretical base is a mixture of Christian principles with a ‘small is good’ suspicion of big government.

A second view sees subsidiarity as a justiciable principle. This is the view that has evolved, and is continuing to evolve, in the EU. It is related to the view espoused by the German Länder. We can expect that this view will develop further in coming years, presuming that the current Lisbon Treaty is accepted. Legal precedents and legal procedures will evolve from this approach.

The third perspective I would describe as a nationalistic-siege-bound understanding of subsidiarity, most notably promoted by UK politicians in their efforts to hold back any expansion of EU powers which they would see as usurping national sovereignty.

The fourth understanding, for me the most apposite, of subsidiarity sees it as a principle that propounds that individuals' common goods should be pursued in apposite but different settings. It suggests that the person is primary but can only flourish in community. The apposite community of flourishing will differ depending on the project of the common good being pursued at a specific time in a specific context. This view of the common good is not a 'small is good' understanding. It is not anti-state intervention. Rather it might be described as an understanding that would say 'the common good should be pursued in apposite contexts'. Accordingly, this view of subsidiarity would demand that each apposite community – family, school, village, university, state, international body and so on – act as appropriate to its own domain to create the conditions in which individuals can pursue their own development.

There are a number of implications for the Irish public service modernisation programme arising from the above analysis. If the vision of the person and of society contained in the above presentation were to be accepted by the modernisers it would play out as follows.

In Chapter 4 I concluded that a common good approach would give primacy to the facilitation of individuals pursuing their proper development – including civil servants pursuing their development qua civil servants. Adding a subsidiarity perspective to that, one must now add that this should happen in apposite

groupings. The NPM approach, which sees 'lower' groupings as there to serve the agenda of the 'higher' group through decentralised and delegated functions would be replaced. An instrumental approach to 'lower' groupings would be replaced by a perspective that would see the 'lower' grouping as the appropriate place not only for action but also for policy making, decision making, self direction, as appropriate.

In Chapter 4 I also concluded that a common good approach would be more conducive to promoting the deliberative role of the civil service. Adding in a subsidiarity perspective here we should now expand on this issue of deliberation. Deliberation also should take place in apposite settings. The government – local, national or international – is not the only player in discussion and exploration of what is good for individuals and for society. There is a role for the multifarious rich strands of civil society, a perspective which I will show in Chapter 6 to have been eventually adopted by the magisterium.

Chapter 6

The Common Good and Subsidiarity in the Magisterial Social Teaching of the Catholic Church

6.1 Introduction

I have presented the concept of the common good (Chapter 4), analysed its provenance and development, and related it to NPM and the Irish public sector modernisation programme. I have equally done this in relation to the principle of subsidiarity (Chapter 5). I referred briefly to the pivotal role of Catholic social teaching in the development and promulgation of these two concepts. As promised in those sections, I now return to the role of Catholic social teaching in these matters.

We are dealing in this chapter primarily with Catholic social *teaching* (CST) which is in the main presented through papal encyclicals and other episcopal and Vatican commission-promulgated documents. The non-official elements of the Catholic social tradition, found in the multitude of organisations and initiatives that are initiated under Catholic auspices and the explorations of the tradition by middle-level thinkers, are not part of the central focus of this chapter – though invariably middle-level thinkers are interviewed in the course of the chapter to throw light on the CST.

I set myself two purposes in this chapter. First, I want to identify how Catholic social teaching developed and show how it is significantly different and nuanced now compared to when it first

moved centre stage in the late nineteenth century. Second, I want to identify where the line of thought evident in the second half of the twentieth century shows a growing compatibility with human rights theory and a recognition of a modern concept of freedom – human rights theory having been condemned by the church in the nineteenth century. The most significant change that I will advert to is the focus on the human person as opposed to a focus on human nature, explaining human dignity by reference to personhood rather than human nature. As the Vatican II document *Gaudium et spes* (The Pastoral Constitution on the Church in the Modern World) trenchantly proclaims

.... there is a growing awareness of the exalted dignity proper to the human person, since he stands above all things, and his rights and duties are universal and inviolable (26).

I will also highlight the concepts of subjective and objective work and the indirect employer, as espoused in the writings of John Paul II, because of their significance for my thesis' argument. The changed perspective on the role of the state will also be dealt with, the acceptance of democracy and of the place of human rights, these also being *ad rem* to my thesis.

6.2 A hermeneutic for reading the papal encyclicals

The common good and subsidiarity heritage is very much a Roman Catholic one. Indeed there would be a line of thought that would see that any concepts at home in a Catholic world-view as sectarian (in the strictly descriptive sense, not necessarily a pejorative sense). But those holding such a position read the documents naively, neglecting to take account of hermeneutical considerations of context and time. Also, such a view is blind to

the distinction between origin and validity. Catholic social teaching may be particular in origin but this in itself is not to vitiate its claim to be universal.

An analysis of the concepts of the common good and of subsidiarity as they developed in Catholic social teaching shows that the concepts have altered in Vatican teaching. The development is traditionally claimed in the documents to be linear, but in fact we see a major shift, indeed reversal where human rights and democracy are at play, since Vatican II. Of course the context has changed considerably. The pronouncements of the Vatican, mainly in the major relevant encyclicals, are of their time. Each of them can more properly be understood when interpreted in the light of the circumstances in which they were made and in the light of the issues which they addressed. The American practical theologian and sociologist of religion John A. Gallagher (1991) suggests that the encyclicals can be defined in terms of their authorship, audience and purpose. Their content has been articulated in response to theological, intellectual, social and economic movements. Theologians John A. Coleman (American) and Gregory Baum (Canadian based) believe that 'Unlike other areas of theology, Catholic social teaching represents a distinctively evolving tradition, open to history and new data ... frequently inductive in its methodology and remains concerned about reading the signs of the times' (p.ix). But, furthermore, the genre of the encyclical, as well as being magisterial in character, has certain internal constitutive elements which further define that genre. 'Among the essential constitutive elements have been the natural law and the law of grace, reason, faith, and a conception of the ultimate purpose of existence' (Gallagher, 1992, pp. 38-9). But for all the contextualising it is nonetheless a fact that there has been a major reversal.

In the remainder of this section then I want to ask if the encyclical tradition represents an ideology. I want to show it moving from exclusive reliance on deductive methods and adopting induction. I want to point to the growing acceptance of a role for the faithful. And I want to show the teaching mode moving, though not fully, away from doctrine to discernment.

6.2.1 Ideology, paranaesis or bias?

Any assessment of the church documents presenting Catholic social teaching must also be hermeneutically aware of the uses to which the documents were intended or were put. The American theological ethicist Michael J. Schuck (1991) has some useful pointers here. Beginning with a consideration of the meaning of the word 'ideology' he progresses to a series of admonitions to anyone setting out to discover the intent of a particular document. 'Ideology' can be used pejoratively or in a non-pejorative way. Some pejorativists think that ideologies mask social interests. Others believe that they conceal social strains. 'Some non-pejorativists equate ideology with any comprehensive system of social ideas; others with strategies for special action' (p. 47). In other words, for non-pejorativists, ideologies are seen either as world views or perspectives to promote and endorse action. Applying this categorisation to Catholic social teaching, it can be seen as either masking social interests, concealing social strain, presenting social ideas or generating social action. On the one hand a tension between neutrality and bias. On the other hand a tension between proclamation and action. Schuck believes that Catholic social teaching, at its best, finds itself at the mid-point of these two axes, that between neutrality and bias and that between gospel proclamation and concrete application. 'At its worst, it slides too far towards one point, producing teachings of vacuous neutrality, dogged bias, abstruse pronouncement or invasive application (p.53)'. In what follows in this chapter, in

my view, we see ample *prima facie* evidence in the late nineteenth century of the first of these three tendencies – teachings of vacuous neutrality. However a contextual reading of the documents will see them in a more favourable light. And the entire project reveals a radically changed perspective at the end of the twentieth century.

6.2.2 *The move from deductive to inductive methods*

One of the major facets of the genre that has changed and which allows for greater insight into their subjects in the encyclicals is the move from reliance primarily on deductive procedures to an awareness of the more comprehensive insights possible through the use of induction. Vatican II opened up new lines of enquiry and thought, paving the way for a major turn in anthropology where the focus moved from a fixed nature to the person. The Irish theologian Donal Dorr suggests that it ‘... incorporates what is best in the natural law tradition and integrates it with a more existential idiom’ (Dorr, 1983, p. 121).¹⁰¹ In *Gaudium et Spes* (1965), for instance, we are told that ‘... the human race has passed from a rather static concept of reality to a more dynamic, evolutionary one’ (5). Paul VI made significant moves in this direction. Two threads are particularly significant, most notably in his Apostolic Letter *Octogesima adveniens*, written to Cardinal Maurice Roy, President of the Council of the Laity and of the Pontifical Commission on Justice and Peace, on the occasion of the eightieth anniversary of *Rerum novarum*. First, a sharper

¹⁰¹ Gallagher (1991) suggests that more profound changes in the understanding of the natural law tradition were coming to the fore. In the early classical social encyclicals the natural law was construed to be ‘... a metaphysical ordering of human reality, biological and social, which created the environment in which human life could be meaningfully and purposefully lived’ (p.42). But from Vatican II onwards, Gallagher suggests, a new set of meanings seem to be replacing those of classical natural law theory. Human dignity replaces human nature as the basic standard of justice – Gallagher correctly notes here that this was not to be the case where the Vatican concerned itself with sexual morality.

focus on politics as opposed to the focus on economics. This leads him to promoting participation in politics and decision making. Second, a move from a deductive approach when theologising in this sphere to an inductive one. Or again, in paragraph 2 of *Octogesima Adveniens*,

We have gone into the crowds and have heard their appeals, cries of distress and at the same time cries of hope. Under these circumstances we have seen in a new perspective the grave problems of our time.

For me, following Dorr, the approach outlined above is grounded in a move from the previously deductive methods of the social encyclicals to a more inductive approach. In the deductive method a universally valid 'social doctrine' was applied to changing circumstances. In the inductive method of *Octogesima adveniens* the different situations themselves are the primary location in which believers come to judgements in domain-specific ethics.

6.2.3 *A recognition of the role of the faithful*

Octogesima adveniens, paragraph 4 says

In the face of such widely varying situations it is difficult for us to utter a unified message and to put forward a solution which has universal validity. Such is not our ambition, nor is it our mission. It is up to the Christian communities to analyse with objectivity the situation which is proper to their own country, to shed on it the

light of the Gospel's unalterable words and for action from the social teaching of the Church.¹⁰²

Note here the radical shift. It is not for the magisterium or the bishops but for the Christian community to 'shed light on the Gospel's unalterable words and for action from the social teaching of the Church'. In other words, the inductive approach implies another change – taking the experience of the faithful seriously.

6.2.4 *Embracing 'discernment'*

From its earliest days the encyclical tradition would have seen itself as presenting social doctrine. We find post-Vatican II a shift here. There is a growing acceptance of 'discernment'. But tensions remain between the place of 'doctrine' and 'discernment'.

We see a shift in John Paul II. His writings progressed the social teaching of the church and changed it significantly. Using altogether different language, these documents signal a most definite break from the inherited teaching on the role of the state and thus enhance the concept of subsidiarity. Further they also develop the common good tradition in their teaching on 'solidarity'. The pronouncements echo those of John Paul II's predecessors, continuing to condemn socialism and individualism. But John Paul II is not content to leave it at that and sets out to demonstrate the bases of the Catholic position, stressing that it is not a mere middle course. The traditional teaching is revisited and interpreted in a new context. There is an emphasis on those philosophical foundations of that teaching

¹⁰² The translation here, taken from the American edition of the encyclical, leaves something to be desired.

which emphasise that the teaching is based on the dignity of the human person.

John Paul II reverts to the use of the term 'social doctrine', a term which implies a corpus of unchanging teaching., '... deductivist, and abstract, insensitive to historical variations...' (Dorr, 1983, p.214). This certainly reverts to a pre-Paul VI understanding, seemingly denying the Christian community's role in discerning the social teaching. There are a number of differing reactions among theologians to this change of terminology.

Patrick Hannon (2007), the Irish moral theologian, describes the insistence of some writers on a distinction between 'doctrine' and 'teaching' as 'fussy', '... even when what is at stake is the important distinction between unchanging principle and contextual practical application' (p. 56). His concern as I understand it is to defend against a tradition which would have seen 'teaching' as not as normative as 'doctrine'.¹⁰³

Dorr (1983) believes that John Paul II wanted to retrieve the term 'doctrine', but nuance it by using it interchangeably with 'social morals' and 'social thought'. Certainly John Paul II goes to considerable length to emphasise that this teaching comes from the Magisterium. Indeed *Centesimus annus*, the encyclical celebrating the hundredth anniversary of *Rerum novarum*, goes so far as to state that the most valuable feature of that encyclical is that it comes from the Magisterium.

¹⁰³ He is aware of an era when moral theology was less interested in social questions and when the official teaching of the church was not seen as active in the area. Indeed Catholic social teaching has often been referred to as the Church's 'best kept secret'.

For the Leuven-based theologian Verstraeten (2007) this is problematic. He sees John Paul II, by using the term ‘doctrine’, as moving away from the *Gaudium et spes* innovation which saw Catholic social teaching as ‘discernment’. This discernment is (1) a reading of the signs of the times, social analysis, and (2) informing that reading with the enrichment that Biblically inspired root-metaphors¹⁰⁴ can provide. In other words, analysis and faith must go together. Without faith there is a risk of ideological bias. Without analysis there is a risk of pious ideas. The root-metaphors are ways that we fundamentally use to understand the human condition. This is a fundamental issue for Verstraeten in coming to understand what the Catholic social *tradition* is. And he opts strongly for the term tradition. The tradition brings the official teaching and the unofficial tradition or practice together. For him the tradition is not fully understood unless it is approached with a consciousness of the myriad of instantiations of the tradition all over the world wherever Catholic practitioners implement that tradition. This understanding I find attractive. It does behove me therefore to warn that the material presented in this chapter focuses on what Verstraeten would call the official written position. Were I to broaden my treatment to look also at the practices, I would need to go into more historical and social analytic fields.

On this same issue the Irish Cambridge-based theologian Frank McHugh (p.24) says: ‘It needs to be acknowledged of course that the term “doctrine” does not mean exactly the same to John Paul II as it did to Leo III and Pius XI, and there is an important task still to be done in clarifying the meaning of doctrine as used in connection with Catholic social teaching’.

¹⁰⁴

For an elaboration of the concept root-metaphor, see 6.2.5 below

As with previous popes, John Paul II's approach is determined to an extent by the context in which he teaches. This pope, after 1989, is speaking to a post-Soviet world. His concerns are not as focused as were his predecessors on combating socialism, though he does repeat the traditional papal pronouncements against it. This pope more than others is concerned with the problems of injustice in a broadly capitalist system. Following John XXIII, he is also more concerned with the international and intra-national issues.

Two statements from encyclicals of 1987 and 1991 give us some insight into the mind shift. To take the latter first. In 1991 John Paul II issued an encyclical to commemorate the one hundredth anniversary of *Rerum novarum* – *Centesimus annus*. Paragraph 3 explains the journey proposed. It offers a 'rereading' of Pope Leo's encyclical. It invites readers to 'look back' at the text itself '... in order to discover anew the richness of the fundamental principles which it formulated for dealing with the question of the condition of workers'. It adds to this an invitation to 'look around' at the 'new things' which surround us and in which we find ourselves caught up. It also issues an invitation to 'look to the future' with its uncertainties but also with promises, '...uncertainties and promises which appeal to our imagination and creativity, and which reawaken our responsibility, as disciples of the 'one teacher' (cf. Mt 23:8), to show the way, to proclaim the truth and to communicate the life which is Christ'(cf. Jn 14:6)'.

The 1987 encyclical *Sollicitudo rei socialis* emphasises that the Church's social doctrine is not a 'third way' between liberal

capitalism and Marxist collectivism (section 41).¹⁰⁵ Rather it constitutes a category of its own. It is the outcome of

... careful reflection on the complex realities of human existence, in society and in the international order, in the light of faith and of the Church's tradition. Its main aim is to interpret these realities, determining their conformity with or divergence from the lines of the Gospel teaching on man and his vocation, a vocation which is at once earthly and transcendent; its aim is thus to guide Christian behaviour. It therefore belongs to the field, not of ideology, but of theology and particularly of moral theology.

While John Paul II concludes here that his presentation of Catholic social doctrine is situated primarily in the realm of moral theology (and implicitly therefore carrying the force of 'doctrine'), his elaborations of the themes he pursues are, as we shall see later in this chapter, in a more philosophical mode. In this method of proceeding he is following a traditional papal process – reasoned arguments leading to a conclusion which is thereafter bolstered by calling on quotations from the scriptures and the Magisterium.

So, the intent was to re-visit and re-situate the doctrine, but also to elaborate it in the light of 'new things'.

¹⁰⁵ The teaching of John Paul II's predecessors could be seen as some such third way. More particularly is this the case with Pius XI in *Quadragesimo anno*, where he talks of the 'class order'. In this model each class would operate to its own order and there would be no clash of classes. As the German practical theologian Norbert Mette describes: 'Instead of transcending the antagonism of capital and labour in the class-less society, there is thus a plea that this contrast should be transplanted to become a flourishing collaboration between the two in a class-free society ... (Mette, 1991, p.32). These ideas did not have any effect. And, according to Mette (1991, p.32) their categories were inappropriate to actual social developments and equally the solution propounded, a call for 'reform of disposition', was incapable of putting a stop to this development.

6.2.5 *The role of root-metaphors in Catholic social teaching*

It is also necessary to take account of the place of root-metaphors in the presentation of Catholic social teaching, though this hermeneutic route is possibly the one least travelled by scholars interrogating the teaching – indeed the role of the root-metaphor in generating meaning is possibly underestimated and not appreciated as being as important as theoretical explanations..¹⁰⁶ By taking account of the role of root-metaphors one is acknowledging that the texts of Catholic social teaching are not merely about rational principles and theories. They are also, through the use of root-metaphors, powerfully inspirational.

Verstraeten, (2000, p. 72) suggests that metaphors make a deeper understanding of reality possible. They achieve this by producing an emotional shock with an 'intentional misuse of language'. By bringing together things that do not go together '...they cause a new, hitherto unnoticed, relation of meaning to spring up between the terms that previous classification had ignored or not allowed' (p.72). And, of course, what is true of metaphors is also true of root-metaphors, those most basic assumptions about the nature of the world, society or experience. E.R.MacCormack (1976, pp. 94-95, quoted by Verstraeten) describes the function of the root-metaphor thus

... the function of the root-metaphor is to suggest a primary way of looking at things or experience and this way of looking at things assists us in building categories or in creating art forms that will express this insight. ... Without such apprehensions about the nature of the world, knowledge would be impossible, for we would

¹⁰⁶ Cf. Verstraeten (2000, pp. 72 ff) for an extensive treatment of the place of root-metaphors in Catholic social teaching.

have no way of organizing our perceptions into a coherent whole.

Root metaphors open new horizons. They bring forth new possibilities for understanding the world. Verstraeten (2000, p. 74) gives examples of the powerful root-metaphors at play in *Sollicitudo rei socialis* – structures of sin, evil 'mechanisms', the 'health' of a political community, the neighbour as the living 'image of God', the Father, the 'brotherhood' of all in Christ and so on.

One of the more significant implications of openness to the transforming power of root-metaphors is that they demand a response. This completes the loop whereby the Catholic social tradition, to be fully appreciated, should be seen as comprising not only official teaching, but also non-official teaching and praxis.

6.3 Three phases in official Catholic Social Teaching

It is possible to divide the movement of Catholic social teaching into three phases. The phases were dictated by different pre-occupations, different contexts and different prevailing philosophies and ideologies. Marxism, fascism and capitalism will each in turn influence developments. A changed perspective on the role of the state comes into play. Freedom of religion finds acceptance, a profound change.

The developments described in section 6.2 point to these three phases in the development of Catholic Social Teaching in the period stretching from *Rerum novarum* (1891) to the current time. *Rerum novarum* issued at a time when the world was experiencing the development of a mass proletariat. It issued at a

time when the conditions of workers were intolerable. The Catholic Church saw a need to take a stance in this context. The encyclical represents the beginning, first phase of Catholic Social Teaching, one based on '...opposition to socialism in that it offends against basic principles of social order according to natural law and therefore can contribute nothing to the solving of the social question' (Mette, 1991, p.26). Nonetheless *Rerum novarum* calls for fair wages, the right of workers to join together to protect their legitimate interests and the right of the state where necessary to intervene to maintain the common good.

By the time *Quadragesimo anno* was promulgated forty years later, the context had changed. The world had witnessed an economic crisis in the late 1920s. Fascism was a reality. The church was more aware of the doctrinaire level of the principles of socialism. The arguments were no longer at the historical-phenomenological level (Mette, 1991, p.26). The search for a third way continued, with a call for the corporatist state. This tradition continued into the pontificate of Pius XII. Accordingly the possibility of collaboration with forms of socialism was remote.

In the third phase, beginning with the encyclical *Mater et magistra* of John XXIII we see a shift. Socialism is no longer seen as homogenous. *Octogesima adveniens* (1971) comments

Distinctions must be made to guide concrete choices between various levels of expression of socialism... (30).

But it was with the pronouncements of Vatican II that the major shift takes place. The person is centre stage from hereon. Human rights and freedom are acknowledged. The integralist perspective of the previous phases with its suspicion of the state is abandoned. Democracy is accepted.

In the remaining sections of this chapter I analyse the teaching in each of these phases. I also concentrate on three concepts as they develop and change in the evolution through these phases – the common good, the principle of subsidiarity and the role of the state.

6.3.1 *Phase 1: Rerum novarum and early Catholic Social Teaching – A middle way between socialism and capitalist exploitation*

6.3.1.1 The context in which Catholic social teaching emerged in the late nineteenth century

Rerum novarum is generally credited as being the first of the major social encyclicals to emerge from the Vatican. Reading it at this distance in time from its publication it seems a rather conservative document, suggesting measured opposition to the status quo in order to alleviate the position of the poor in society.¹⁰⁷ Such an evaluation would, first, misunderstand the importance of the encyclical as a major step forward and, second, fail to appreciate the circumstances and perspective from which the pope was speaking.

To take the latter first – the perspective of Leo XIII. *Rerum novarum* did not emerge from a vacuum.¹⁰⁸ Germany, for

¹⁰⁷ The American moral theologian Charles Curran (1988) describes it at best as paternalistic or at worst authoritarian.

¹⁰⁸ Though *Rerum novarum* is credited as the first major social encyclical, it does follow a line that was prevalent in earlier encyclicals, i.e. the need to combat the 'evils' of communism and socialism. And it shares concerns of previous encyclicals, concerns with the tensions developing in society between classes as a result of the uneven distribution of wealth. Indeed the language and tone of *Rerum novarum* on these issues might be considered low key and balanced compared to that of its predecessors. For instance, one predecessor of Leo XIII, Pius IX in his 1849 encyclical *Nostis et Nobiscum* propounded the following view

instance, had a long history in its pastoral discussions and debate of tackling what was variously called the 'workers' question' or the 'social question'. The industrial revolution had given rise to appalling working conditions – poor wages, child labour, unsafe working conditions, and so on. Churchmen (sic) were concerned to deal with these issues. Catholic and Christian workers' associations did develop (though tardily because of the 'paternalistic spoon-feeding of industrial workers by large parts of the official church hierarchy, which kept them in subservience' (Schäffer¹⁰⁹, 1991)). Indeed one bishop, Ketteler of Mainz¹¹⁰, fought a losing battle to get his colleagues to take more interest in this issue. Nonetheless 'Christian-social associations' did emerge. Indeed '... the Christian social movements and the Catholicism of the church hierarchy were far ahead in decisive areas ... they had come into being as a response to the pluralisation of the modern world in the nineteenth century ... and in so doing developed an ethic which could be adopted by the papal encyclical' (Schäffer, 1991).

Rerum novarum then emerged in a definite context. It was one where new social conditions, those associated with the industrial revolution, had come into play such that workers, now industrial

As regards this teaching and these theories, it is now generally known that the special goal of their proponents is to introduce to the people the pernicious fictions of *Socialism* and *Communism* by misapplying the terms 'liberty' and 'equality'. The final goal shared by these teachings, whether of *Communism* or *Socialism*, even if approached differently, is to excite by continuous disturbances workers and others, especially those of the lower class, whom they have deceived by their lies and deluded by the promise of a happier condition. They are preparing them for plundering, stealing, and usurping first the Church's and then everyone's property.

Coleman and Baum (1991) however suggest that there was a coherence in papal social teaching going back to Benedict XIV (1740). The popes adjured monarchical encroachments on the freedom of the church, regretted violence against secular states, addressed issues of family life, immoral business practices, utilitarianism and theft, set themselves against the social contract theory and unbridled capitalist market economics (p.viii)

¹⁰⁹ University of Padoa based theologian when this was written.

¹¹⁰ Ketteler was singled out for praise as recently as December 2005 in the papal encyclical *Deus Caritas*(27).

workers rather than agricultural workers, were being exploited. But, also, the encyclical was published at a time when the pope felt obliged to chart a course between two 'solutions' being proposed. In *Rerum novarum* Pope Leo XIII steered a middle course between 'individualism' and 'socialism'.¹¹¹ This was a matter of extreme anxiety for the church. 'Socialism' and 'communism' as they developed became major targets of condemnation because of their atheistic overtones. Leo XIII presented as disagreeing with both the liberal concept of the state and the Marxist concept. He shared the liberal view that the state should be in some sense neutral, above economics, but in practice espoused action that might be more appropriately based on a Marxist analysis, because his '...account of what happens in practice is closer to the Marxist view' (Dorr, pp 16-17). Later commentators, for instance the Spanish social scientist Jose Maria Diez-Algeria, would describe the Vatican position as 'an excessive nostalgia for the world of peasants and guilds, seen as almost the only vehicles for safeguarding personal values' (Díez-Algría, 1991). This because both Leo XIII and, even more vigorously, his later successor Pius XI, endorsed a type of return to the workers guilds.¹¹² For instance

In any case we clearly see, and on this there is general agreement, that some opportune remedy must be found quickly for the misery and wretchedness pressing so unjustly on the majority of the working class: for the ancient workingmen's guilds were abolished in the last

¹¹¹ Norbert Mette (1991) suggests that the church teaching which Leo XIII put forward and which was adhered to up to the time of Paul VI, though not wanting to be or be seen as an ideology, was often actually seen as one. Mette says that the teaching contributed to this view because its starting point invariably was a discussion on the ideological level before getting to grips with the social question.

¹¹² Although both these popes did express some nostalgia for the guilds, Pius XI more than Leo XIII, nonetheless Leo XIII did endorse unions of workers as an alternative to mixed unions of patrons and workers. Pius XI was particularly taken by solidarism and the idea of harmonious cooperation between classes.

century, and no other protective organisation took their place. Public institutions and the laws set aside the ancient religion. Hence, by degrees it has come to pass that working men have been surrendered, isolated and helpless, to the hard-heartedness of employers and the greed of unchecked competition. (*Rerum novarum*, 3)

It seems to me that a more balanced evaluation of the approach of Leo XIII is adopted by Dorr when he says that it is not the case

... that Leo XIII entertained any romantic attachment to the past. The men of the last years of the eighteenth century were blameworthy, not because they had destroyed the 'ancient workingmen's guilds', but because they had put no other organisation in their place (Dorr, p.353)¹¹³

Rerum novarum then was concerned to progress a social agenda, but to do so in a manner which would not encourage any instability in society. Specifically the intent was to oppose the contention that the classes in society were opposed to each other. To argue this case *Rerum novarum* uses a classical natural law ploy, the comparison of the symmetry of the parts of the human body with the body politic.

Just as the symmetry of the human frame is the result of the suitable arrangement of the different parts of the body, so in the State it is ordained by nature that these two classes should dwell in harmony and agreement, so as to maintain the balance of the body politic. Each needs the

¹¹³ This is a quotation which Dorr has taken from Calvez, Jean Yves and Jacques Perrin (1961) *The Church and Social Justice : The Social Teaching of the Popes from Leo XIII to Pius XII (1878-1958)*. Chicago: Regnery.

other: capital cannot do without labour, nor labour without capital.¹¹⁴ (*Rerum novarum*, 19)

This organological understanding of man and of the state would change radically in the third phase of the development of the teaching.

To return to a concern which I expressed at the outset of this section. It should not be thought that *Rerum novarum* was just a tentative entry into the field of social teaching. Rather it was a strong challenge to the status quo. However, as Dorr notes

It has now become evident that Leo XIII's political philosophy, his spirituality, and his fear of revolution, all imposed severe limits on the extent to which the pope could carry through that challenge. (Dorr, p.48)

However, the achievement of the encyclical is that it '... laid a solid basis for the emergence of the concept of "social justice"' (Dorr, p.51). It put commutative justice central stage in the ordering of society.

6.3.1.2 The understanding of the 'common good' and of the principle of subsidiarity in the first phase

In this first phase of Catholic social teaching the concept of the 'common good' features strongly, but often is taken as a given and not explained or justified. It is an assumption of the tradition, an assumption that is presumed to be part of the readers' world view. I think it is worth commenting in passing that the notion of the common good is not explicated in the writings of Leo XIII,

¹¹⁴ Here we see a very organological understanding of the natural law at play. This natural law philosophical tradition seems to have underpinned the papal encyclicals well into the twentieth century.

Pius XI or Pius XII. I have found no evidence in reading their publications of any elaboration of this concept. It does of course appear in their pronouncements, but always as an assumed good – never analysed, never developed, never explained.¹¹⁵ Indeed, even though never expanded, it is assumed to have a centrality in these popes' social teaching.

The principle of subsidiarity also appears in *Rerum novarum* when it argues for a resolution of the clash of the classes and private property. To meet this issue the encyclical uses the classical natural law ploy, the comparison of the parts of the human body with the body politic

Just as the symmetry of the human frame is the result of the suitable arrangement of the different parts of the body, so in the State it is ordained by nature that these two classes should dwell in harmony and agreement, so as to maintain the balance of the body politic. Each needs the other: capital cannot do without labour, nor labour without capital. (9)

¹¹⁵ My contention here is that the concept of the common good is vital and central to these popes, but not elaborated upon or nuanced as it will later come to be in the writings of John XXIII and John Paul II. Indeed *Quadragesimo anno* sees a strong connection between the common good and social justice.

Vatican teaching on the common good in the twenty-first century is far more explicit. The *Compendium* (2004, 166) gives an excellent concrete description of what is implied by the common good

These demands concern above all the commitment to peace, the organization of the State's powers, a sound juridical system, the protection of the environment, and the provision of essential services to all, some of which are at the same time human rights: food, housing, work, education and access to culture, transportation, basic health care, the freedom of communication and expression, and the protection of religious freedom. Nor must one forget the contribution that every nation is required to make towards a true worldwide cooperation for the common good of the whole of humanity and for future generations also.

Here we see a seed of the principle of subsidiarity. But it is presented as an answer to those who might foment instability in society.¹¹⁶

We see further pointers towards the development of the subsidiarity principle when the encyclical deals with private property and with the family. The issue of private property was important to Leo XIII because the socialist agenda was opposed to it. *Rerum novarum* proclaims

To remedy these wrongs the socialists, working on the poor man's envy of the rich, are striving to do away with private property, and contend that individual possessions should become the common property of all, to be administered by the State or by municipal bodies. (*Rerum novarum*, 4).

And

Socialists, therefore, by endeavouring to transfer the possessions of individuals to the community at large, strike at the interests of every wage-earner, since they would deprive him of the liberty of disposing of his wages, and thereby of all hope and possibility of increasing his resources and of bettering his condition in life. (*Rerum novarum*, 5)

The encyclical then is opposed to interference by the state or municipal authorities where this is inappropriate. It uses this position to then progress to a defence of the family. The family

¹¹⁶ Dorr is of the opinion that Leo XIII was likely to be very conscious of the impact of a radical restructuring of society, bearing in mind the impacts of the French Revolution and of the Roman Republic of 1848 on the church (Dorr, p.44).

as an anterior part of society has privileges above the state, which was seen, in keeping with natural law theory, as a creation of positive law.

Hence we have the family, the 'society' of a man's house – a society very small, one must admit, but none the less a true society, and one older than any State. Consequently, it has rights and duties peculiar to itself which are quite independent of the State. (12)

The encyclical goes further in mapping out the position of the family in society and thereby enlarges further on the subsidiarity principle.¹¹⁷

A family, no less than a State, is, as We have said, a true society, governed by an authority peculiar to itself, that is to say, by the authority of the father. Provided, therefore, the limits which are prescribed by the very purposes for which it exists be not transgressed, the family has at least equal rights with the State in the choice and pursuit of the things needful to its preservation and its just liberty. We say, 'at least equal rights'; for, inasmuch as the domestic household is antecedent, as well in idea as in fact, to the gathering of men into a community, the family must necessarily have rights and duties which are prior to those of the community, and founded more immediately in nature. If the citizens, if the families on entering into association and fellowship, were to experience hindrance in a commonwealth instead of help, and were to find their

¹¹⁷ It is important to note that the encyclical never uses the word 'subsidiarity'. The assignment of later authors of the provenance of the concept to this encyclical is however correct in that the argumentation of the encyclical does argue at some length for the appropriate allocation of roles in society. This it does, as outlined in this chapter, when it deals with class, private property, the family and the role of the state in the domain of distributive justice.

rights attacked instead of being upheld, society would rightly be an object of detestation rather than of desire.
(13)

6.3.1.3 The understanding of the role of the state and of citizens in the first phase

Rerum novarum also speaks more explicitly of the role of the state. Again it relies on the principle of allocation of responsibilities to appropriate areas. It suggests (34) that

‘... although all citizens, without exception, can and ought to contribute to that common good in which individuals share so advantageously to themselves, yet it should not be supposed that all can contribute in the like way and to the same extent.

The encyclical notes that ‘...there will ever be differences and inequalities of condition in the State’. It goes on to teach that

Some there must be who devote themselves to the work of the commonwealth, who make the laws or administer justice, or whose advice and authority govern the nation in times of peace, and defend it in war. Such men clearly occupy the foremost place in the State, and should be held in highest estimation, for their work concerns most nearly and effectively the general interests of the community.
(34)

So, the encyclical points to the central role of the state and at the same time insists that ‘...the State must not absorb the individual or the family; both should be allowed free and untrammelled action so far as is consistent with the common good and the

interest of others' (35). But there is also recognition for another role for the state. It has the responsibility to promote and safeguard the other parts of society.

Rulers should, nevertheless, anxiously safeguard the community and all its members; the community, because the conservation thereof is so emphatically the business of the supreme power, that the safety of the commonwealth is not only the first law, but it is a government's whole reason of existence; and the members, because both philosophy and the Gospel concur in laying down that the object of the government of the State should be, not the advantage of the ruler, but the benefit of those over whom he is placed. As the power to rule comes from God, and is, as it were, a participation in His, the highest of all sovereignties, it should be exercised as the power of God is exercised – with a fatherly solicitude which not only guides the whole, but reaches also individuals. (*Rerum novarum*, 35)

In summary, the first phase of Catholic social teaching was an attempt to respond to the emerging social/industrial conditions of the times, but was marked by an organological understanding both of man and of the state. Consequently the teaching of the period was authoritarian and deeply suspicious of the role of the state. It was, because of its fear of socialism, a defender of the idea that the classes in society had roles appropriate to them. And therefore, of course, the teaching was strongly defensive of the status quo whereby those in authority, precisely because they were in authority, were to be obeyed – the organological understanding of society predicated this.

6.3.2 *The second phase – Quadragesimo anno and Pius XII: Corporatism and an Analysis of the Economic Order*

The two popes that followed Leo XIII, Pius X and Benedict XV, did not show the same interest in social affairs which Leo had. The next incumbent, Pius XI, did return to the social theme. On the fortieth anniversary of *Rerum novarum* he issued his much celebrated encyclical on social teaching, *Quadragesimo anno*. Its tone is of its time, archaic to our ears, but its content, though weakened by its leaning towards a vocationalist/corporatist structure in society, nonetheless shows some movement in the economic/political analysis of societal structures.

Pius XI had the same moral outrage against the suffering of the poor as Leo XIII had and made the same kind of criticism of economic liberalism. He also rejects communism and socialism.

Accordingly, twin rocks of shipwreck must be carefully avoided. For, as one is wrecked upon, or comes close to, what is known as 'individualism' by denying or minimising the social and public character of the right of property, so by rejecting or minimising the private and individual character of this same right, one inevitably runs into 'collectivism' or at least closely approaches its tenets. (*Quadragesimo anno*, 36)

Pius XI, like Leo XIII, sees himself presenting a middle way. However, he is concerned with '...not just the conditions of the workers but with the whole socio-economic order of society'. *Quadragesimo anno* insists on the need for both 'a reform of the social institutions and the improvement of conduct'.

Dorr (1983) is of the opinion that Leo XIII saw structural problems in society but dared not present specific proposals for

reform for fear of fermenting instability, of which the papacy had had plenty recent experience.¹¹⁸ In contrast, Pius XI, also seeing structural faults in the manner in which society was being ordered, does in fact both analyse these faults in great length and gives a prescription for reform. In sections 132ff of the encyclical we find an extended analysis suggesting that ‘...evil conduct can solidify into a set of practices and traditions which are themselves real “structures” of society, affecting the more obvious political social and economic structures’ (Dorr, p.58).

The root and font of this defection in economic and social life from the Christian law ... are the disordered passions of the soul, the sad result of original sin...Hence arises that unquenchable thirst for riches and temporal goods, which has at all times impelled men to break God’s laws and trample upon the rights of their neighbours, but which, on account of the present system of economic life, is laying far more numerous snares for human frailty. (*Quadragesimo anno*, 132)

The encyclical continues, in section 132, to point out that it is the ‘instability of economic life, and especially of its structure’ that leads to hardened stings of conscience. It goes on to criticise the ‘... easy gains that a market unrestricted by any law opens to everybody’. And continues ‘ The laws passed to promote corporate business, while dividing and limiting the risk of business, have given occasion to the most sordid license’. And furthermore ‘...by hiding under the shelter of a joint name, the worst of injustices and frauds are penetrated’.

¹¹⁸ Dorr (p.25) suggests that Leo’s prophetic voice seems to have faltered when it came to drawing practical conclusions from his focus on the structures of society.

Many would claim that from Leo XIII onwards we see the papacy ever in the corner of what might loosely be called Western capitalism¹¹⁹. However in *Quadragesimo anno* we find trenchant criticism of untrammelled capitalism.

Just as the unity of human society cannot be founded on an opposition of classes, so also the right ordering of economic life cannot be left to a free competition of forces. ... Destroying through forgetfulness or ignorance the social and moral character of economic life, it held that economic life must be considered and treated as altogether free from and independent of public authority, because in the market, i.e., in the free struggle of competitors, it would have a principle of self direction which governs it much more perfectly than would the intervention of any created intellect. (*Quadragesimo anno*, 88)

The encyclical demands that free competition must be kept within certain limits. It suggests that the

...concentration of power and might, the characteristic mark, as it were, of contemporary economic life, is the fruit that the unlimited freedom of struggle among competitors has of its own nature produced, and which lets only the strongest survive; and this is often the same as saying, those who fight the most violently, those who give least heed to their conscience. (*Quadragesimo anno*, 107)

¹¹⁹ See Budd, Michael and Brimlow, Robert (2002) for an extensive treatment of this theme. Budd is professor of political science at DePaul University; Brimlow is associate professor of philosophy at St. John Fisher College, New York. Their book is a trenchant critique of church support for liberal capitalism, pace Chapter 5 entitled 'John Locke in Ecclesial Drag? The Problem with *Centesimus Annus*'.

It is therefore ‘...most necessary that economic life be again subjected to and governed by a true and effective directing principle’ (88). The encyclical then cautions that ‘economic dictatorship’ is equally to be eschewed.

However, we see that at base it is ‘social charity’ that is the bedrock of this encyclical’s thinking. Justice is to be underpinned by social charity as the ‘soul’ of social order.

Hence, the institutions themselves of peoples and, particularly those of all social life, ought to be penetrated with this justice, and it is most necessary that it be truly effective, that is, establish a juridical and social order which will, as it were, give form and shape to all economic life. Social charity, moreover, ought to be as the soul of this order, an order which public authority ought to be ever ready effectively to protect and defend. It will be able to do this the more easily as it rids itself of those burdens which, as We have stated above, are not properly its own. (*Quadragesimo anno*, 88)

In section 110 we find further evidence of the encyclical’s thoughts on the effective ordering of society and of economic life, with charity again invoked to bolster justice. Significantly there is no mention of a right to justice. However, it is in its way a progression of thought on the principle of subsidiarity. The pope returns to the concerns that he shares with his predecessor Leo XIII – the right relationship of labour and capital. The present system of economy is founded chiefly upon ownership and labour. He propounds that the ‘principles of right reason, that is, of Christian social philosophy,’ must be applied when considering the relation between these two. Again, returning to his and Leo XIII’s pre-occupation with individualism and

collectivism, he stresses that proper balance must be sought between the two.

Relations of one to the other must be made to conform to the laws of strictest justice – commutative justice, as it is called – with the support, however, of Christian charity. (*Quadragesimo anno*, 110)

And then to the nub.

Free competition, kept within definite and due limits ... must be effectively brought under public authority in these matters which pertain to the latter's function. The public institutions themselves, of peoples, moreover, ought to make all human society conform to the needs of the common good; that is, to the norm of social justice. If this is done, that most important division of social life, namely, economic activity, cannot fail likewise to return to right and sound order (*Quadragesimo anno*, 110).¹²⁰

It is true however that a large portion of *Quadragesimo anno* is devoted to corporatist proposals. This is where Pius XI is very specific in his suggestions about how society should be

¹²⁰ Strangely, the vocationalist proposals of the encyclical resulted in a strong move by the Catholic Church in Ireland to promote vocationalism – even to the extent of wishing the state to adopt new structures. In 1938 the Commission on Vocational Organisation (twenty-five members) was set up by government under the chair of Bishop Michael Browne of Galway. It reported in August 1944. It recommended that the state should as much as possible act through vocational bodies. It advocated a National Vocational Assembly, with six subsidiary bodies :the National (Agricultural, Industrial, Commercial, Transport, Finance) conferences and a Professional Commission. These latter would elect the National Assembly. This commitment to a diminution of the role of the state and adherence to the need for vocationalism took firm root in Catholic clerical and lay pronouncements. It seemed to reflect a pre-occupation with the ‘evils’ of statism and socialism. Yet, it would be difficult to detect any tradition of excessive state interference in social affairs as we might understand them today in Ireland at that time, nor was there any evidence of strong commitment to socialism.

organised. He seems to pine for another era, one which effectively cannot be re-created. He talks of the overthrow and near extinction of that rich social life which was once highly developed through associations of various kinds. He laments the loss of these associations, effectively the workmen's guilds. He concludes that the loss of these associations has led to the state taking over too many burdens and being overwhelmed and crushed by almost infinite tasks and duties (78). And, he concludes in section 83, that it is 'under nature's guidance' that towns are established, that those who follow the same profession or industry form guilds and associations '...so that many are wont to consider these self-governing organizations, if not essential, at least natural to civil society'. To echo Charles Curran (1988, p.91), Pius XI's plan never had a chance of succeeding because it did not correspond to any existing historical reality.¹²¹

It is of course with Pius XI, in *Quadragesimo anno*, that we find for the first time an explicit definition of 'subsidiarity'. The celebrated passage on subsidiarity is the following from section 79:

Still, that most weighty principle, which cannot be set aside or changed, remains fixed and unshaken in social philosophy: Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organisations can do. For every social activity ought of its very nature to

¹²¹ *Quadragesimo anno* is sometimes remembered for its corporatist proposals. My reflections above would suggest to me that it more rightly deserves to be also remembered for its attempts to reflect on the ordering of society and its elaboration of the principle of subsidiarity through its analysis of the socio-economic order.

furnish help to the members of the body social, and never destroy and absorb them.

The principle is rather baldly stated. No great justification is given for it. It is 'most weighty' and 'cannot be set aside or changed'. But no arguments, no supporting citations from theology or philosophy, or from his predecessors as is often the case in encyclicals, are supplied. Certainly, the claim that violation of the principle is a 'grave evil and a disturbance of right order' begs questions. There seems a certain dissonance between this, the oft-quoted and celebrated definition of subsidiarity, and his more detailed and, to my mind more compelling, analysis based on the socio-economic ordering of society.

However, there is a meeting of the two approaches when the encyclical further speaks in these sections on the regulating role of the state. It insists that the state ought '... to let subordinate groups handle matters and concerns of lesser importance, which would otherwise dissipate its efforts greatly' (80). Here also we find the balancing element of the subsidiarity principle. Not alone must the state allow a proper role to subordinate groups. The state in doing this is freed to '...do all those things that belong to it alone because it alone can do them: directing, watching, urging, restraining, as occasion requires and necessity demands' (80). It then summarises, using the term 'subsidiary':

Therefore, those in power should be sure that the more perfectly a graduated order is kept among the various associations, in observance of the principle of 'subsidiary function', the stronger social authority and effectiveness will be the happier and more prosperous the condition of the State. (80)

Pius XI was succeeded by Pius XII (1939-1958). This pope never issued an encyclical on social affairs but is considered to have made a significant contribution to Catholic social thought in his 1,350 addresses and allocutions (Hannafey, 2006, p.107). He continues the tradition of concern for those suffering poor social conditions and turns to the role of the state in these circumstances. Following Dorr (1983), two factors regarding social teaching during his reign seem worthy of note. First, he continued to have the same worries as did his predecessors about class tensions. Dorr (1983, p.80), drawing on the pope's 14 September 1949 radio message, says

For him, as for previous popes, the way to minimise class tension was to promote the organic unity of society. ... The State, he held, requires structures of cooperation. But these should not normally be structures of the State itself.

This is of course to re-emphasise the understanding of the subsidiarity principle at that time – cooperation, appropriate structures and the limiting of the role of the state. Pius XII, it would seem, was very concerned that more and more people were being left practically powerless in the face of massive systems of one kind and another. He spoke out strongly and repeatedly against this kind of powerlessness (Dorr, p.86). He '... rejected the great systems of the left and the right, believing that they both leave the individual at the mercy of the state' (Dorr, p.82). He feared that such systems swallowed up the individual person.

In summary then, the second phase of Catholic social teaching continued to base itself on the organic model of man and of the state and society. There continued a suspicion of state power and the principle of subsidiarity continued to be invoked defensively.

In this period also there were changes in the face of the experience of fascism. During the pontificate of Pius XII we see the promotion of the corporative state starting to wane¹²². Dorr (p. 81) suggests that by 1949 Pius XII felt that it would be both unrealistic and perhaps counter-productive to promote the corporative-type state. The Vatican view was evolving to the position of being content with ‘... a tempered version of capitalist society, while working for a further tempering of its most obnoxious features’ (p.81).

6.3.3 *Phase 3: John XXIII – John Paul II: The Acceptance of Human Rights and Democracy*

6.3.3.1 A new understanding of the state

In the third phase of the evolution of Catholic social teaching we are presented with some profound changes. The tendency to present the teaching as linear continues. However the reality is that there is real change in the teaching on the common good, on subsidiarity and on the role of the state. For instance, when we come to Vatican II, we see a significant change in considering the role of the state. The late nineteenth century papal teaching was markedly an anti-socialist abstract product, in the case of Leo XIII inordinately interested in the protection of private property. However, according to the Spanish theologian and philosopher Díez-Algeria, Vatican II showed a ‘... certain openness to a variety of (non-dogmatic) forms and possibilities of democratic socialism, taking account of the great variety of historical, social, economic and cultural situations that exist’ (Díez-Alegría, 1991, p.21).

¹²² It does make a hesitant, though faltering, reappearance in *Mater et magistra*.

Kenneth L. Grasso (1995, pp. 31 ff), Associate Professor of Political Science at Southwest Texas State University, sums it up thus. He claims that the Council made ‘... a preferential option, as it were, for constitutional democracy’ (p.30). It affirmed the rights of man (GS, 41, 941). It affirmed the principle of limited government, emphatically affirming that the ends of government are co-extensive neither with the ends of human life, nor even with those of human society.¹²³ It re-affirmed that the right ordering of human society requires that the principle of subsidiarity be respected. It affirmed that freedom must take its place alongside the traditional triad of truth, justice and love. It called for a system of positive laws to provide constitutional government and emphasised the need for structures that would allow citizens participate in the affairs of society.

We see this move beginning with John XXIII. His encyclical *Mater et magistra* opened up new ground in Catholic social thought, or as Dorr (p.115) would describe it

Mater et Magistra opened up cracks in what had been a rather monolithic body of social teaching. It raised doubts about matters that had not previously been questioned – for instance the attitude of suspicion about state intervention and a conviction that it ought to be kept to a minimum.

The encyclical was written at a time when the Vatican was moving to an acceptance of human rights theory, democracy (both of which would be advocated explicitly in Vatican II) and

¹²³ This is of course in line with traditional teaching that the ultimate good, *summum bonum*, is to be found in God, who is indeed the *summum bonum*.

of capitalism – tempered capitalism¹²⁴ – and when there was a certain sanguinity about the capacity of development to deliver for humanity¹²⁵. Dorr suggests that John XXIII optimistically argues that one of the reasons for poverty in the world is underdevelopment in the poverty-stricken areas in terms of modern industrial techniques (p.91).¹²⁶ Dorr further suggests that John XXIII like many of his contemporaries, including economists, ‘... showed a rather uncritical optimism in relation to Western-style democratic capitalist society’ (Dorr, 1983, p.99). However it is important to note here that, while Dorr may be

¹²⁴ John XXIII is not content to trust market forces in isolation. In *Mater et magistra*, for instance, he says that the remuneration of work is not something that can be left to the laws of the marketplace.

It must be determined in accordance with justice and equity; which means that workers must be paid a wage which allows them to live a truly human life and to fulfil their family obligations in a worthy manner. Other factors too enter into the assessment of a just wage: namely, the effective contribution which each individual makes to the economic effort, the financial state of the company for which he works, the requirements of the general good of the particular country – having regard especially to the repercussions on the overall employment of the working force in the country as a whole – and finally the requirements of the common good of the universal family of nations of every kind, both large and small. (*Mater et magistra*, 71)

¹²⁵ *Mater et magistra* speaks of ‘Scientific and technical progress, greater productive efficiency and a higher standard of living ... (59).

¹²⁶ It is also important to note another aspect of the context in which this encyclical was produced. Heretofore the social encyclicals had, in the main, been addressed to European, and perhaps North American, problems. *Mater et magistra* was addressing another problem, the contrast of plenty and poverty in a global context. For instance

The second point which We consider basic in the encyclical [QA] is his teaching that man’s aim must be to achieve in social justice a national and international juridical order, with its network of public and private institutions, in which all economic activity can be conducted not merely for private gain but also in the interests of the common good. (*Mater et magistra*, 40)

It is interesting, in an early twenty-first century Irish context, to advert to another admonition of the encyclical concerning immigration

And so Our Predecessor, in speaking of migration, admonished both parties involved, namely the country of departure and the country receiving the newcomers, to seek always ‘to eliminate as far as possible all obstacles to the birth and growth of real confidence’ [23] between the nations. In this way both will contribute to, and share in, the increased welfare of man and the progress of culture.

correct in seeing 'uncritical optimism', nonetheless whatever mis-placed optimism there was lay in the belief that technical solutions were available for global structural problems. The acceptance of democracy, on the other hand, was a major break through compared to nineteenth century paternalist suspicion in the church of democracy, as was the respect for science.

Mater et magistra is at pains, as is usually the case with papal encyclicals, to point out that the encyclical is at one with its predecessors. But I will suggest hereunder that this pope also pushes the body of papal teaching further. Most importantly, he sees in the world to which he is addressing himself a need to further define the role of the state and indeed sees an enlarged role for the state compared to the perspectives of previous popes. In understanding this nuanced change of perspective it is important to note the different context in which this encyclical emerged. Catholic social teaching in previous encyclicals had emerged in the context of exploitation of the poor in an industrialising world. That context was also one where the popes were at pains to rebut so-called 'individualism' and 'collectivism'. They had wanted to steer a middle course. John XXIII, by contrast, was addressing what he saw as a more prosperous world, one where he would advocate an enlarged role for the state in facilitating the spread of successful development, and indeed a state no longer under the tutelage of the church.

Acknowledging that the whole *raison d'être* for the state is the realisation of the common good, *Mater et magistra* says that the state cannot '...therefore, hold aloof from economic matters. On the contrary, it must do all in its power to promote the production of a sufficient supply of material goods, "the use of which is necessary for the practice of virtue"' (20). However it is careful to make this statement within the subsidiarity principle

And in this work of directing, stimulating, co-ordinating, supplying and integrating, its [the state's] guiding principle must be the "principle of subsidiary function" formulated by Pius XI in *Quadragesimo anno*. (*Mater et magistra*, 53)

Here we see John XXIII explicitly extending the social teaching on the role of the state, but careful to emphasise at the same time that there is delimitation.

The traditional caution of the papacy is also evidenced, as is its traditional preoccupation with defending private property. The encyclical acknowledges that state and public ownership of property is very much on the increase, and accepts that this is explained by the exigencies of the common good. But it warns that, here, too, the 'principle of subsidiary function' must be observed.

The State and other agencies of public law must not extend their ownership beyond what is clearly required by considerations of the common good properly understood, and even then there must be safeguards. Otherwise private ownership could be reduced beyond measure, or, even worse, completely destroyed.

To me it seems that the encyclical seeks to be true to its predecessors in delimiting the role of the state. But, nonetheless its presentation of the subsidiarity principle places more emphasis on the role of the state in actively promoting the common good. Leo XIII and Pius XI had been more intent on delimiting the state, warning against state interference. John XXIII retains this view, but places more emphasis than did his predecessors on the other side of the coin, that the state also has an obligation, for the common good, to intervene when

necessary. The greater emphasis of John XXIII on the role of the state was a consequence of awareness of the phenomenon of 'socialisation', the interdependence of modern societies, including a greater dependence of citizens on the state. *Mater et magistra*'s enumeration of sorts of state intervention is a *de facto* acceptance of the social assistance state.

Again, in line with its predecessors *Mater et magistra* adverts to the growth of many other kinds of association in society, and, again, is more explicit about these than were its predecessors. It sees as one of the principal characteristics of the age '... an increase in social relationships, in those mutual ties, that is, which grow daily more numerous and which have led to the introduction of many and varied forms of associations in the lives and activities of citizens, and to their acceptance within our legal framework' (59). Later (1963) *Pacem in terris* describes these associations as '...the indispensable means to safeguard the dignity of the human person and freedom while leaving intact a sense of responsibility'(24). Effectively we are witnessing here a break away from an integralist stance and seeing the church accept the role of other associations without a fear that they might take people away from the church.

John XXIII expands on the role of these associations in society. They too are subject to the principle of subsidiarity and must respect their members. He suggests that public authorities must take account of these associations '... which favour the full development of human personality' (65)¹²⁷. These bodies must be '... really autonomous, and loyally collaborate in pursuit of their own specific interests and those of the common good' (65). These groups form the substance of a true community as they '... treat their individual members as human persons and encourage

¹²⁷ This is in effect a definition of the common good.

them to take an active part in the ordering of their lives' (65). It speaks of the 'autonomous and active collaboration of individuals and groups' (66). As *Mater et magistra* develops its thought along these lines we see a glimmer of the model used in the older encyclicals when it refers here to '... that *organic reconstruction* of society which Our Predecessor Pius XI advocated in his encyclical *Quadragesimo anno* as the indispensable prerequisite for the fulfilment of the rights and obligations of social life (67) (emphasis mine).¹²⁸

So in 1961 in *Mater et magistra* we see the start of an acceptance of an expanded role for the state. Dorr describes it thus (1983, p.107)

Even when a nation keeps this state involvement as low as possible by respecting the principle of subsidiarity (as Pope John asks), still the common good nowadays requires far more state 'interference' than was needed in the past. *Mater et magistra* gives a mandate for this extra involvement by the state.

Two years later *Pacem in terris* (1963) is more explicit demanding an active role for the state, more particularly in a world-wide environment.¹²⁹ The encyclical suggests that

¹²⁸ The encyclical is also conscious of the potential role for 'associations' in the more rounded development of their members

Tragic situations and urgent problems of an intimate and personal nature are continually arising which the State with all its machinery is unable to remedy or assist. There will always remain, therefore, a vast field for the exercise of human sympathy and the Christian charity of individuals. We would observe, finally, that the efforts of individuals, or of groups of private citizens, are definitely more effective in promoting spiritual values than is the activity of public authority. (120)

¹²⁹ *Pacem in terris* was written before the term 'globalisation' came into common currency. However, its pronouncements on international relations and responsibilities seem uncannily relevant to a globalised world. It displayed a more global perspective than previous papal writings.

... just as it is necessary in each state that relations which the public authority has with its citizens, families and intermediate associations be controlled and regulated by the principle of subsidiarity, it is equally necessary that the relationships which exist between the world-wide public authority and the public authority of individual nations be governed by the same principle. (140)

By this is meant that there is a role for a 'world-wide' authority to '...tackle and solve problems of an economic, social, political or cultural character which are posed by the universal common good' (140). In other words where issues are so large and complex that public authorities of individual states cannot cope, the world-wide authority must act. But, again, the role of the world-wide authority is not to usurp the role of the individual state but rather to

...create, on a world basis, an environment in which the public authorities of each state, its citizens and intermediate associations, can carry out their tasks, fulfil their duties and exercise their rights with greater security (141).

A further significant change in the teaching on the role of the state is the increased emphasis on politics which emerges in the writings of Paul VI. Whereas previous popes had focused on economic issues in their focus on social teaching, Paul VI looks at political structures. Dorr (pp.157 ff) notes that the most radical change in Paul's thinking comes after the South American Conference of Bishops held at Medellin in 1968. The papers of that conference stressed a focus on politics and Paul in his papal letter *Octogesima adveniens* reflects this. Dorr instances a rather

obscure, but in his view important, paragraph from the letterl, paragraph 25

Political activity – need one remark that we are dealing primarily with an activity, not an ideology? – should be the projection of a plan of society which is consistent in its concrete means and in its inspiration, and which springs from a complete conception of man’s vocation and of its differing social expressions. It is not for the State or even for political parties, which would be closed unto themselves, to try to impose an ideology by means that would lead to a dictatorship over minds, the worst kind of all. It is for cultural and religious groupings, in the freedom of acceptance which they presume, to develop in the social body, disinterestedly and in their own ways, those ultimate convictions on the nature, origin and end of man and society.¹³⁰

Dorr interprets this piece as follows (p.166). Political activity needs to be based on an adequate model of society. This in turn depends on one’s interpretation of the human vocation and how that vocation is realised in society. A significant change here, coming from the papacy, is the notion that cultural and religious groupings have the obligation of promoting a true concept of the human vocation, to which a political model must conform, but in doing so these groupings must not impose their views on people but must respect human freedom. Truth is now linked to the freedom of the person, their own insight, rather than ‘objective’ truth and error.

Octogesima adveniens suggests in paragraph 46 that there must be a radical limitation to economics. Economic activity is

¹³⁰ I have consulted various versions of the encyclical and they all give this less than clear translation.

necessary but ‘... it runs the risk of taking up too much strength and freedom’. So it calls for the move from economic considerations to political ones. Political power must have as its aim the achievement of the common good, must ‘... create, effectively and for the well-being of all, the conditions required for attaining man’s true and complete good, including his spiritual end’. It continues in paragraph 47

The passing to the political dimension also expresses a demand made by the man of today: a greater sharing in responsibility and in decision-making. This legitimate aspiration becomes more evident as the cultural level rises, as the sense of freedom develops and as man becomes more aware of how, in a world facing an uncertain future, the choices of today already condition the life of tomorrow.

Moving to John Paul II, we find more specifics in the 1991 document *Centesimus annus* on the role of the state, formally using the concept of ‘subsidiarity’. Here he is deliberating on modern capitalism as opposed to what he terms ‘primitive’ capitalism as encountered by his predecessors. He is concerned with the weaknesses of what he calls the ‘Welfare State’ and again the ‘Social Assistance State’.¹³¹ He talks about its excesses

¹³¹ The criticism of the ‘Social Assistance State’ in John Paul II is not nuanced, and indeed can be critiqued for a narrow understanding of the welfare state. Indeed this fault line is repeated, if anything more strongly, in the *Compendium* (2004, 187) where it says

The principle of subsidiarity is opposed to certain forms of centralization, bureaucratization, and welfare assistance and to the unjustified and excessive presence of the State in public mechanisms.

The *Compendium* uses *Centesimus annus* to substantiate this position, quoting (48)

By intervening directly and depriving society of its responsibility, the Social Assistance State leads to a loss of human energies and an inordinate increase of public agencies, which are dominated more by bureaucratic ways of thinking than by concern for

and malfunctions which have arisen because of an inadequate understanding of the tasks proper to the state.

Here again the principle of subsidiarity must be respected: a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good. (*Centesimus annus*, section 48)

The encyclical suggests that undue interference by the state leads to a loss of human energies and an inordinate increase in bureaucratically inclined agencies. It defends, not at this point using the specific terms, the role of civic and voluntary agencies

In fact, it would appear that needs are best understood and satisfied by people who are closest to them and who act as neighbours to those in need. It should be added that certain kinds of demands often call for a response which is not simply material but which is capable of perceiving the deeper human need. (48)

6.3.3.2 Recognising the place of rights and corresponding duties

Another change which emerges in this third phase is the understanding of the concept of the common good. With John

... serving their clients, and which are accompanied by an enormous increase in spending.

This is surely to ignore the reality of the welfare state in, for instance, the Nordic countries. Cf Johan Verstraeten (2008, pp. 394 ff) for a description of the influence of Michael Novak and colleagues on the drafting of *Centesimus annus*, such that '... it is the first encyclical which openly praises the free market and profit ...' (p.395).

XXIII we see some initial movement. For instance, *Pacem in terris* suggests that ethnicity has a bearing on the common good. 'Assuredly, the ethnic characteristics of the various human groups are to be respected as constituent elements of the common good, but these values and characteristics by no means exhaust the content of the common good' (*Pacem in terris*, 55). Here is an acknowledgement of the need to balance universal and particular culture-based traits.

John XXIII emphasises that the common good touches the whole man, the needs both of his body and of his soul. Accordingly *Pacem in terris* says that the civil authorities must undertake to effect the common good by ways and means that are proper to them; '...that is, while respecting the hierarchy of values, they should promote simultaneously both the material and the spiritual welfare of the citizens' (57). Section 60 of the same encyclical goes on to say that the common good is chiefly guaranteed when personal rights and duties are maintained. It continues by pointing out that the '... chief concern of civil authorities must therefore be to ensure that these rights are acknowledged, respected, coordinated with other rights, defended and promoted, so that in this way each one may more easily carry out his duties'.

Vatican II is also more explicit in this connection. In Section 5 of *Gaudium et spes* we see a change of language from previous Vatican documents when it comes to deal with its understanding of the common good. It elaborates the understanding of the common good and, in a break with phases 1 and 2 of the social teaching, recognises the place of rights and corresponding duties. It says

Every day human interdependence grows more tightly drawn and spreads by degrees over the whole world. As a

result the common good, that is, the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfilment, today takes on an increasingly universal complexion and consequently involves rights and duties with respect to the whole human race. Every social group must take account of the needs and legitimate aspirations of other groups, and even of the general welfare of the entire human family. (26)

Here the emphasis is on 'ready access to (their own) fulfilment' involving 'rights and duties with respect to the whole human race'. In section 35 this is repeated where it says that '...the norm of human activity is this: that in accord with the divine plan and will, it harmonise with the genuine good of the human race, and that it allow men as individuals and as members of society to pursue their total vocation and fulfil it'.

Working from this concept of the common good, the creation of a context where the conditions are created for men¹³² to fulfil themselves, *Gaudium et Spes* outlines a quite prescriptive approach to civic life. Without using the term 'subsidiarity', it presents a view of the ordering of society which is much more proactive certainly than the early papal encyclicals, but also more comprehensive. It actually calls for a 'statute of positive law' to provide for a suitable division of the functions and bodies of authority and '... an efficient and independent system for the protection of rights' (75). Notably however, it talks in this context of rights and duties of the citizen.

The rights of all persons, families and groups, and their practical application, must be recognised, respected and

¹³²

The council was not gender sensitive in its language.

furthered, together with the duties binding on all citizens.
(75)

The duties include ‘... rendering the political community such material and personal service as are required by the common good’. On the other side, rulers have obligations to create the context in which people flourish and contribute to the common good that is the fulfilment of all. They must not

... hamper the development of family, social or cultural groups, nor that of intermediate bodies or organisations, and not (to) deprive them of opportunities for legitimate and constructive activity; they should willingly seek rather to promote the orderly pursuit of such activity.(75)

The writings of John Paul II further progress the teaching on the common good. His teaching on solidarity is germane to his understanding of the common good. His insights are particularly strong in the encyclicals *Sollicitudo rei socialis* and *Centesimus annus*. The concentration on ‘development’ over and above ‘economic development’ is the key here. While concerned with the injustice in the international arena in terms of economic development, the encyclical realises and stresses that there are other kinds of injustice and that, in solidarity with others, there must be a concern for a more holistic development.

Sollicitudo rei socialis (Section 9) adverts to Paul VI’s reference to a moral obligation, the ‘duty of solidarity’ (from *Populorum progressio*, which itself was also dedicated to the international development question). Section 15 points out that while it is of course unjust to deny a human economic rights, and that denial of such rights destroys the spirit of initiative, that is to say the creative subjectivity of the citizen, there are however many other forms of poverty. Here we see a continuation of the Vatican II

recognition of human rights as against the previous magisterial and ecclesial condemnations. The encyclical points to deprivations which arise from the denial of

...the right to religious freedom, the right to share in the building of society, the freedom to organise and to form unions, or to take initiatives in economic matters – do these not impoverish the human person as much as, if not more than, the deprivation of material goods? And is development which does not take into account the full affirmation of these rights really development on the human level?

In effect the pope here is stressing the right to cultural and political development as well as economic development.¹³³ Baum (1991, p. 57) sees here a contrast between classical liberal social theory and Catholic theory.

According to liberal social theory, the democratic ideal was to maximise personal freedom in society, while the Catholic theory proposes a concept of democracy that aims at maximizing personal participation.¹³⁴

John Paul II is writing this in the international context, a development context. Nonetheless, though the context is not that of traditional social teaching, we see here an enhancement of the concepts of subsidiarity and the common good.

¹³³ Gallagher (1991, p.43) is particularly strong on the development in John Paul's thinking on the dignity of man. He says that John Paul saw '...the solicitude for the welfare of persons as not a matter of giving an abstract answer to who man is'. 'He has no interest in returning to a metaphysical reading of human nature, but rather insists that the process of historical development be viewed as 'a matter of the whole dynamism of life and civilisation ... a matter of meaningfulness'.

¹³⁴ Baum elaborates as follows. In liberal theory the rights of individuals are given and protected by the state and so are rights enjoyed only by citizens. The Catholic theory sees these rights grounded in the dignity of persons and so are human rights to which all human beings are entitled.

With regard to the common good then, we see in this third phase of Catholic social teaching considerable change since *Rerum novarum* of 1891. For some fifty years a classicist understanding of the common good was the presumed position of the official teaching. Often invoked, it was rarely analysed. From John XXIII onwards we find a real change in the teaching. The creation of the conditions in which the human person can flourish is seen as the locus of the common good. And development is viewed in a deep sense. The Irish moral theologian Patrick Hannon (2007, p.48) sums up the position arrived at by the time of the publication of the *Compendium of Catholic Social Teaching*¹³⁵ in 2004. Following the *Catholic Catechism* the *Compendium* sees the common good as

... the sum of those conditions of social life which allow both the social groups and their individual members relatively thorough and ready access to their own fulfilment.(164)

Papal documents are ever keen to place themselves in a continuum of development with their predecessors. However, with the advancements to emerge, particularly in phase 3 of Catholic social teaching beginning at the time of Vatican II, we see a profound change, highlighted by Hannon (p.48) where he points to three essential elements which are later summarised by the *Catechism*: (1) the fundamental and inalienable rights of the

¹³⁵ I should perhaps note that though the *Compendium* is obviously an important document in the sphere of Catholic Social Teaching, particularly as a guide to what might be officially seen as normative, nonetheless I chose not to use it extensively in the thesis. This because I found that its constant need to nuance its 'pronouncements' seemed to me to tip into 'over nuancing'. Consequently for my purposes I chose to rely on two avenues – the encyclical avenue and the non-official teaching avenue. Also, the *Compendium's* method is to draw encyclical and official teaching together, quoting extensively. I chose to go direct to the primary documents. Nonetheless, I have on occasion relied on the *Compendium*, see footnotes 116 and 132 for example.

human person; (2) the social well-being and development of the group itself; (3) peace, that is the stability and security of a just order. The common good is not something over and against individual freedom. Rather is the individual's freedom part of the common good. Three related concepts are emphasised – the universal destination of human goods¹³⁶, solidarity and subsidiarity.

6.4 Objective and subjective work : direct and indirect employer

In this chapter I have up to this point focused on the changes in Catholic social teaching since 1891, looking in turn at three phases of the evolution of the teaching. I want now briefly to move away from those phases and to focus on two specific concepts emerging from the writings of John Paul II that are particularly apposite to my thesis – the distinction between subjective and objective work and the distinction between the direct and indirect employer. These two distinctions are, I will suggest, significant for the role of the public service and its modernisation as presented in this thesis.

¹³⁶ This is an important concept, though not central to the concern of my thesis. From *Rerum novarum* onwards the encyclicals were pre-occupied with the private property issue and, mistakenly, attributed the defence of private property to Thomas Aquinas. The principle of the universal destination of human goods more accurately reflects the Thomistic position, whereby the goods of the earth are for humans, though the practice of private property is not wrong and may be the most appropriate in given circumstances. The early encyclicals were totally defensive of the right to private property because they were inveighing against collectivism and socialism. However, the encyclicals of the second half of the twentieth century are more circumspect. Indeed John Paul II develops the principle of universal destination of human goods when he deals with the 'goods' of modern society. He defended the right of all to technical knowledge.

The *Compendium of the Social Doctrine of the Church* devotes considerable space to this principle, indeed double the amount of space devoted to the common good. The *Compendium* states; 'The principle of the universal destination of goods is an invitation to develop an economic vision inspired by moral values that permit people not to lose sight of the origin or purpose of these goods, so as to bring about a world of fairness and solidarity, in which the creation of wealth can take on a positive function'. (174)

On the concept of work John Paul II combines the teaching of his predecessors with a new direction. In *Sollicitudo rei socialis* (1987) he says (Section 3) that human work is *a key*, probably *the essential key*, to the whole social question, if we try to see that question really from the point of view of man's¹³⁷ good. He goes on in section 7 to state that the error of early capitalism was to treat man in the same manner as the whole complex of the material means of production, as an instrument and not in accordance with the true dignity of his work. He calls the error which he criticises *economism*, seeing human labour solely according to its economic purpose. Here he is following the traditional line which condemns socialism and capitalism insofar as it (economism) places primacy on the material and accordingly places the spiritual in a position of subordination to material reality. He cautions against re-creating this error. On the contrary, man should be he treated as subject and maker, and for this very reason as the true purpose of the whole process of production.

In other words, he adverts to the problem as outlined since the time of Leo XIII, the need to combat both individualism and collectivism. He discusses Marxism at some length. However, the approach here is a development of the previous teaching. It is grounded in an explanation of the objective and subjective nature of work. The objective nature of work is the task, the doing, the implementation. But the subjective nature of work is more important.¹³⁸ This subjective conception of work sees work as uniquely common to man and making the man, whatever the work is and however trivial it is. And because of this the encyclical opposes such terms as 'labour force' and a view that

¹³⁷ The documents are not gender sensitive. I follow them as presented.

¹³⁸ I cannot but feel that there is a certain romanticism at play here. I can think of many tasks where the subjective carrying out of them cries hollowly for dignity.

would see labour as a means of production that can be sold. The labour system must

... overcome the opposition between labour and capital through an effort at being shaped in accordance with the principle [put forward above]: the principle of the substantial and real priority of labour, of the subjectivity of human labour and its effective participation in the whole production process, independent of the nature of the services provided by the worker. (13)

This emphasis on the 'priority' of labour accords with my contention (see Chapters 2 and 3) that the individual civil servant is unwisely treated instrumentally, as I suggest is being done in the Irish public sector modernisation programme. The concept of 'subjective work' protects the individual, recognises the dignity of the individual. This also of course resonates with the view that the common good must take account of the conditions necessary to allow each individual pursue his or her fulfilment. The pursuit of fulfilment is obviously central to work.

Also in *Sollicitudo rei socialis* John Paul proposes the concept of the indirect employer. The direct employer is the employer as we would ordinarily understand that word. The concept of indirect employer is more complex. It includes

... both persons and institutions of various kinds and also collective labour contracts and the *principles* of conduct which are laid down by these persons and institutions and which determine the whole socio-economic *system* or are its result. (Section 17)

This concept of indirect employer then has many elements. The following sentences are key to understanding the responsibility of the indirect employer:

The indirect employer substantially determines one or other facet of the labour relationship, thus conditioning the conduct of the direct employer when the latter determines in concrete terms the actual work contract and labour relations. This is not to absolve the direct employer from his own responsibility, but only to draw attention to the whole network of influences that condition his conduct. When it is a question of establishing an *ethically correct labour policy*, all these influences must be kept in mind. A policy is correct when the objective rights of the worker are fully respected. (17)

What I understand the pope to be suggesting here is that the direct employer acts within a particular environment or context, a context that is created by the indirect employer. For instance, the national partnership agreement in Ireland creates the context in which direct employers deal with their employees; the framers of the national partnership agreement are indirect employers. Or again one could interpret the indirect employer concept at play in an international context, where EU policy may frame the context in which African farmers are precluded from a true market price for their produce; the EU is in the role of indirect employer here.

But crucially the state is the lead indirect employer.

The concept of indirect employer is applicable to every society and in the first place to the state. For it is the state that must conduct a just labour policy. (17)

The following section (18) elaborates on the role of the indirect employer. It is the responsibility of the indirect employer to

... make provision for *overall planning* with regard to the different kinds of work by which not only the economic life, but also the cultural life of a given society is shaped; they must also give attention to organising that work in a correct and rational way.

It stresses that, in the final analysis, this overall concern weighs on the shoulders of the state. Yet, without using the term, the encyclical calls on the principle of subsidiarity here. The state must take the lead indirect employer role

... but it cannot mean one-sided centralisation by the public authorities. Instead, what is in question is a just and rational *coordination*, within the framework of which the *initiative* of individuals, free groups and local work centres and complexes must be *safeguarded*, keeping in mind what has been said above with regard to the subjective character of human labour. (18)

Let me bring together these elements of John Paul II's position, as outlined above thus far. 'Work' is the key concept to understanding the dignity of the person in the social (economic, workforce, industrial) situation. The focus must be on subjective work, the implementing, which is the individual doing, a person-centred not a thing-centred event. But that subjective work takes place in an environment. That environment is the one in which the worker and the (direct) employer operate. Critically, that environment is fashioned by the indirect employer. This indirect employer is not any one person or agency. It is those agencies, statutory and voluntary, that create the conditions in which both the worker and the direct employer operate and relate to each

other. The prime mover in the indirect employer role is the state. On the basis of this analysis the role of the worker, the employer and the state can be identified.

Reverting to my concern in this thesis. NPM views individuals in the public service workforce instrumentally. Further, it demands that a market or quasi-market environment where competition, rationality, contracts and so on determine the most effective environment to 'produce' public services. *Au contraire*, John Paul II claims that there is a duty on the indirect employer to produce an environment where the individual worker can pursue personal development, in the sense of human flourishing, through subjective work. The NPM position is based on an anthropology which sees the individual as a self-maximiser. The papal position is based on an anthropology rooted in a concept of the dignity of inter-related human persons.

6.5 Summary

For our purposes here it is worth highlighting some pointers for the role of the state and of the public service that resonate with Catholic social teaching.

The teaching has evolved through history. It has learned more from some of its mistakes (e.g. the pre-occupation with corporatism in the earlier part of the twentieth century). There has been real change, such as the shift in understanding of private property, markedly in the recognition of the proprietary nature of skills and knowledge by John Paul II. This latter speaks to the role of public servants. It should be a mark of their dignity that they are allowed access to development that introduces them to relevant skills and knowledge, but, perhaps more importantly, that they would be recognised as dignified in using that

knowledge and skills for a recognised purpose. Significant too is the reversal, starting with John XXIII, of earlier papal opposition to worker co-determination schemes.

The Catholic social tradition as developed continues to balance the individual and the common. A central hall mark of the approach is its conviction that there is a need to focus on the fate of social institutions, as the places where individuals are formed and nurtured, as well as a focus on individuals. 'Roman Catholic social teaching brings freedom and responsibility together under the theme of participation in the common good' (Sowle Cahill, 1996, p.159). For our purposes here this points to the importance of a range of *civitates* in the pursuit of the common good. It points to the principle of subsidiarity, richly understood.

A significant shift has been the 'escape' from classicism. This was most emphatically signalled in the constant 'reading of the signs of the times' in *Gaudium et spes*. It marked a move from the rigid deductionism of the earlier body of teaching to the use of induction. A high point in this move was the papal letter *Octogesima adveniens*. However one detects some pulling back in John Paul II where there is the constant fear of relativism.

Perhaps the most significant shift to come about, from Vatican II onwards, is the shift towards the person and the rights attached to the truth of the person, with a concomitant demand that human freedom, equality and participation be recognised. Already Pius XII was focusing on human dignity rather than human nature as the basic standard of justice (Gallagher, 1991, p.42). *Octogesima adveniens* (22) dealt at length with the aspirations to equality and participation. This builds on the views of *Dignitatis humanae* (1965) which propounded that human beings are more than exemplars of a common human nature. They are 'persons' – beings endowed with reason and free will and therefore

privileged to bear personal responsibility (*Dignitatis humanae*, 2, 167-8). This demands actualising oneself in terms of others, ‘in a sincere giving of the self’ (*Gaudium et spes*, 24, 925). The insights here are in marked contrast to the instrumental rationality of NPM.

For my purposes then in this thesis, Catholic social teaching does present a concept of the common good which can dialogue with the modern world. However, it is not a concept that can be drawn upon as an easy tool for the resolution of problems. It is not a blue print for action in the ordering of the public forum. It provides no text book answer to the issue of public service modernisation. But it does provide a broad Christian anthropology of human *telos* or flourishing. It does provide an ethos or vision to underpin development. And, as suggested on a number occasions already above, it contrasts with the assumed anthropology which underwrites NPM and by extension the Irish public sector modernisation programme.

Two concepts developed by John Paul II are also relevant to my thesis. First, his distinction between objective and subjective work. This focuses on the worker as a person, not a resource. John Paul is unhappy with the use of ‘labour force’. One can presume that he would be equally unhappy with the widespread use of the term ‘human resource’ with its instrumental connotations. His second useful concept for my purposes is the notion of ‘indirect employer’. This he uses to characterise organisations, institutions and processes that set the context of employment. He worries about context creating indirect employers that vitiate the possibility of workers enjoying their subjective work. Here again I see useful insight – NPM is no doubt part of the indirect employer apparatus.

My contention is that in its development, and because of the significant changes in its approach and in its underlying philosophy and anthropology, Catholic social teaching can be accommodated with liberal values, including democracy, and there is ample scope for dialogue with other approaches and for collaboration and joint action.

Part 3

Catholic Social Ethicists and a Revisionist Natural Law Approach

A recurring concern in this thesis is that the fundamentals on which the thesis is built – the principles of the common good and subsidiarity as rooted in natural law – are open to serious criticism, specifically that they are rooted in a pre-modern concept of the person. I have been concerned to defend against this criticism to allow me to use a re-constructed natural law approach as a fruitful paradigm within which to situate public service modernisation. More specifically I want to defend the credentials of my basic approach in order to use it in my critique of the instrumental rationality which I see underpinning the current Irish public service modernisation programme. I will be suggesting in this part of the thesis that in order to achieve this aim I must adopt what has been termed a revisionist approach to natural law theory.

Accordingly this part of the thesis moves beyond official Catholic social teaching and explores the developments since the middle of the twentieth century that have allowed thinkers within the Catholic social tradition to forge new dimensions to natural law theory and to dialogue with commensurable and indeed incommensurable interlocutors. I will argue that here is further reason to promote conversation between a developing public management system and a developing Catholic social tradition.

Chapter 7

A Roman Catholic Revisionist Approach to the Natural Law

Roman Catholic moral theory has swung from a natural law ethic to one that sought to distance itself from philosophical reasoning and to stress revelation. In the autonomy movement it has reverted to natural law – a changed conception of it but, nevertheless, natural law. The Glaubensethik has seen this as virtually a betrayal of Christianity and has argued again for a faith ethic. (Mac Namara, p. 208)

7.1 Introduction

In this chapter I first trace the radical changes that have occurred in Roman

Catholic moral theology from the 1940s onwards, using the work of the Irish theologian Vincent MacNamara (1985). The fundamental change has been the eschewal of a neo-Scholastic philosophical approach in favour of a more scriptural and theologically based one. I will point to the uncertainties that the move caused in contrast to the certainties that were available to those who followed the neo-Scholastic approach. It is my view that it is not a loss to have moved from apodicticity.

My second task in the chapter is to outline specifically the changes that a revisionist approach has brought to the understanding of natural law. I will use the perspective of the American moral theologian Richard M. Gula (1991), who

presents a natural law theory that has abandoned the traditional neo-Scholastic approach prevalent from the late nineteenth to the mid twentieth century. Using Gula as an example I will outline changes to natural law thinking which have moved away from a physicalist interpretation of natural law, which take account of historical consciousness, and which are aware of the role of induction and experience in reaching moral judgement

7.2 The emergence of revisionism in Roman Catholic theology in the twentieth century

Vincent MacNamara's work which traces the emergence of revisionism in Roman Catholic moral theology and the consequent variety of approaches is nearly thirty years old. Nonetheless it offers a fruitful framework within which to situate the emergence of a watershed in Roman Catholic moral theology – the move away from neo-Scholasticism. Again, even at this remove from when MacNamara wrote, there seems to be a certain prescience in what he concluded. He identified two broad movements to have emerged – the *Glaubensethik* movement which insisted that there was a specificity unique to Christian morals; and what he called the autonomy movement¹³⁹ which argued the opposite, that Christian morals were to be discovered by us and not revealed by God. But that stark contrast, he suggests, was too simplistic. Both sides had certain rigidities which weakened their cases. Indeed they shared some rigidities, for instance a rather static conception of revelation. It seems to me that MacNamara's analysis correctly pointed to the likely development of a far wider range of

¹³⁹ The use by MacNamara of the label 'autonomy movement' can be misleading. He does not use it in the meaning in common currency, e.g. where one would describe Kantianism as an autonomy perspective. MacNamara's usage is rather to describe one side of the emerging revisionism in Catholic theology, those Catholic theologians who believe that ethical norms are potentially discoverable by every human person.

approaches in the years that followed, such that the watershed of breaking with neo-Scholasticism is a given, but the landscape is populated with a wider range of approaches.

Effectively Mac Namara began by addressing the question as to whether there is a distinctively Christian ethics, because that raises issues of source, method and justification of moral judgments in the Christian community (p. 1). On this question he reached a twofold conclusion that straddles the two positions he describes in his book. So, we find him saying (in a quote that seems to favour his so-called autonomy movement by stressing that Christians must 'work out' an ethic) that

... in every age Christians must work out an ethic that is consonant with their world-view and that in any age they will occasionally arrive at moral judgments that are justified precisely in terms of the specific elements of that world-view. (p.202)

but also (in a quote that seems to favour the *Glaubensethik* perspective by alluding to the 'full' range of Christian consciousness)

To find a way of harnessing the full range of Christian consciousness and developing the authentic response is the task of Roman Catholic ethics for the future. (p.206)

7.2.1 *The beginning of the break with neo-Scholasticism*

MacNamara (1985) describes the movement away from neo-Scholasticism in Roman Catholic moral theology from around the 1940s onwards. He describes a desire for renewal. It emerged from '...a dissatisfaction with what passed in neo-Scholasticism

for Christian morality' (p.3). The conviction of these emerging authors was that there was more to Christian morality than was being offered by neo-Scholastic natural law. The neo-Scholastic approach had produced manuals of moral theology, used in the education of priests. The manuals were uniform in their content and had an aura of certainty about them. They were rigid in their adherence to law.

The manual tradition saw morality as a matter of remaining in the state of grace and reaching eternal life. The preferred way of referring to morality was in terms of the law of God. Thus law became central. Morality is the law of God, his eternal law. The morally good can be considered as what leads us to our last end or what is in accordance with eternal law or what is in accordance with right reason. ... The eternal law has two parts. There is the positive divine law of the Old and New Testaments ...And there is the natural law.' (p.11)

This neo-Scholastic tradition saw the new content in divine positive law relating only to the receiving of the sacraments and believing the truths of faith. The moral content according to most of the neo-Scholastic authors is the natural law, though the new law does contain counsels of perfection (p.12). Accordingly the preoccupation of the manualists was with the natural law, the philosophical working out of the dictates of that law. This was the understanding of Christian morality that was in possession. But it was precisely this preoccupation with philosophical ethics that became the target of the renewal movement. 'The central criticism was that what had been proposed as moral theology or Christian ethics was merely philosophical ethics or moral philosophy (p.15)'.

The so-called revisionists that emerged were intent on finding a moral theology that was distinctively Christian.

In the forties and fifties much of the discussion was about the possibility of finding one basic principle on which the whole structure of morality could be built. This would be something that would replace the natural law as the dominant thought-pattern and which would be entirely theological in character. (p.18)

MacNamara traces the development of three such principles explored by authors of the era – (1) the morality of the new life of grace in Christ; (2) the primacy of charity; (3) the following of Christ.

The Morality of the New Life of Grace in Christ approach (pp.18ff) was based on the interpretation of grace as conferring a new *esse*, a new ontology which demanded a new kind of moral life. An anchor principle was *Agere sequitur esse*. Natural *esse* demanded natural morality. A supernatural *esse* demanded a supernatural morality. For instance the early Bernard Häring¹⁴⁰ was of the view that ‘... morality appropriate to the supernatural order of grace totally transcends the knowledge of unaided reason and can be known only from the revealed law of God.’ (MacNamara, pp.20). ‘One could not experience the difference made to moral acts by being supernaturally ‘elevated’; what one experienced was one’s natural powers and natural morality. But what mattered was that one knew that there was an entitative

¹⁴⁰ MacNamara is particularly critical of the early Häring. He accuses him of being naive in his use of Scripture, with little sensitivity to exegesis or hermeneutics. Indeed he also says that Häring invariably began his treatment of any topic with a loose gathering of seemingly related Scriptural passages, but then goes on to treat of the subject in question with scant regard for Scripture (pp.33-5). MacNamara describes elsewhere in the book how Häring changed his views in later years and became far less loose in his theologising on the basis of Scripture and far less dogmatic than the mainstream *Glaubensethik* movement.

elevation of natural moral acts so that they became supernatural...' (p.21).

In the *primacy of charity* approach (pp.24ff) the meaning of morality is bound to the meaning of the human person and it is only in revelation that the mystery of the person is revealed. This mystery is that God is love and that we are called as children of God to communion of life with him (p.24). This approach did give a principle for the organisation of the whole of Christian life, thus giving a new spirit and inspiration to morality – but what of the norm of morality, the source of moral knowledge?

The *following of Christ* approach (pp. 28ff) insisted that morality and dogma must be re-inserted into biblical theology and reunited. In that biblical morality the key idea is that of the following of Christ.

But critical difficulties present in these approaches. They are short on moral content. MacNamara commenting on the early renewal movement concludes

It does introduce into morality a climate, spirit, stimulus, and motivation that were lacking in the neo-Scholastics. But its formal structure does not seem to be able to yield new content. (p.23)

He also points to some confusion. For instance, in the *new life of grace in Christ* approach everything that could be regarded as contributing to growth of life in Christ was regarded as in the moral domain! We have a problem here of dealing with the concept of obligation (pp.21-2). In effect 'The very sparse description of the Christian moral life comes as an anti-climax after all the rhetoric about the new ontology and the morality which is said to correspond to it' (p.22).

MacNamara concludes, at the end of his description and analysis of the early revisionists

The history of fundamental moral theology in Roman Catholicism since then has been one of reaction to the renewal, of debate about identity, of objection and counter-objection. (p.36)

7.2.2 Reaction to early revisionism and the emergence of two broad approaches

Reaction to the revisionist breakthrough resulted, as MacNamara recounts it, in two broad approaches emerging; one sympathetic to the desire to have a faith ethic, and know as the *Glaubensethik* movement; the other an approach where the emphasis is not on God as revealer of morality but on the human being as discoverer of it, not on the specific morality of Christians but on the common morality of all people, the movement for an autonomous ethic (p.38).

The *Glaubensethik* theologians¹⁴¹ argued that (a) Christian morality is not to be discovered simply by unaided reason; (b) its content cannot be identified with philosophical ethics; (3) its specific character cannot be limited to considerations of context and motivation. It is the task of Christianity to continue to elaborate moral norms from faith and to refuse to capitulate to reason. (pp.57-8). There continues to be an emphasis on the

¹⁴¹ Authors identified by MacNamara in this vein of thought would include Josef Ratzinger, the biblical scholar Heinz Schürmann,, Gustav Ermecke, Bernhard Stoeke and the early Bernard Häring. He also identifies two authors who are ‘...less interested in the precise issue of specificity than in the question of how one is to approach the doing of Christian ethics’ (p.60) – Klaus Demmer and Michael Simpson. MacNamara suggests ‘...that their approach may offer significant possibilities for the future of a faith-ethic’ (p.60).

Bible. The most widely accepted feature of the *Glaubensethik* movement is the claim that the moral requirement of *agape* is something specific to Christians (p.61). Another way of defending the *Glaubensethik* is to stress that essential ethics applies to everyone but that experienced existential ethics applies to Christians, especially choices of vocation, and are specific to and dependent upon faith (p.62).¹⁴²

The so-called autonomy position¹⁴³ is that the 'biblical positivism' of the *Glaubensethik* approach is essentially divine command morality, and furthermore must confront major hermeneutical, exegetical and philosophical difficulties. There is a failure to differentiate the explanation of moral positions from the justification of those positions. The autonomy school would further hold that where moral exhortation is found in the New Testament it is paranaesis not normative ethics (p.79). In paranaesis what is at stake is the effectiveness of the author in the appeal made. In normative ethics what is at stake is the cogency and clarity of the argument (p.79).

MacNamara exposes weaknesses in both movements. He points to two developments that would seem to strengthen the autonomy side if accepted. When a new understanding of grace began to be accepted, this impacted on the debate. Rather than seeing grace as making an ontic change in a person, it came to be seen as changing one's insight into the meaning of life, or entering a new relationship. It was no longer necessarily seen as an entitative elevation. The emphasis was on grace as God's love for us rather

¹⁴² Norbert Rigali, the San Diego moral theologian identifies four levels of ethics: 'essential ethics' which includes norms applicable to all persons; 'existential ethics' referring to the choices a person has to make in his or her own circumstances; 'essential Christian ethics' including moral demands made on the Christian qua Christian; and 'existential Christian ethics' embracing the choices an individual Christian must make. See 'On Christian Ethics', in *Chicago Studies*, 10 (Fall), pp.22-47.

¹⁴³ Authors identified by MacNamara in this vein would include Alfons Auer, Josef Fuchs, Josef Blank, Bruno Schüller and Franz Böckle.

than on created grace i.e. the effect of such love in us. With this change the *Agere sequitur esse* principle can no longer hold sway (pp.51-2). The other change is the understanding of the relationship of the baptised to the unbaptised. If Rahner's celebrated phrase, the 'anonymous Christian', is embraced (p.53), the implication is that there is no natural/supernatural divide. All live in the supernatural order. So we can no longer talk about two moralities (p.52).

On the other side, he finds weaknesses in the autonomy case because it seems to find no place for '... the importance of vision, disposition, reasons, intention, virtue, desires. The autonomy position plays down all of them' (p.203). He suggests

While the autonomy movement has, in my view, made Christian morality credible to a world come of age and exposed some very loose theological thinking ... it seems that it fails to catch the whole of the Christian experience and that its total alignment of Christ and culture in the moral area (allowing only a clash with culture gone corrupt) sells Christianity short. (p.204)

He also suggests a fault line in the autonomy position in its view of what constitutes religion and morality. If a sharp religion/morality divide is accepted then the autonomy position will be more readily acceptable. But if a wider understanding of morality is accepted then the *Glaubensethik* position is more tenable (103).

In the final analysis MacNamara seems to confront the two movements with some telling interrogations. The division is not about additional moral demands. It is about the source of

morality, about where Christians seek their morals (the biblical revelation or the general human community). It is about the norm or standard (Christ or the rational man of philosophy). It is about the source of moral obligation (the will of God who reveals or human reason) (62-3).

The debate has remained largely at the level of theory, of fundamental moral theology. For instance the *Glaubensethik* movement has not pursued the significance of a distinctively Christian ethics into the different areas of morality. Equally, the autonomy position has not been specific and uses phrases like 'per se accessible', 'theoretically possible', 'fundamentally intelligible' when referring to the possibility of non-Christians coming to comprehend morality fully. (64)

Equally, MacNamara suggests (pp.89ff), both sides of the debate may be using a rather static understanding of revelation, a Vatican I approach – the line of communication is God – the inspired writer – the Bible – the community. A contrast between revelation and human experience, between faith and reason, between the authority of God and intrinsic reasons. If a more modern revelation theology were in play – seeing revelation as God revealing himself in human history, enabling his human creatures to enter into awareness of Him within human communities – the debaters might find more common ground (90). And again: 'It may be that the significance of biblical ethics lies not so much in what it says should be done – in explicit teaching – as in what it can reveal about the way in which the early Christian community dealt with certain types of situations' (p. 203).

7.2.3 *Implications for Catholic Social Teaching*

What I have presented, using MacNamara's 1985 work, is a change of horizon in Catholic moral theology. A universally accepted apodictic moral theology, rooted in neo-Scholasticism, has been replaced by a more variegated landscape in which there is no 'given Roman Catholic position'. Rather we have a theological landscape where authors use different sources and take positions along a continuum, the *Glaubensethik*/autonomy continuum. This of course has implications for Catholic social teaching. In its early provenance (*Rerum novarum*) it was rooted in the neo-Scholastic approach. The key features of a Roman Catholic natural law theory are altogether different 'post-renewal'. Richard M. Gula in a 1993 article, 'Natural Law Today', summarises what he sees as the 'profile of natural law which represents the dominant tendency of a significant number of contemporary Catholic theologians' (pp.384ff). He does not lay claim to a systematised theory of natural law but does identify certain key features. It is real, experiential, consequential, historical, proportional and personal.

It is *real*, based on reality, opposed to legal positivism or whim. It is *experiential*. Our moral theology must pay close attention to human experience, past and present, in telling us what it means to be human. It is *consequential*. Here Gula is cautious. He accepts that 'consequences' alone do not tell us what is right or wrong, and seems to re-interpret 'consequences' as 'the moral community's experience of moral value' (p. 385). It is *historical*. Contemporary theory grounds its position in the person concretely realised in various stages and situations in history. It no longer grounds its norms in an abstract, ahistorical, metaphysical nature of the person. It is *proportional* – 'we are doing the morally right thing when we achieve the greatest possible proportion of good over evil'. And it is *personal*. This is the feature of contemporary Catholic natural law theory that was given impetus in the Vatican II document *Gaudium et spes* (1965),

where attention is called not to human nature as such but to the human person. The human person is (1) a moral subject; (2) an embodied subject; (3) an historical subject with continuing new possibilities; (4) an embodied subject who is part of the material world; (5) related to others; (6) in a social group with structures and institutions worthy of persons; (7) called to know and worship God; (8) unique yet fundamentally equal (p. 387).

Lisa Sowle Cahill (1993), in a commentary on the perspective of the American theologian Richard McCormick, outlines four important shifts that took place in the Catholic understanding of the natural law in the second half of the twentieth century. First, the 'classicist' world view was abandoned. A more historically conscious one has replaced it. Second, and most significant as a major breakthrough allowing for less encumbered theological reflection and a role for the experience of the laity, the teaching office of the Catholic church is seen as interpreting natural law; it does not simply transmit revelation. Third, there is an enhanced reflection on Scripture – and hence an enhanced role for the faith perspective. And, fourth, there is a more integral appreciation of the importance of sociality and interdependence of human persons, looking beyond the individual and certainly beyond physical functions and capacities, placing the person in relationship to others.

7.3 Richard M. Gula

Richard M. Gula puts forward what he terms a 'synthetic description of natural law' (1991, pp. 378 ff). Borrowing from the Georgetown philosopher Louis Dupré¹⁴⁴, he stresses that it is important not to confuse human biological structure with human nature and not to see human nature as a static thing, but rather as

¹⁴⁴ Dupré, Louis (1994) *Contraception and Catholics: A New Appraisal*, Baltimore: Helicon Press.

a principle of development (p.373). He is particularly concerned to stress that physicalism must be avoided

The danger of physicalism is to derive moral imperatives from bodily structure and functions and to exclude the totality of the person and his or her relational context in making a moral assessment. (1993, p.372)

He is at pains to stress that there is an objective moral order which is accessible to anyone, independently of religious commitment. And that accordingly dialogue is possible for Catholics with other Christians and non-Christian religions (1993, p.377).¹⁴⁵ He talks of a second strain of interpretation of natural law, the order of reason (the first strain was that used heretofore, the order of nature). 'Contemporary theology's use of natural law is more historically conscious and taps into the second strain of natural law, the order of reason' (1993, p.374). Echoing the use of 'discovery' and 'experience' as used by autonomy theorists when insisting that moral norms are not given top-down, Gula says 'The work of reason is to discover moral value in the experience of the reality of being human' (1993, p.374), and that as that reality changes moral positions must be open to revision (p.375).

Gula in the article in question initially allows the two approaches to stand.

On the basis of the order of nature criteria, Catholic sexual ethics and medical ethics pertaining to reproduction have achieved a degree of certainty, precision, and consistency of moral judgement which we do not find in the documents on social ethics. The order

¹⁴⁵ He does however believe that not everyone is capable of knowing what is morally required. There may be a strain of faith ethic here.

of reason approach to understanding natural law does not yield the clear unambiguous positions which the order of nature approach does. (p.377)

However he then goes on to compile his 'synthetic description of natural law'. He uses a chart to juxtapose the two orders of interpretation, nature and reason, but in his text he moves away from the order of nature. He stresses that 'natural' here is not opposed to 'artificial'. Rather it connotes 'the total complexity of human reality in all its relationships and with all its potential' (p.379). So the intent is not to oppose the 'artificial' but to 'ground morality in reality lest moral obligations become the product of self-interest groups or subjective whim'. Nor is 'law' a code or system of regulations, it is the force of reason, the inclination to grasp the whole of reality and to come to moral truth. In effect when he puts his synthetic definition together – 'natural law is reason reflecting on human experience discovering moral value' (p.382) – it is not completely synthetic, because he has downplayed the order of nature interpretation.

The main features of Gula are his abandonment of physicalism, his option for the 'order of reason' understanding of natural law and his emphasis on the possibility of dialogue with others.

7.4 Summary

I opened this chapter announcing that I wanted to defend the principles of the common good and subsidiarity as rooted in natural law from the criticism that they depend on an implicit pre-modern concept of the person. I set out to do this first by visiting the renewal in Catholic moral theology that began in the mid-twentieth century. I have described the demise of an apodictic moral theology, rooted in neo-Scholasticism claiming universal acceptability, which has been replaced by approaches

that see natural law as belonging to the order of reason that is characterised as: real, experiential, consequential, historical, proportional and personal. And I have used Gula to demonstrate the appropriation of the revisionist approach to natural law.

I believe that my presentation in the chapter demonstrates that contemporary Roman Catholic natural law theory is not a monolith. It allows for different approaches and is not tied to an ahistoric metaphysical understanding of human nature. There has been a new departure whereby the role of experience and the relevance of the domain specific are taken into account. Consequently I believe that my use of Catholic social teaching – given its reliance on natural law theory – is not vulnerable to criticisms that would debar me from using it as I have done in earlier chapters to critique the rational instrumentalism of NPM. Rather, the evolved understanding offers an anthropology which combines inherent striving for the good with the social destination of the human person, with scope for interpretation and contributions from believers and non-believers on guiding visions for society and proposals for implementing such action rooted in trust in the joint capabilities of human moral reason.

Chapter 8

Jean Porter's Contribution to the Construction of a Natural Law Approach

The idea that we should live in accordance with nature is one of the most ancient and pervasive moral ideas. (Porter, 1999, p.64)

A contemporary appropriation of the Scholastic concept of the natural law would undoubtedly go beyond the Scholastics in recognising the element of human construction in the development of social practices and mores. (Porter, 1999, p.307)

It would appear that the idea of a morally significant human nature is an idea whose time has come, or has come again. (Porter, 1999, p.26)

8.1 Introduction

My thesis in Part 1 described and critiqued NPM and the Irish public service modernisation programme; in part 2 presented the concepts of the common good and of subsidiarity as alternative paradigms for the determination of a public service model, and presented the magisterial Catholic Social Teaching (CST) perspective on the common good and on subsidiarity, suggesting that because of the significant changes in its approach and in underlying philosophy and anthropology, Catholic social teaching can be accommodated with liberal values, including democracy, and there is ample scope for dialogue with other approaches. In Part 3 I set out to move beyond the magisterial position and to investigate the use these concepts are put to by authors affirmative both of liberal democracy and revisionist natural law theory, going beyond the magisterial approach of the

Vatican and exploring non-official Catholic social teaching, the contribution of moral theologians. The previous chapter has introduced the revisionist approach and given an example of an author grappling with the revision.

I will in this chapter and the next explore two authors in more detail to investigate the fitness to my purpose of the natural law based concepts of the common good and subsidiarity. My first interlocutor is Jean Porter, the American Christian ethicist. I have chosen her work for a number of reasons.

(1) She presents to me as an author who has given an exposition of natural law theory that resonates with the inductive and ‘sign-of-the-times-reading’ (pace *Gaudium et spes*) approach that I referred to approvingly when treating of the approach of Paul VI, particularly in *Octogesima adveniens*. She is a Scholastic scholar but distances herself from the neo-Scholasticism of the late nineteenth and early twentieth century

(2) Her approach is heavily reliant on her appropriation of twelfth and thirteenth century Scholastic theory of the natural law, and more particularly the work of Thomas Aquinas. She recognises that the Scholastics’ approach is time-bound and needs to be reconstructed to take account of the growth in human knowledge since their time, and perhaps more particularly the insights which allow a more nuanced view of the socially constructed, i.e. historically conditioned elements of our views of what it is to be human. This latter concern is crucial to the modern/contemporary credibility of the natural law approach.

(3) For my purposes in this thesis, Porter’s work is a useful tool in understanding the different approaches to, or perhaps concepts of, law that appear in Catholic social teaching. She links the

concepts of eternal law, divine law, natural law and positive law – in a Scholastic understanding.

(4) An overarching reason why I chose to investigate the Porter approach is that I see in her the capacity to bridge a gap between the Scholastic world view and modernity, but also to demonstrate by implication that it was not Scholasticism that unhelpfully coloured the Roman Catholic official approach to natural law theory, but rather neo-Scholasticism (as developed and promoted officially after the promulgation of the encyclical *Aeterni patris* (1879) by Pope Leo XIII).

I interrogate Porter from two perspectives. First (8.2), I concentrate on Porter's own moral theory, for the most part relying on her book *Moral Action and Christian Ethics* (1995)¹⁴⁶. I treat of her own approach to moral theory at some length because I see it as crucial in providing the context for her natural law reasoning. For me, one of the most fruitful insights she puts forward is the centrality to medieval Scholasticism of a dialectical approach.

The following section (8.3) concentrates specifically on her exposition of natural law theory, here relying on her book *Natural and Divine Law* (1999)¹⁴⁷.

8.2 The basic assumptions and key components of Jean Porter's ethical thinking

I begin my outline of Jean Porter's approach to moral thinking by examining some of the basic assumptions in her work and some of its key components. Given that she is avowedly sympathetic to

¹⁴⁶ As I will be using this work extensively hereinafter, I will refer to it as MACE.

¹⁴⁷ As I will be using this work extensively hereinafter, I will refer to it as ND.L.

the approach of the medieval Scholastics, it might be expected that one would find in her work that certainty that has come to be associated with Scholasticism – or more accurately neo-Scholasticism. This is not the case. Porter herself is no believer in deductive certainties in the domain of morality and goes to great lengths to absolve the medieval Scholastics from the hubris of that kind of certitude so typical of nineteenth and early twentieth century neo-Scholasticism. The Scholasticism with which she is in sympathy portrays no such certainties. Rather, she describes it as a theological approach that seeks to find answers through dialectical methods. Her own approach is embedded in a similar dialectic.¹⁴⁸

8.2.1 'Open-Texture' and 'Analogy': two interpretative paradigms fundamental to our understanding of moral concepts

A basic idea running through her moral thinking is the notion of the 'open-texture' of moral concepts. This is a concept that she borrows from Friedrich Waismann (1945). He claimed that generic moral concepts, like most generic empirical concepts, are open-textured. In other words, empirical concepts do not give one, uniquely correct description of an object or event. As Porter explains

It is always possible that, under some combination of circumstances, we might be genuinely in doubt whether

¹⁴⁸ At a later stage in this chapter I will discuss Porter's understanding of the way in which the Scholastics moved dialectically between the practices they commented upon, the traditions they received (including the natural law tradition) and scripture in an analogical manner in order to resolve problems confronting them. She stresses that they do not progress deductively, but rather analogically. She herself moves dialectically from presented problems (examples which she sketches) to her sources. Her sources are of course often Scholastic. But she also interrogates those sources through the lenses of twentieth century scholarship from different fields, and in turn uses the Scholastics to interrogate those authors. Following Alasdair MacIntyre she says : 'It is in the nature of all dialectic, understood as Aristotle understood it, to be essentially incomplete' (MACE, p.91).

or not to apply what had previously been a straightforward, well-behaved empirical concept. (MACE, p.23)

She says that the quality of empirical concepts is grounded in what Waismann calls 'the essential incompleteness of an empirical description'. This notion should not be confused with the fact that some concepts are vague in themselves (she uses the example of 'heap'). Neither should it be seen as a description of the difficulty of applying general concepts. Rather, the phenomenon that Waismann describes is the imprecision of our ordinary thought and observation, not something that is necessarily given with the nature of language itself.¹⁴⁹ Theoretically, it would be possible to have a concept that would have 'one, uniquely correct description of an object' if one were working in the context of a perfected science.¹⁵⁰ But that is not likely. Therefore we must operate on the assumption that empirical concepts are 'open-textured'.

She goes on to use this 'open-texture' concept in her understanding of moral concepts. Here again, the posited view is that total description is impossible. More specifically, if we use certain features of a case to classify a particular situation, i.e. working within the accepted conceptual framework within which the problem has arisen, the decision made will be rational, supported by reasons within the accepted framework – 'yet those reasons will under-determine the decision that they support'

¹⁴⁹ This line of thought, Porter explains, finds resonance in Wittgenstein. She explains that he claims that 'criteria for correctness in following a rule, and correlatively, the criteria for understanding a concept, must be grounded in inter-subjective structures of meaning and understanding' (MACE, p.27).

¹⁵⁰ She describes a perfected science as one 'so responsive to the messy data of observation, and withal so logically elegant and cogent, that every ambiguous case could be resolved in such a way as to be rationally compelling to all' (MACE, p.30). She declares herself 'agnostic' to the possibility of such an ideal ever being reached in human knowledge.

(MACE, p.32). We cannot expect to arrive at an apodictic answer. In other words, moral concepts are also open-textured, not allowing of absoluteness.¹⁵¹

Porter uses the work of Julius Kovesi (1967) to further advance her understanding of moral concepts. He suggests that our high level moral concepts can only be understood in instantiations of them. The same would apply to the concept 'moral' itself.

... the unity proper to the concept of morality is that mode of unity that is proper to concepts, especially very general concepts, as they actually emerge and function in natural languages. That is to say, it is analogical, rather than analytical.(NDL, pp.47-8)

Here we have another key to Porter's approach. The notion of 'analogicality'. She insists that moral concepts, as with empirical concepts¹⁵², are analogous. We only know these concepts in instantiations of them.

So, the concepts of 'open-texture' and 'analogicality' come together in Porter's thought to define for her the nature of moral concepts. They are such that they can only be understood in instantiations of them, in other words 'analogically'. And, even so understood, they will be open-textured, that is to say they will be incapable of formulation so that all circumstances and eventualities are catered for. However, an important nuance is

¹⁵¹ Porter is even more emphatic in relation to moral concepts than general empirical concepts: '...even if it were possible to bring a natural science to the level of a perfected science, it is not clear that it would be possible to do the same for the framework of moral concepts that structure our lives' (MACE, p.31).

¹⁵² Porter in referring to the analogous nature of empirical concepts actually says '*most* empirical concepts' (emphasis mine). I am at a loss to understand which empirical concepts she would see as analogical and which analytical. She certainly seems to declare all empirical concepts to be 'open-textured', but only some to be analogical.

introduced here. ‘The capacity to use the relevant language in appropriate ways is only one of the capacities for intelligent action that go to make up my comprehension of a concept’ (MACE, p.50). In other words, my comprehension of a concept is also manifested in action. I understand the concept ‘plant’, therefore I water this flower.¹⁵³ And so, as I interpret Porter, she suggests that moral concepts presuppose and are embedded in ‘... those fundamental capacities for *action* which are brought to bear in our relations to other people, and, reflexively, to ourselves’ (italics mine) (MACE, p.50).

8.2.2 *Non-maleficence and respect for the human person as guiding moral principles*

The perspective on moral concepts described in the previous paragraph leads Porter ineluctably to see that ‘... morality is deeply intertwined *for us* with the fundamental concept of the human person’ (emphasis in original) (MACE, p.51). If moral concepts presuppose capacities for action, and if these capacities are brought into play in relation to other people, then ‘... there is something fundamentally *wrong* (for want of a better word) with inflicting harm on other people’ (emphasis in original) (MACE, p.52). Which takes us to another key concept in Porter’s work and one which she finds central to Scholastic thought – non-maleficence. She suggests that the duty not to inflict harm on another person is based on an understanding of harms that are inconsistent with valuing the worth of a human person. For her then, respect for the human person is core. She says

¹⁵³ Here we see another echo of Aquinas. When she presents his moral approach she stresses that for him action, human action in the moral context, is focal. See below.

... I take the focal meaning of our concept of morality to lie in a commitment to non-maleficence, understood in the context of, and as a fundamental expression of, our basic attitudes towards other human persons.' (MACE, p.56)

It is worth repeating here that Porter in presenting her 'focal meaning' of morality is talking about an analogical concept. It is only understood in instantiations of it. Equally when she comes to talk about paradigmatic moral concepts, she is also talking about analogical concepts. Therefore moral argumentation must move forward analogically. It is not possible in moral argumentation to arrive at apodictic conclusions by reason of analytic deduction.

8.2.3 The resolution of moral disputes or dilemmas : Aquinas and the role of inclinations

Her argumentation thus far takes her to a problematic stage. Is she in danger of falling into a moral relativism, of finding herself defending the impossibility of entering into moral dialogue, because she has rejected the possibility of arriving at definitive answers to moral questions? If we can only understand moral concepts in praxis and in individual instantiations, and if apodictic answers to moral dilemmas are not available, how do we resolve moral disputes? How do we recognise moral error, true/false, valid/invalid, serious/frivolous? For instance, how do I resolve the question 'is euthanasia an instance of murder'? If our moral concepts are so general as to under-determine conclusions arising from them, how are we to act, what practical decision may I make? How do we distinguish between deliberate errors

and unaware errors? We need answers to these kinds of questions if we are to live together in decency.

In meeting this problem Porter is consistent. She insists that an infallible method is not available. She continues to hold that we are talking about an analogical situation. But, she says, in a case of a genuine mistake (or I presume in a situation where there are opposing views) the person making the mistake, (or those holding the opposing views) will be capable of presenting public arguments that are consistent with the basic concept of morality at issue – for instance, if the person is arguing for euthanasia (if this be wrong) the arguments will be made in the context of an understanding of the implications of taking another person's life. Further in a genuine case, or in the case of honest moral disagreement, the actor can be expected to display '... the sensibilities and the capacities for empathy that we expect of anyone who really understands what it is to be moral' (MACE, p.83).

Nonetheless, Porter is not content to halt her search for a moral discourse in such a thin and, as she might describe it, under-determined moral scheme. In order to find more specifics she turns to Aquinas. She is at pains to explain that it is not his wont to argue deductively. His, she explains, is no foundational method. Rather, he works continuously in a dialectic mode. He moves between his sources, letting each interrogate the other, always allowing for further insight and further sources that may change the conclusions arrived at. It is perhaps here that we find Porter in her most 'Scholastic' mode, as that mode might be generally understood. She presents what she herself accepts is a complex and difficult account of the relationship between action, goodness, being, reason and moral judgement.

For Aquinas the starting point for an account of morality is the concept of action, itself an analogical concept which takes its focal meaning from human action. Action is intimately bound up with the concepts of goodness and being. The concepts of action, being and goodness are convertible. For Aquinas, all things seek the good, in other words, seek their own perfection. In the case of human persons, they seek their perfection, their goodness, their perfected being, knowingly, through actions.¹⁵⁴ For a human person this is a quest for her own proper specific good, i.e. to live in accordance with reason. And, '... since all created existence and goodness can be stated to be a similitude of God's perfect existence and goodness ...' human persons, no less than any other created beings '... can be said to desire God ...' in desiring their own forms of perfection (MACE, p.94). Action is the focal point in Aquinas' attempt to build a moral schema. In that schema, Porter explains, he focuses on human acts themselves, and then proceeds to discuss the principles which give meaning to human actions, virtues, different kinds of laws, divine grace and the specific norms of human action '... organized around the schema of the three theological and four cardinal virtues'.¹⁵⁵

Having stated that all action is in some sense good, how can Aquinas account for badness in any action? What are the criteria by which human actions can be evaluated? He presents three criteria. First, the *object* must be appropriate. Second, the action must be done in the proper *circumstances*. Third, the *aim* or purpose of the agent must be good (MACE, p.95). Porter confesses that the concept of the *object* of an action is a difficult concept to grasp in Aquinas. She sees the object of an act as '... the generic concept under which an act is correctly described,

¹⁵⁴ This seeking of perfected being or goodness is however an ideal. The reality is one of a context of sin, such that the search for perfection, the self-directed search for happiness through reason, will in reality be imperfect as touched by sin.

¹⁵⁵ The three theological virtues are faith, hope and charity. The four cardinal virtues are prudence, justice, fortitude and temperance.

when considered from the standpoint of moral reason' (MACE, p.97). This for Aquinas, as interpreted by Porter, is primarily (though not exclusively) a matter of non-maleficence. Porter stresses that for Aquinas it is not possible to analyse the components of actions in the hope of finding a correct procedure for determining the morality of every act. Rather, what he provides is a method by which we can describe an action and approach a judgement as to its morality. For him this is clearer at the generic level. In the natural law and in the Decalogue, there is little or no room for error. But the more specific the action to be evaluated the more difficult it is to determine how a precept should be applied. At the most basic level moral evaluation is guided by general moral notions which '... may be understood in terms of the rationales of the correlative moral rules'. 'These rationales reflect our shared consensus of what we owe to another and may expect of one another...'

We are still left with the question, how do we judge in problematic situations? For Aquinas the answer lies in reason. The human person directs his actions in accordance with a reasoned understanding of the good. Each judgement will be determined by its specific context. In judging, one criterion is paramount, the norm of equality taken in tandem with the injunction of non-maleficence. A malefactor injures his victim by not honouring shared humanity.

Porter believes that at this juncture of Aquinas' argument we reach a fundamental point. Aquinas focuses on action, seeing action as convertible with being and goodness, and evaluating actions by reason, which is guided by the criteria of equality and non-maleficence. That equality is based on Aquinas' understanding of what it is to be a human creature. And that equality embodies an orientation towards the good. That orientation finds expression in certain inclinations (to remain in

existence, to reproduce, to live in society, to worship God). Porter goes to great lengths to stress that moral norms do not, in Aquinas' view, derive from these inclinations. Rather, these inclinations bring order to the norms of the natural law, which are in turn derived from the twin injunctions to love God and the neighbour and abide by the injunction of non-maleficence (MACE, p109)¹⁵⁶. Porter concludes this part of her Thomistic account by declaring that Aquinas

...offers us the resources to defend a [more] circumscribed account of moral obligation. Ultimately, the responsibilities of persons spring from, and are congruent with, their status as individual creatures, whose existence and identity are enmeshed in a web of local causalities, particular concerns.

8.2.4 *The place of virtues in Jean Porter's ethics*¹⁵⁷

Porter believes that accounts of moral judgements that are limited to an analysis of the functioning of basic moral norms (such indeed as that outlined above here) are at best incomplete. She points to the danger of being a slave to 'quandary ethics'. This is

¹⁵⁶ It should be noted here that in my distillation of Porter's interpretation of Aquinas I am operating at quite a level of abstraction. Whereas, the material in Aquinas from which Porter derives her understanding, and indeed her presentation, is littered with examples which illustrate the points at issue. To put this point more forcefully, Aquinas, as Porter constantly states, works dialectically with problems presented and the sources (tradition, the fathers, the Scripture) available to him. As I note above, this absence of rationalistic deduction is to me also a feature of the work of Porter herself.

¹⁵⁷ Porter's work on virtues is not as central to the focus of this thesis as is her approach to moral theory in general (outlined up to this point in this chapter) or her work on natural law (to come later in the chapter). Nevertheless, because she, and her prime source Aquinas, both seek to combine law-based and virtue-based ethics, I elaborate here on that attempt at fusion. It seems to me to be necessary to do so in order to do justice to both writers. It is also worth giving some consideration to virtues in order to highlight the absence of any conception in NPM of the capacity of 'virtues' to fill institutions with life.

a concept she borrows from Edmond Pincoffs (1986). He argues against moral systems that are totally pre-occupied with moral problems or dilemmas. Such systems he claims do not recognise the impossibility of apodictic answers in questions of morality; furthermore, they leave no place for character in the agent and the ways in which it matters to us, and impose a false unity on the moral life. Alternatively, virtue ethics respects heterogeneity, inconclusiveness and contextual sensitivity.¹⁵⁸

In arguing for the place of virtue ethics, Porter alludes to the indeterminacy of virtues. While she is not as explicit in her use of the terms 'open-texture' or 'analogical' when describing virtues, it seems to me that she comes close to that kind of reasoning. Virtues, I take her to imply, as with moral acts, are known in instantiations of them. Just as our basic moral notions are understood in paradigmatic instances of actions, so our notions of virtues are also known in paradigmatic actions that would be accepted as instances of the virtue in question.

One of the differences between virtues and rules is that virtues do not seem to be tied to specific non-moral acts, as rules are; for instance, murder is tied to the non-morally-described action of taking life. Our concepts of virtues are not so tied, and can even be ambiguous. It is not possible therefore to turn from the language of moral rules to the language of virtues as if these were alternative approaches to moral judgements. In reality they are different. Moral rules and virtues perform different tasks. It is not a question of either or.

¹⁵⁸ An important point here is to resist the temptation to fall into a total virtue ethic approach, or equally a total moral law approach. Porter claims that the contribution which Aquinas makes to the discussion, one which has equal force today, is that one must find a balance between virtue and law. It is false to dichotomise them. Neither Porter nor Aquinas would subscribe to an eliminatist approach; i.e. where an ethical theory based entirely on character does all the work of ethics.

It is not surprising that it is again to Aquinas that Porter turns to put order on the balancing and interweaving of moral rules and virtues. Remember for Aquinas action is the focus in moral discussion. Action is related to the good, to being and to reason. The rational creature attains perfection through actions which are knowingly directed towards his happiness. The intellect is centrally involved. Aquinas says that the will (to act), and the passion for an act, are dependant for activation on the intellect, on reason. But the active powers of the agent are 'qualified by dispositions over and above their natural dynamisms'. These abiding dispositions are the virtues.

Aquinas brings the two together – the moral norms known by reason and the virtues. A good act is done, is virtuous, when it conforms to the external standard of a moral notion, but is also a step in the perfection of the individual. Here we see the moral norms and the virtues meeting. The act is good in that it is in conformity with what reason tells is the external good, but is also good in the sense of actualising and perfecting the powers of the agent, including the passions, will and intellect.¹⁵⁹

8.2.5 Jean Porter's reformulation of Aquinas in the light of modern psychology

Porter recognises that the views of Aquinas on the virtues (and perhaps his views in general) have been overtaken by developments in psychology. She therefore reformulates Aquinas, attempting to retain his central tenets, while taking account of advances in psychological insight. The following

¹⁵⁹ Once again Porter finds it necessary to emphasise that Aquinas is working in a dialectical mode. He does not '... derive an account of the virtues from his general account of goodness in action'. He has diverse sources about virtues to which he brings coherence in a framework arrived at dialectically, with the sources talking to each other.

paragraphs give a brief summary of the Thomistic stance reformulated by Porter.

She starts from the premise that the human individual is deeply conditioned by the complex interactions between herself and the wider community, mediated by caretakers, peers and the institutions of society. This does not imply a lack of autonomy. Rather, it acknowledges awareness of the individual as one human being among others, dependant on empathetic identification with and distantiation from others. In this way the child develops, entering ‘... a network of mutual claims and expectations’ (MACE, p.170).

As the child grows the paradigms imbibed by a form of osmosis as a member of a culture are internalised. They are evaluated. The developing individual begins to get a ‘feel’ for appropriate behaviour, grasping the point of self-restraint, persistence and courage. At some point in this process the individual reaches a stage of being able to internalise these virtues and appreciate what is involved in acting in accordance with them. Gradually the capacity to act in accordance with these virtues in unfamiliar situations develops. This marks a critical point of moral maturity in the development of a child. In following years the maturing young person begins to realise that the virtues acquired as a member of the community are desirable and necessary for any human agent. But with maturity the young adult will, as appropriate, re-configure the virtues thus acquired to critique them in new situations – Porter gives the example of a young man who comes to the realisation that the virtue of courage demands of him in a particular situation to take a pacifist stance. This kind of critical reflection is possible because of a

commitment to the ideal of the unity of human goodness, and therefore to the ‘connection of the virtues’.¹⁶⁰

8.2.6 *The basic positions in Jean Porter’s ethics: a critique*

In this section (8.2) I have been analysing the work of Jean Porter to identify where lie the basic positions, assumptions and principles in her ethics. I have been exploring this because she is a revisionist natural law thinker and therefore is a possible locus for the identification of an approach that is more nuanced, more flexible, less classicist, more aware of modern insights on the person and on the ‘constructivist’ elements in identifying the basic features of personhood, than the natural law theories of late neo-Scholastics (particularly that school that emerged following the injunctions of Pope Leo XIII on a return to Scholasticism). What emerges for me is less than wholly satisfactory.

Porter’s usage of the paradigms ‘open texture’ and ‘analogy’ as epistemological keys to open the door to moral concepts I find useful. They do acknowledge that we are always subject to the contingent and that context and culture are ever at play. Her reasoning here also allows for the reality that the more specific the issue at stake the less chance there is of full agreement in moral reasoning. Her understanding that moral concepts are only

¹⁶⁰ This seems to be a critical point in the re-formulation of Aquinas on temperance and fortitude. Porter deals at length with this concept of the ‘connection of the virtues’ and sees it as critical to Aquinas’ views. It would take us very far afield if I were to deal with it in any detail here. Suffice it to note that, in summary, the view would be that the virtues are connected and that it is not possible to act for the good by practising any one of the cardinal virtues in isolation; they are connected. The person who is temperate is so for prudential reasons, not purely for purposes of self-restraint. Again, here I would see the coming together of the good, action and reason in Thomistic parlance. It would seem that in this idea of the ‘connection of the virtues’ we see a version of the belief that the *telos* of humankind demands that there be some common element, or more correctly as Porter puts it some common connection, between all of the virtues. See Pence (1991), p. 255.

found in instantiations of moral action is also helpful. It too takes account of context and moral experience.

It is when she makes the move from the usage of 'open texture' and 'analogous' concepts to an attempt to copper fasten how, given such a lack of apodicticity, we can make any moral decision, perform any moral act, with some degree of certainty, that I find her less than satisfactory. When she attempts to demonstrate how conflicting moral views can be adjudicated upon she seems to me to need to fall back on theological considerations. And this because she fails in her resort to Aquinas to formulate an adequate bedrock upon which she can base her respect for the human person. She relies on the concepts of equality (as human persons) and non-maleficence (the injunction not to deprive any person of goodness). But this still demands a clear argument as to why it is that human persons should be treated as equal and not dishonoured. In the final analysis, what is it for her to be distinctively human? It is to have '...the capacity for self-direction through free action' (MACE, p.114). To underpin this position she relies on the *imago Dei* concept. The 'image' in question here signifies '... the intellectual [capacity], freedom of judgement and the power of self-government' (MACE, p.91).

In summary, she presents as a natural law thinker who can cope with the contingent in the circumstances of moral action. She presents as a natural law thinker who has a horizon wider than the result of deductive rationality – this by giving a role to the inclinations in the ordering of moral actions and in the dialectical conversation with a range of authors and specialities. However, the centrality which she gives to non-maleficence and equality of persons, crucial to her project, under-determine her conclusions,

and leave her relying on '*imago Dei*'.¹⁶¹ For my purposes in this thesis then, she provides some help in demonstrating that a natural law approach is not necessarily unaware of the contingent and the cultural, but is not finally satisfactory on providing an adequate account of the dignity of personhood as the bedrock of moral activity.

8.3 The concept of natural law in Jean Porter

I move now to interrogate Porter's position on natural law. This description will focus selectively. For my purposes the more important issues here are Porter's treatment of: (1) the Scholastics' strong reliance on Scripture in their attempts to comprehend the natural law; (2) their over-arching theological framework for understanding law; (3) their thorough commitment to the connection between nature and reason (though I treat less of this in what follows because I have treated it at length in 8.2 above); and (4) their surprising flexibility, as Porter explains it, in their understanding of human nature. Pervading all of this is the dialectical approach of the Scholastics as portrayed by Porter.

8.3.1 The centrality of Scripture in accessing the natural law

First, natural law theory is grounded in a Scriptural interpretation of human nature. The Scholastics worked with many sources: traditions handed on to them (some sacred some secular, Plato and Aristotle for instance), the fathers, but above all Scripture. In other words, the Scholastics drew heavily on the range of texts available to them, but regarded Scripture as their prime source.

¹⁶¹ Paradoxically, because she is aware of the need to have a thick concept of what it is to be human as the foundation of her moral action, she rejects the Kantian concept of autonomy because it does not, she claims, adequately cope with respect for foetuses, mentally retarded or senile people for instance (MACE, pp.55-6). Nonetheless she herself does not seem to have adequately confronted the autonomy v. heteronomy debate.

The Scholastics ground their concept of the natural law in a particular reading of Scripture, while at the same time interpreting specific scriptural texts in terms of that concept. (NDL, p, 123)

They believed that the natural law is contained in the divine law, as revealed in Scripture. However, the divine law is wider, containing ceremonial precepts of the Old Testament for instance, and articles of faith from the New Testament.

More specifically, Scripture provides a normative formulation of the natural law in the form of the negative and positive formulations of the Golden Rule, and in addition it offers the paradigmatic statement of the immediate moral implications of the natural law, in the form of the Decalogue. (NDL, p. 132)

In a sense Scripture amplified knowledge of the natural law. Because morality is under-determined by human nature, reliance on Scripture leads them to consider some human inclinations as centrally important from a moral standpoint. They interrogate Scripture to clarify specifics. If Scripture seems unhelpful, or even contradictory, they use their natural law concepts to interrogate Scripture. Porter states (NDL, p.151) that 'For the Scholastic theologians, who lacked the comforts of the historical-critical method ...' when there was a need to confront seemingly difficult Scriptural passages they appealed to the rational cogency of the natural law'. Porter accepts that this may seem circular, but not viciously so.

8.3.2 *Different conceptualisations of 'Law'*

The second central concept in appreciating Scholastic natural law theory is their understanding of the concept of 'law'. Here it is important to realise that they understood the word 'law' to have different meanings. Porter (NDL, pp.147 ff) outlines the different conceptions of law at play in the Scholastic world view. It could be understood to be a principle of order. This facet is reflected in the Scholastic's strong view that the natural law is interpreted by reason, and that the natural law can be known by reason. Law could also be understood as a decree of divine reality. On this ground the Scholastics saw the natural law as the decree of a personal God and the expression of divine wisdom. Finally, law could also be understood as the facticity of 'what actually happens' (this latter a more Stoic perspective). When drawing on this view they saw humans as sharing in the natural law with all of creation.

It was also important for the Scholastics to situate their concept of the natural law within a framework of laws, within an overarching theological framework. At the top of this framework is the idea of the eternal law.

Eternal law is nothing other than the reason of divine wisdom, insofar as it directs all acts and motions' (Aquinas, *Summa Theologica*, I-II 93.1, quoted in NDL, p. 162)

Reason and wisdom feature prominently in their discussions of the eternal law. It is God's providential wisdom '... directing all things forward towards their proper fulfilment in God, in the way appropriate to each kind of creature'. They placed particular

importance on divine law, as revealed in the Scripture. However, it is perhaps important to note that they did not see this as positive law. Rather, it represents specifics of the eternal law revealed in Scripture (see the preceding section for an explanation of how they reconciled seeming contradictions in Scripture).

To understand their perspective on natural law¹⁶² in this over-arching framework, a classic quote from Aquinas' *Summa* suffices

And this participation of the eternal law in the rational creature is called the natural law. (*Summa Theological* I-II, quoted in NDA. P.163)¹⁶³

In other words, natural law fits into their over-arching framework. It is the eternal law operating in humankind.

The Scholastics also treat of the 'law of nations'. A distinction arises again and again in Porter's exposition of Scholastic teaching as between the natural and the conventional. The conventional is that which has been imposed on society by human positive intervention, often called the law of the

¹⁶² It is important to understand that 'natural law' could for the Scholastics be used at several levels of intentionality: (1) it could refer to nature as the totality of all creatures (a facticity of a Stoic nature is implied here; later neo-Scholastic conceptions of natural law of a 'physicist' kind have their provenance here); (2) 'nature' could be construed as the intrinsic characteristics of a given kind of creature (here we see the substantiveness of human nature highlighted); (3) the emphasis could be on the human capacity for rational judgement (this is the version which Porter adopts); natural law could be seen as God's will revealed in Scripture. (NDL, p.77)

¹⁶³ This description of the natural law may sound strange to our ears. Aquinas talks of the eternal law participating in the natural law. We would probably express it the other way around, the natural law participating in the eternal law. A second point about the quotation: it does not to me seem to embrace all of the nuances that inhere in Scholastic natural law theory. For instance it ignores the view of some Scholastics, including Aquinas himself in some places according to Porter, that non-rational creatures also participate in the natural law.

nations.¹⁶⁴ Reason is the force that is in play when the law of nations is put in place¹⁶⁵ and they therefore suppose that the law of nations is in some secondary sense part of the natural law. The contrast between the natural and the conventional ‘... provides them with a framework for analysing the practices of society, with the aim of establishing their foundations in natural principles’ (NDL, p.78). In other words, for them positive law is to be judged in the light of the natural law. Its validity will be determined by its conformity to the natural law. It will of course be more specific, more in tune with the exigencies of the community which promulgates it.¹⁶⁶ This latter point has ramifications for their perception of what it is to be human, of their perceptions of what we might call cultural influences (see Human nature below at 8.3.4).

¹⁶⁴ This she says can be described as natural law in a derivative sense, since valid (in accordance with reason) laws of the nations are expressions of the natural law, and are ‘in some cases nearly as universal as the natural law itself’ (NDL, p.307)

¹⁶⁵ We would probably use a different term to describe this kind of law. We might call it positive law, civil law or human law. It seems to me that the technical term ‘law of nations’ may have its provenance in the fact the Scholastics lived in what was a relatively homogenous society. In such a society, as they experienced it, the ‘law of nations’ assumed a certain universality from place to place, even though put in place by different rulers in different places.

¹⁶⁶ The Scholastics deal at length with the civil power, the power of the ruler. Their views in this regard are of course coloured by the ruling conditions of society in their time. For my purposes here the most pertinent part of that part of their work is what they have to say about hierarchy in society. In some of the Scholastics we do find a Platonic approach to natural justice implying a hierarchy of being. This expresses itself in a social hierarchy. The Pauline image of society as a body has resonances here. For many latter day scholars this approach would be seen as the quintessence of natural law theory of society. This did find favour with many of the Scholastics and of course find its apogee in the papal encyclical *Rerum novarum*. However, Porter claims that ‘... the more distinctive Platonic ideas of a natural social hierarchy, and of society as a body, play at most a secondary role in their reflections on the natural law’ (NDL, 9. 73) Indeed in the same section Porter says that Aquinas repudiates the view that social inequalities reflect a natural hierarchy among human beings, comparable to the angelic hierarchy. This line of thought poses at the least interesting questions with regard to the natural law perception that pervades CST from *Rerum novarum* into the mid-twentieth century.

8.3.3 *The relationship of nature and reason and the centrality of reason in Scholastic natural law theory*

Popularly understood, natural law as propounded by the Scholastics is often crudely seen as a body of decrees rooted in human nature which is readily accessible to human reason. This is of course a caricature. The concepts of 'nature', 'reason' and 'law' are each in turn mis-construed in this crude understanding. For the Scholastics both nature and reason are grounded in and reflective of a transcendent reality. They were committed to the intelligibility and the goodness of nature. This provided a basis for drawing a connection between nature and reason, a central tenet of their natural law theory (NDL, p. 75).

They do distinguish between nature, understood specifically as pre-rational, and the characteristic human ability to reason. Yet they see a continuity between ourselves and the rest of creation. For them the natural world as a whole is informed by reason, and human reasonableness is an expression of our continuity with all of creation (NDL, p.86). Rationality is considered to be the human characteristic *par excellence*. Hence the use of the phrase 'reason as nature'.¹⁶⁷ While all of creation acts in accordance with reason, only rational creatures are capable of following rational principles, and so can be said to be under obligation. The properly human expression of the natural law is to act in accordance with reason, to conform to precepts of practical reason.

... Albert, Aquinas and Bonaventure all consider the natural law to be habitually known through the reason,

¹⁶⁷ Some canonists and theologians of the period understood the natural law to be equivalent to synderesis, the higher or superior component of reason. This was not the majority approach, which was rather to see the natural law in its primary sense to comprise precepts (not moral rules, it should be stressed) (NDL, p. 89). These precepts were known through synderesis or through conscience.

more specifically through synderesis, in the case of the former two, or conscience in Bonaventure's case. (NDL, p.89)

Hence we see the connection between reason and nature. Natural law is not for the Scholastics a canon of rules – the more popular meaning of 'law' as we would understand it. Rather, natural law comprises 'fundamental norms by which the power of moral discernment operates'. That discernment is reason in action.¹⁶⁸

8.3.4 The Scholastic flexible conceptualisation of 'human nature'

Porter is aware that the common perception of natural law theory is one that presupposes a substantive account of human nature. Not so, she says, for the Scholastics. For them '... appeals to the pre-rational aspects of human nature and to reason are seen as complementary and mutually interpreting' (NDL, p.66). She then goes on to make the following claim about the Scholastics

[It] further suggests that human nature as they understood it is not something that is completely fixed prior to the operation of reasonable judgement and the emergence of culture. (NDL, p.66)

The most surprising part of that statement is perhaps the final phrase, 'the emergence of culture'. Here we have a claim that natural law can be culture-specific, that the interpretative capacity called 'natural law', understood as a law of reason, is culture specific. Indeed Porter in another part of her work suggests that there were many understandings of the natural law

¹⁶⁸ This resonates with the approach taken by Verstraeten and his colleagues to the Catholic social tradition. They insist that one must take account of action, instantiations of the teaching in practice, not just the teaching or analysis, in understanding the social tradition.

and the Scholastics attempted to bring some order to that diversity by making a distinction between ‘... what is natural in the sense of existing prior to human customs and legal enactments, and what is conventional or established by human design’ (NDL, p.77). I take it that she refers here to the natural law in that secondary sense, where the ‘law of nations’ is valid and culture-specific but, most importantly, is in accordance with reason. Perhaps key to this insight is the emphasis on the human capacity for rational judgement. The emphasis is not on facticity but on order and intelligibility. And here also we see the role of the so-called *inclinaciones naturales*: ‘...the precepts of the natural law are said to pertain to the natural law, and correlatively, the inclinations bring order to these precepts, thus guaranteeing the order and the unity of the natural law’ (ST 94.2, 1) (NDL, p.93).

It is striking that she balances two concepts that at first sight may seem contradictory, or at least to be in tension. She says that the Scholastics do pre-suppose that the human person is a substance with an intelligible, specific nature, in terms of which human behaviour can be understood and evaluated. Yet she says that the Scholastics did not start with a fully determined account of human nature. They presuppose that the practices they observe are expressions of some aspect of human nature but leave room ‘... for some agnosticism about what human nature actually is’ (NDL, p. 79).¹⁶⁹ They recognise that the natural law must be expressed through human conventions in order to take practical force, but stress that natural law places definite moral constraints on the legitimate forms of human life (NDL, p. 251).

¹⁶⁹ Yet again we are seeing here the use of the dialectical method. The Scholastics moved between what they understood human nature to be and their observations. They are not working deductively from a given concept of human nature.

8.3.5 *The distillation of 'natural law' from the Scholastics in Jean Porter*

The centrality of Scripture in Scholastic natural law thinking is compelling. It points to a facet of natural law thinking which is often neglected and indeed strikingly so in the late nineteenth and early twentieth century Vatican encyclicals. The capacity for enrichment of natural law understanding by dialogue between deductive reason, discernment and scriptural exploration promises much. And indeed presumably offers more to a modern than it did to the medieval Scholastics given the advances in biblical scholarship in the intervening period.¹⁷⁰

A related point is the capacity of the Scholastics to work dialectically with a range of sources – a capacity which Porter herself richly uses. This is useful on two fronts. It offers the possibility of enrichment of understanding of the natural law, but it further points to the need for openness to the contingent and to a healthy caution against apodicticity.

For me one of the most striking insights to be had from reading Porter's take on Scholastic natural law is the emphasis on the different understandings of the term 'law'. The distinctions drawn between 'eternal', 'divine', 'pre-conventional' are helpful. Of significance also is the caution against seeing natural law (solely) in a Stoic sense of facticity. As an operating definition, seeing the natural law as '... fundamental norms by which the power of moral discernment operates', is attractive.

Finally, looking at her take on natural law, I see a struggle in Porter to reach a non-substantive account of 'human nature' – a

¹⁷⁰ McHugh, Boswell and Verstraeten (2000) express a different though similar point. They point to the over-reliance of the Catholic Social teaching on deductive reasoning in philosophical mode and the neglect of other sources, for instance the patristic tradition, in delineating social teaching.

struggle which is not successful to my way of thinking. She seems to follow the Scholastics in seeing human nature as something that is not completely fixed prior to the operation of reasonable judgement and the emergence of culture (NDL, p. 66) (thus allowing that they left room for some agnosticism about what human nature actually is), but yet also follows them in accepting that the human person is a substance with an intelligible, specific nature, in terms of which human behaviour can be understood and evaluated.

8.4 Summary

At the outset of this chapter I indicated why I saw a need to analyse traditional natural law theory and, more particularly, why I chose to interrogate Jean Porter to do so. I outlined how my paradigmatic concepts of the 'common good' and of 'subsidiarity' were grounded in a theory of natural law. Given that natural law theory is open to the criticism that it is rooted in a pre-modern concept of the person, I wanted to find a modern author that confronted this line of criticism with some credibility – hence my choice of the 'revisionist' natural law thinker Jean Porter.

Have I been successful? Yes, to a degree. I believe I have shown that it is possible within a natural law system to take account of the contingent, to take account of the culturally-specific, and to show a 'certain agnosticism' to the concept of a pre-conventional personhood, but only that, a 'certain agnosticism'. The shadow of the substantive concept still casts itself over the construct. The search for a bedrock for equality and non-maleficence ultimately needs to call on *imago Dei* and leaves the doubt that the moral system in question cannot operate without God. Nonetheless, Porter's construction of the Scholastic concept of the natural law gives us many valuable insights, perhaps none more so than that,

because it is scriptural and yet in dialogue with other sources, their concept of the natural law ‘... offers a framework for moral reflection that is authentically theological while remaining open to the best insights of the natural and social sciences’ (NDL, p.303). Also her inclusion of ‘virtue’ as an internal orientation towards ‘perfection’ gives cause to value internal motivation. And in so doing gives some confidence in confronting the instrumental rationality of the Irish public service modernisation programme.

Chapter 9

Solidarity and Mutual Recognition in Place of Tolerance: The Common Good in the Theology of David Hollenbach

9.1 Introduction

My second contemporary interpreter of the Catholic social tradition is the American Jesuit moral theologian David Hollenbach. He embeds his approach to the principle of subsidiarity in his concept of the common good, as its organisational principle.

My intent in this chapter is to pursue further a foundation for a natural law approach to the common good and to subsidiarity. Porter (Chapter 8) has provided some foundation in her espousal of a dialectical rather than deductive method. My dialogue with Hollenbach seeks further strengthening of the guiding anthropology. Three facets in particular of his thinking make him more compatible with modernity – (1) his understanding of the common good as something that people pursue together, rather than seeing the common good as a ‘thing’; (2) his emphasis on solidarity, where mutual recognition of each other by subjects brings people together in community; and (3) his explication of the notion of a ‘pluralistic-analogical’ understanding of the common good which sees Christians relating to fellow human persons in a plurality of fora, in accordance with the principle of subsidiarity.

In this chapter I propose to (1) describe the context within which Hollenbach puts forward the concept of the common good; (2) analyse the philosophical approaches underlying his position, together with his view of the common good as the guarantor of human rights; (3) consider his theological warrants for the concept of the common good; (4) examine his rebuttal of the liberal critique of the common good approach. A critique of Hollenbach will emerge in each of these explorations. I will be using four pieces written by Hollenbach, but will be relying primarily on his 2002 book on the common good – *The Common Good and Christian Ethics*.

But, first, some general comments on Hollenbach's approach. He believes, in common with those who hold to the Aristotelian school that '...the larger good realised in social relationships is superior to the good that can be achieved in the life of a single person considered apart from the community' (2002, p.4). However, Hollenbach's approach is adapted to take account of recent scholarship, particularly the liberal school. Indeed it is in dialogue with that tradition, and particularly with John Rawls, that we see some of the more nuanced traits of Hollenbach emerge (see 9.5 below). His approach is one that accepts that there is an 'interdependence of basic goods'. However, in contrast to Rawls, his hermeneutics place great emphasis on human knowledge being tradition based, echoing Alasdair MacIntyre. Consequently, Hollenbach is ever open to the balancing of interacting goods. The primacy or otherwise of any given good cannot be arrived at *a priori*.

The conclusions one reaches about these interrelations [of goods] will largely be the result of generalisations about how human beings ordinarily can be expected to behave in their interactions with each other. In other words they

are the prudential conclusions drawn from the lessons of history and from insights into “ the way the world works”. They are not purely moral or purely religious judgements. They involve both insight into basic human values plus a significant amount of worldly political wisdom (1983, p.21-22).

He is at pains to stress that the human pursuit of insight is a constant journey, one that must always be open to dialogue and to change.

9.2 The context in which Hollenbach operates

Hollenbach is very much in the mode of ‘middle-level’ thinkers described in Chapter 1 above. He is concerned to apply the approach of Catholic social teaching to the major problems that he sees as confronting his society. More particularly he has a deep concern for two major issues, the marginalisation of those living in the US inner cities and the marginalisation and depredation that can be the results of globalisation, be that economic globalisation or globalisation as it affects power and politics.

He uses narratives to illustrate, or even to demonstrate, arguments that he wishes to make. For instance in Chapter 2 of the 2002 book, entitled ‘Problems tolerance cannot handle’, he describes these two major societal problems at great length – race, poverty and social isolation in the inner cities of the USA and the problems of a globalised world, e.g., AIDS, trade distortion, financial domination, depredation of the environment.

On urban poverty he uses evidence available in the public domain to demonstrate that this is not a race problem. It is rather a structural problem within American urban society. Zoning

laws, local tax laws, local education structures, these all contrive to create a society of separated blocks. Urban America is separated into communities that are badly served by that separation (be they the rich suburbs or the poor inner cities). One side barricades itself in the protection of the suburbs. The other is marginalised into under-developed areas where educational and employment facilities are in poor supply.

His conclusion, having sketched the problems, is that there is a need for more solidarity in society. That solidarity he juxtaposes with the liberal value of tolerance, grounded in an individualistic understanding of autonomy. He sees that value as the predominant stance of American liberalism, indeed as the predominant value of American society. But this, he says, is not a stance that is adequate to engaging with the conditions revealed by his narrative and analysis.

Tolerance as acceptance of differences is a psychological stance entirely inadequate for the development of a creative response to urban poverty today.

(2002, p.33)

A more envisioned stance is required, a more empowering one. That stance he identifies as a commitment to the common good, a stance that is engaged and involvement-creating. We face problems of a very different kind from those that made tolerance such a cherished value. A stronger vision is required. Following Alan Wolfe he asks

If tolerance becomes a card that trumps all strong proposals on how we should live together, will it stifle the

imagination needed to address pressing public problems?¹⁷¹

9.3 The philosophical underpinnings of Hollenbach's approach to the common good

The philosophical basis upon which Hollenbach builds his concept of the common good is fourfold: (1) eschewing the dominance of the classical liberal value of tolerance, he proposes an alternative view of tolerance; (2) building on the premise of the non-instrumentality of human relationships, he argues that the common good of public life is a realisation of the human capacity for intrinsically valuable relationships; (3) he sees intellectual solidarity, the pursuit of a shared vision of the good life, as calling on the virtue of civility, but subordinates Rawls' 'civility' to intellectual solidarity; (4) he suggests that the pursuit of intellectual solidarity is rooted in a positive conception of human rights that facilitates that pursuit.

9.3.1 An alternative view of tolerance

He dismisses a number of what he would regard as shallow notions of the common good – economic and utilitarian approaches; the 'public interest' approach which he describes as disaggregative, breaking the common good into the effects it has on individuals, and thus lacking the richness of 'common'; the 'public good' approach because it is a purely extrinsic approach to the common good, looking to the distribution of 'things'.¹⁷²

Returning to his strong conviction that we need a more envisioning concept of the common good, he moves towards a new vision in a chapter entitled 'Recovering the commonweal'

¹⁷¹ Wolfe, Alan (1998) *One Nation After All*. New York: Viking.

¹⁷² See 4.2 above for a more extended treatment of alternative approaches to the common good.

(pp.69 ff, 2002). Here he gives a twist to the interpretation of the word 'tolerance'. It can, he says, be an appeal that 'the social good be available to all'.

Thus one can envision the aspiration for tolerance as an aspiration for a social good – the good that is realized when all persons share in the political, social, and cultural life of the communities whose activities affect their well-being. (2002, p.69)

He emphasises that this does not merely mean individuals being facilitated to go their own way. 'People who live alone have no occasion to be either tolerant or intolerant; the concept simply does not apply to them' (2002, p.69).

This notion of the common good sees the pursuit of this common good as itself constitutive of the common good. In this view mutual respect is a social reality. Mutual respect is a shared or common good. Tolerance is interpreted as a creative act of mutual recognition

It is a good which is realized when the members of society share in creating their life together. (2002, p.70)

To strengthen this point he draws on an insight from the Canadian philosopher Charles Taylor. Taylor uses the analogy of language, drawing on de Saussure's distinction between *langue* and *parole*. A language (*langue*) and an act of speaking (*parole*) are mutually interdependent 'The social reality of the shared language, therefore, is *in* the speaker, just as the specific meaning of the speaker is communicated *in* the shared language' (2002, p.74). In analogous manner, the good of an individual and the good of all are constitutive of each other.

Self-determination is not a solo activity but has social pre-conditions. Moreover these social pre-conditions are not external to the person who makes free choices; they are internally constitutive of the capacity for freedom itself (2002, p. 75).

In other words, self-determination and democratic social practice go together. Returning to his pre-occupation with the contemporary phenomenon of large groups of people being marginalised, he says

... the internal connection between self-determination and democratic social practice means we face the choice of discovering how to achieve good lives together or accepting the fact that some people (likely very many) will not have good lives at all. (2002, p. 77)

9.3.2 *Human relationships as valuable in themselves*

A second aspect of tolerance based on recognition starts from the premise that human relationships have non-instrumental value. 'We seek such relationships for their own sake, not because once obtained, they enable us to satisfy other desires in solitude' (2002, p.80). He sees the good of relationships realised in the interactive activities of communication and love that are distinct capacities of persons. This valuing of human relationships as non-instrumental enables him to conclude

[In the same way] the common good of public life is a realization of the human capacity for intrinsically valuable relationships, not only a fulfilment of the needs and deficiencies of individuals. (2002, p.81)

For Hollenbach then, a key aspect of the common good is *the good of being a community at all* (2002, p.82). It is in communicating with each other that we create relationships, protect freedom and create the commonweal. Public speech, joint action and shared self-governance are dimensions of a freedom that can only exist in community (2002, p.83).¹⁷³ He calls this 'solidarity of shared freedom'. It is '... the first step out of a self-protective wariness toward the solidarity necessary for a morally inter-dependent community' (2002, p.85).

Where such conversation about the good life begins and develops, a community of freedom begins to exist. And this is itself a major part of the common good. (1994b, p.334)

It is worth digressing here briefly from my analysis of Hollenbach to point, at this juncture, to a significant insight of his germane to my project. His view, as outlined in this section, is a strong argument against an instrumental perception of the person. Human relations have non-instrumental value and are oriented towards a flourishing life. These visions and orientations are not privatised, they are something to be worked out together. In relationships the individual related to is valuable as an end in his or her self and seen as such in the relationship. This contrasts starkly with the instrumentality of the NPM approach outlined in Chapter 2, uniquely evoked in the concept of 'human resource management', where the individual is 'objectified' as a resource to be managed.

¹⁷³ In the midst of this argument Hollenbach betrays another consideration that would seem to hold great sway with him – a suspicion of the market. It seems to me that he sees the market as a product of individualism, or at least as an outlet for individualism. Hence we find the following

For today in the West, the market and a politics of the image driven by money and media threaten to reduce the citizens to political consumers rather than self-governing agents. (2002, p.84)

9.3.3 *'Intellectual solidarity' as a foundational concept*

He describes the pursuit of a shared vision of the good life as 'intellectual solidarity'. It can only occur in active dialogue of mutual listening and speaking across the boundaries of religion and culture (2002, p.137). Here he is looking at the common good from a political perspective.

The hints in recent literature¹⁷⁴ that point towards the need for this kind of solidarity appear most explicitly in discussions about democracy as a deliberative process. (2002, p.141)

The mutuality in this scenario is defining, as it is in Rawls but here it aims at mutual recognition not just indifference. It is a deliberative process based on respect for equality. This demands the virtue of 'civility', which is much richer than mere *politesse*. It is grounded in the belief that all are equal and free. Thus one making a proposal should be able to argue that it would be at least reasonable for others to accept it (2002, p. 145). The participants' respect for each other see them in a politics of deliberation, not a politics of bargaining. Those who come to the table to bargain bring their commitments with them for implementation, not for transformation or evaluation (2002, p.143).

¹⁷⁴ Unfortunately he does not tell us to which 'recent literature' he is referring. One hint appears where he insists that we must re-shape the attitudes that shape the way we live together, our public philosophy, which he describes using the words of Sandel as '... the political theory implicit in our practice, the assumptions about citizenship and freedom that inform our public life' (Sandel, Michael (1996) *Democracy's Discontent*. Cambridge MA: Harvard University Press, p.4).

A political argument ... advocates some aspect of a vision of the common good, along with reasons why others should see that it will lead to a better life for all who must live together. (2002, p.144)

9.3.4 *Positive human rights enabling intellectual solidarity*

In keeping with his understanding of the common good as a shared process of discovery, his interest is in the conditions and intellectual framework presupposed. There must be a climate available in which this form of solidarity can be pursued. In other words human rights must be afforded a primacy such that people can engage in intellectual solidarity.

When understood in this way, the protection of human rights is part of the common good, not an individualistic alternative to the common good. (2002, p.159)

Following his interpretation of recent Catholic thought he says

Catholic thought and action in the human rights sphere ... are rooted in a communitarian alternative to liberal human rights theory. (1994 a, p.128)¹⁷⁵

He reverts to this 'rights' theme in a number of places when he uses the reflections of John Paul II in *Sollicitudo rei socialis* (1987). It is worth quoting the passage from that document referred to by Hollenbach because it captures the vision of human rights as part of the common good that he wishes to portray.

¹⁷⁵ It seems to me that his portrayal of the liberal position is not always nuanced. For instance he describes it as a 'traditional autonomous individualistic self-legislating rights approach', and claims 'Kant based all morality in the self-legislating autonomous will' (1994a, p.131). Kant did make such a claim, but Hollenbach does not allow for the distinction between current uses and Kant's own understanding of autonomy.

[The first positive note is] the full awareness among large numbers of men and women of their own dignity and of that of every human being. This awareness is expressed, for example, in the more lively concern that human rights should be respected, and in the more vigorous rejection of their violation. ... The awareness under discussion applies not only to individuals but also to nations and peoples, which, as entities having a specific cultural identity, are particularly sensitive to the preservation, free exercise and promotion of their precious heritage. ... At the same time, in a world divided and beset by every type of conflict, the conviction is growing of a radical interdependence and consequently of the need for a solidarity which will take up interdependence and transfer it to the moral plane. Today perhaps more than in the past, people are realizing that they are linked together by a common destiny, which is to be constructed together, if catastrophe for all is to be avoided. From the depth of anguish, fear and escapist phenomena like drugs, typical of the contemporary world, the idea is slowly emerging that the good to which we are all called and the happiness to which we aspire cannot be obtained without an effort and commitment on the part of all, nobody excluded, and the consequent renouncing of personal selfishness.

He goes to *Gaudium et spes* in search of a theological warrant for universal human dignity and rights and finds it – the creation of humans in the image of God and the death of Christ for the redemption of all people. But the document for him also provides non-theological warrants – the capacity of humans to understand and know the truth, their ability to discern the good through conscience, and the freedom that is the pre-condition for the pursuit of goodness (1994a, p.138). It is important to bear in

mind that when Hollenbach talks of human rights he sees them as primarily positive social empowerments. They are not simply negative immunities from coercion (2002, p.161). This reflects his continuing need to show the common good – and here human rights as part of the common good – as a good to be actively pursued. And so, people must have the freedom to actively speak, assemble and have the freedom to ‘... suggest that religious understandings of the good have a bearing on the realities of public life’ (2002, p.161).¹⁷⁶

His linkage of human rights and the common good is an important element of his thinking. He is not primarily interested in defending rights as privileges of autonomy to be called upon without counterpart duties. He challenges the view that would see rights as a matter for the private sphere and the common good as a matter for government. Rights are empowering. This leads him to claim, contra a widespread liberal view, that

... the right to religious freedom means the right of religious communities to be seen and heard in public and to propose their visions of the common good for deliberation in public. (2002, p.166)

In summary, with regard to human rights, his agenda is to present ‘... a normative proposal for what human rights ought to mean in our time’ (1994a, p.139). This phrase ‘in our time’ assumes significance because Hollenbach, in line with his hermeneutical approach (see above) maintains that

... human rights are not ahistorical moral concepts. The meaning of human rights is subject to ongoing argument

¹⁷⁶ See below, in the section on Rawls, for further elaboration of Hollenbach’s views on the place of religion in public life.

and development; it is not simply a historical given.
(1994a, p. 139)

He is aware that arguments can be made against him, to the effect that grafting classical human rights arguments to his communitarian approach might be seen as unsustainable, because of the emphasis on the individual in that classical mould. His counter argument draws on MacIntyre¹⁷⁷ who claimed that all moral visions are tradition-dependent, but dynamic and open to new knowledge gained elsewhere. Tradition therefore is not solely backward looking. 'It demands creativity, encounter with other traditions and the search for truth wherever it leads in the light of dialectical investigation' (1994a, p.143). He goes further than MacIntyre then and concludes that commitment to this dialogue of traditions demands freedom of speech – and we may conclude, I suggest, human rights. He then goes on to claim that

The value of MacIntyre's work is that it points the way to a communitarian re-construction of the political rights asserted by classical liberalism, even though MacIntyre himself seems not to recognize this. (1994a, p.144)

He links his 'rights talk' with his concern with solidarity and community. He says that human rights are '... the minimum conditions for life in the community'. The antithesis is marginalisation, exclusion from active membership of the community (1994a, p.140). And this conclusion he declares '... a clear-eyed vision of the human person whose dignity is social through and through' (1994a, p. 147). In this quotation we find the quintessence of the Hollenbach view. The individual has dignity, but that dignity, and its corresponding positive rights, are only *fully* (emphasis mine) realised in relationality.

¹⁷⁷ In (1998) *Whose Justice? Which Rationality?* London : Duckworth.

9.4 The theological warrants for the common good in Hollenbach

Hollenbach's warrants for a theological grounding of his concept of the common good are largely enunciated drawing on Augustine and on the French philosopher Jacques Maritain. He also uses the Pastoral Constitution on the Church in the Modern world of Vatican II, *Gaudium et spes*, to find a theological warrant for common moral ground between Christians and non-Christians.

9.4.1 Augustine

He provides an interpretation of Augustine's view of the relationship of the earthly city to the City of God. Christians live in the midst of both cities. The City of God is the perfect society, but an eschatological one. Christians are called upon to transform their society from lesser approximations of the heavenly city to ones that come nearer to the good that is their ultimate end (2002,p.128). For Hollenbach this is the common good to be pursued. It is a common good that approximates to the ultimate good, that final good which is not available in the earthly city.

For Hollenbach, Augustine presents a justification for the separation of church and state and a basis for the pursuit of the Christian perception of the common good in the earthly city.¹⁷⁸

¹⁷⁸ Interestingly, Hollenbach says that Augustine can be seen to have common ground with modern liberals, because he (Augustine) sees a limited role for government. Given that the true common good is eschatological, the roles of both church and state are limited. With such a theology, one opposes any form of religious persecution and any governmental denial of religious freedom (2002, p. 126). Two quotes are apposite here.

... Augustine's insistence on the transcendence of the City of God desacralizes politics. (2002,p. 125)

Augustine defended Christianity against the label of being apolitical. He would not accept the criticism of the day that Rome was in decline because it was accepting a worldview, Christianity, that was not enmeshed in the here and now. For Augustine

The decline of the republic was not due to the public acceptance of Christianity but to the absence of the virtues Christianity brings to public life in a unique way. (2002, p.122)

But equally he maintained that the Christian faith could not be identified with any political programme (2002, p.121). So Hollenbach can proceed to an Augustinian separation of church and state, but one where the pursuit of the common good in the here and now can be pursued in its approximation to the final good. So

...Augustine said *yes* to the differentiation of religion from politics, but *no* to the control of the polity by the church, *no* to the control of the church by the polity, and *no* to the withdrawal of the church into the domain of private subjectivity. (2002, p.124)

9.4.2 *Maritain*

Hollenbach moves from Augustine to a Thomistic grounding of his concept of the common good, using the approach of Jacques Maritain¹⁷⁹. Maritain, following Aquinas, has an analogical understanding of the common good. He starts with the notion of

An exclusively religious politics is a form of false messianism. (2002, p. 125)

¹⁷⁹ He relies in the main on Maritain, Jacques (1966) *The Person and the Common Good* (trans. John Fitzgerald). Notre Dame IN: University of Notre Dame Press (originally published 1947).

'person'. He maintains that '... the idea of the person is an analogical idea which is realized fully and absolutely only in its supreme analogue, God' [*The Person and the Common Good*, p.56] (2002, p.130). And therefore, to grasp the true meaning of 'person', Maritain suggests, we need to consider the doctrine of the Trinity. God is three persons in relationships of absolute self-communication and communion. That communion is so total that God is radically one. For Maritain, the essential relationality of personhood has its supreme exemplification in the Trinity. The Persons of the Trinity are 'subsistent relationships', i.e. their 'very identity as persons is their relationship one with the other' (2002, p.131).

This position of Maritain, referred to as 'personalist communitarianism', moves from the position of ultimate personhood, in God, the supreme exemplar of love and communion, to the view of the good of persons in their communion with each other.

The true good of persons is communion with other persons, not something that can be enjoyed in solitude. This good is realized completely only in God. God is supremely personal ... (2002, p.130)

Human persons are persons of a lesser sort, for they are capable of love and interpersonal communion to a lesser degree. (2002, p.130)

In other words, human community is located on an 'analogical scale' between the perfect society of the persons that is the Trinity and simple aggregations of non-personal beings. Humans are persons capable of communication, love. But they are also physical, chemical things separated from each other in space and time. And so the human good of society is both like the full

communion of love but different from it because of its finiteness and temporality (2002, p.131).

Hollenbach's reading of Maritain then seems to me to marry with his reading of Augustine (on the relationship of the earthly city to the City of God). Following Maritain, in his view of the human good of society as an analogue of the divine communion, Hollenbach concludes

Christians, therefore, are required by their faith to reject any attempt to achieve the full common good, as it is understood theologically, by political means. (2002, p.132)

Reflecting, or perhaps building upon, his interpretation of Augustine, Hollenbach, here using the position outlined by Maritain, moves to elucidate his own position on the pursuit of the common good. He uses the 'personalism' espoused by Maritain to present his view, i.e. that the communion of personhood is to be found in many aspects of interpersonal and communal relationships.

Since the freedom and dignity of persons are achieved in interaction with other persons, respect for this freedom and dignity calls for respect for the many forms of relationship in which persons can participate. Each of these relationships is the locus of part of the common good that can be achieved in history. (2002, p.134)

He goes on to suggest that Christians, called to transform social life into a more fitting reflection of the good that is their ultimate hope, can do this in the many interpersonal relationships in which they act – family, friendships, and all the loci of civic society.

All aspects of public life can be real though imperfect reflections of the fullness of communion that is the ultimate Christian hope. (2002, p.134)

So, Hollenbach's theological reflection leads him to what he terms a 'pluralistic-analogical' understanding of the common good. It is one which sees Christians relating to fellow human persons in a plurality of fora, only one of which is the state, pursuing a transformation of those fora in anticipation of the ultimate common good. Indeed his analysis here also leads him to dwell on the distinction between the state and civic society. Civic society is wider than the state, it is the free sphere of individuals working together, and the common good is

... an ensemble of goods that embody the good of communion, love, and solidarity to a real though limited degree in the multiple forms of human interaction. (2002, p.136)

From this theological base, Hollenbach is enabled to return to his pre-occupation with the need for an envisioned concept of the common good. He argues that the potential that the political/civic/governmental domain has for a partial embodiment of the full human common good points to a form of politics that seeks greater human solidarity, not just toleration or the protection of individuals in their solidarity (2002, p.136).

9.4.3 A theological warrant for common ground between Christians and non-Christians

Having established his position in theological terms for the common good, Hollenbach sees the need, also from a theological perspective, to find a warrant for common moral ground between

Christians and non-Christians. This he finds in the belief that one God has created the whole of humanity and that all human beings share a common origin and destiny¹⁸⁰ (2002, p.149). He insists however that it would be naïve to think that this classical theological argument can simply be repeated in the face of contemporary challenges. Following *Gaudium et spes*, he points to what has since come to be labelled as ‘post-modern suspicion of universalism’. This is a criticism of the Enlightenment belief that reason is independent of social context and inherited culture¹⁸¹ (2002, p.151). He seems happy with Vatican II wanting it both ways – affirming the deep roots of the vision of the good life in the gospel; but, also promoting the idea of enriching Christian convictions of the common good by fruitful engagement with alternative conceptions. He calls this ‘dialogic universalism’. Elsewhere he says

It is important to realize, however, that Christian principles of political ethics are not timeless, transcendental ideas that can be discerned apart from the active employment of political reason and political argument. It is surely true to say that some norms of Christian morality are timeless and non-political. But these norms are all of a *prima facie* variety. The Ten Commandments list strictures that are applicable in every society and in every historical situation. When we try to discern what these commandments call for in concrete

¹⁸⁰ He sees analogues to this Catholic approach in Lutheran (‘orders of creation’) and Calvinist (‘common grace’) approaches.

¹⁸¹ While Hollenbach is following Vatican II in this line of argument against the worship of abstract reason in Enlightenment thinking, it would be equally valid to use this line of argument to confront the traditional natural law timeless view of human nature.

decision, however, prudential judgment is always involved. (1983, p.87)¹⁸²

Up to this point then we see Hollenbach's thought presenting us with a number of pointers. As a theologian working in the contemporary USA he is disturbed by the lack of an envisioned response to the major social issues of his society, particularly the problems of marginalisation of the urban community and further marginalisation emanating from distant globalising forces. He sees the 'tolerance' perspective, rooted in liberal individualism, as blocking action. He proposes an alternative – intellectual solidarity based on the dignity and human rights of individuals who are fully defined as persons because they live in relationalities. He further grounds his position theologically by appealing to analogical personalism, which sees the human person in an analogical position to the perfect Persons of the Triune God, who are defined in their relationality. The human person, analogically, finds definition also in relationality, but is separated from others by finiteness.

So, in a 'pluralistic-analogical' understanding of the common good, he sees the person called to relationality with other individuals, pursuing solidarity in the multiple 'societies' of relationship in which she finds herself, but realising that the ultimate good is eschatological.

For my purposes, in this chapter I am exploring in dialogue with Hollenbach, the possibility of a natural law-based understanding of the common good, with theological warrant, to underpin my critique of the instrumentality of the NPM, and *pari passu*, of the Irish public service modernisation programme. Hollenbach's

¹⁸² Hollenbach leaves himself open to criticism here in an oversimplistic, and non-Biblical, understanding of the Decalogue as a covenantal relationship between Yahweh and his people.

‘analogical-pluralism’ seems to me to be fit to that purpose. It states a goal for society – interaction, participation, joint elaboration of pluralistic ideas of the good, within the proviso of human finitude.

9.5 Hollenbach in debate with liberalism

There is one further facet of David Hollenbach’s work that I want to explore – his debate with contemporary liberalism. It provides deeper insight into his general stance and – particularly *ad rem* for my purposes – argues cogently for the place of religious views in the public forum. I have chosen to deal with Hollenbach’s rebuttal of the liberal approach as a separate part of my discussion. I do this because the nuances of his thinking are well portrayed in this manner.¹⁸³

9.5.1 ‘Equality’ demanding silence on views of the good

This debate he undertakes mostly with John Rawls¹⁸⁴ though he does also argue forcefully against the liberalism that sustains ‘naked’ market economics¹⁸⁵. He is unhappy with the stance of Rawls in *Political Liberalism* which claims that an Aristotelian/Thomistic view of the common good ‘... is no

¹⁸³ In approaching his thoughts on liberalism in this way I am drawing on material which would otherwise appear under the earlier headings of this chapter. Also, the attention given by Hollenbach to the place of religion in the public sphere, as he engages with the liberal stance, is germane to my consideration of the relevance of a theological stance in the context of public management approaches.

¹⁸⁴ He debates with Rawls at two levels. First he rebuts the middle work of Rawls, particularly as presented in *Political Liberalism* (1993). But he also engages with the later Rawls in *The Public Realm Revisited* and finds some common ground with him.

¹⁸⁵ For instance

... there is a more immediate threat to the life of the community capable of nurturing freedom in the United States today; the dominance of the market over increasingly large domains of social and cultural life. (1994(b), p.327)

longer a political possibility for those who accept the constraints of liberty and toleration of democratic institutions' (*Political Liberalism*, p.201). This is the liberal view that sees the process of arguing for one conception of the good over another as treating people unequally (2002, p.10). But Hollenbach counters this by maintaining that

The conviction that the pursuit of the common good must be subordinate to respect for equality rests in part on judgements that have been formed by major social and political currents in [this] history. These judgements are historical and contingent, not self-evident or necessary like the conclusions of logic and mathematics. (2002, pp10-11)

So, he is arguing against the specific understanding of equality that has its roots in the liberal privatisation of the good.

9.5.2 *Public, non-public, private and the place of religion*

Here he is reflecting on the liberal pre-occupation with the effects of religious beliefs in history, particularly the European history of wars of religion accompanied by coercion and oppression. Liberals even today point to the Balkans, Northern Ireland and other conflict zones and see religions contributing to conflict. But Hollenbach counters that while '...linkage of the notion of the common good with oppression and coercion has strong warrants', nonetheless '... these warrants are historical, not eternal truths' (2002, p.33). On the contrary, he insists, we do not have to confine religion to the private sphere lest it engender strife. There is an alternative, '... religious communities can and do contribute to the public good of a community that is both peaceful and supportive of the freedom of its members' (2002,

p.88).¹⁸⁶ Religious traditions interpreted properly have the capacity to contribute to the common good in a way that is compatible with pluralism and freedom.¹⁸⁷

Religion is not an undifferentiated phenomenon. He argues that the issue is not whether religion should enter public affairs, but how (2002, p.109). He expounds his answer to the 'how' question in discussion with the late Rawls¹⁸⁸

Hollenbach disputes the simplistic distinction between public and private life. He regards as naïve the approach which sees 'public' as the domain of government and all else as 'private'.¹⁸⁹ He appropriates the distinction Rawls makes between the 'political'

¹⁸⁶ For instance he claims '... a kind of religious engagement that aims to contribute to an understanding of the common good that reaches beyond the in-group/out-group boundaries is certainly not absent in the United States' (2002, p.93).

He also argues forcefully against the views of Samuel P. Huntington (*The clash of civilizations and the remaking of world order*. New York : Free Press, 2002). 'The characteristics of the most conflict-prone and exclusive religious groups are certainly not universal attributes of religion as such' (2002, p. 94). He isolates the fundamentalist tendency, declaring it not to be core to the religion(s) it emerges from and declaring it to have characteristics which '...make fundamentalist movements adversaries of all efforts to find common good with those outside the community of the faithful' (2002, p.95).

¹⁸⁷ He refers to the views of Robert Putnam (2000, *Bowling Alone: The Collapse and Revival of American Community*. New York: Simon and Schuster). Hollenbach sees Putnam's position as '... a whimsical symbol of a serious reality: the decline of the associational life needed to undergird and support democratic politics' (2002, p.102). He suggests that religious communities are contributing to the renewal of associational life, drawing on a number of empirical studies to show that involvement in church communities is an empowering experience that develops citizens for civic life. He believes that political '... participation is sustained by active involvement in extra-political civic communities, and the churches are among the most important of these communities' (2002, p.107).

In this context he also alludes to the contributions to the development of public life which religious communities have made in the velvet revolutions of Central and Eastern Europe in the last decade of the twentieth century and also to contributions of religion in Latin America and more recently Africa.

¹⁸⁸ Here he uses the later Rawls: Rawls, J. (1997) 'The Idea of Public Reason Revisited', *University of Chicago Law Review*, 64, pp. 765-807.

¹⁸⁹ Such a distinction, for instance, overlooks the enormous impact of 'private sector' economics on our lives in public or indeed the impact of the 'welfare state' on private life.

(or 'public'), the 'non-public' (the civic) and the 'private'. Hollenbach sees religious people or communities acting in the 'non-public' or civic sphere. They contribute to what he terms the 'background culture of political life' (2002, p.166). Three points should be noted here.

First, Hollenbach seems to agree with, if not draw upon, Rawls when he argues for the freedom for religious perspectives to contribute to the development of the 'background culture of political life'; however, he sees this as participation in public debate. It is participation in public debate because it is in the wider civic society that the context of political debate is created. And this is an ever-evolving context. Accordingly, for Hollenbach, religious arguments have their place in politics more widely understood.¹⁹⁰

Second, he disagrees with Rawls' insistence that a so-called 'proviso' must apply when religious arguments are produced in public¹⁹¹. Only thus, for Rawls, can reciprocal respect for the equal rights¹⁹² of citizens be institutionalised. But for Hollenbach 'reciprocal reasonableness' is a two-way street. Yes, it constrains what can be done in the name of religion. But, equally, because of its role in the 'background culture' it will have an influence on what any given culture will regard as

¹⁹⁰ However, from my reading of Hollenbach I do not see him advocating that Christians use pure Christian arguments as they engage in public debate. Rather, my understanding is that he sees a need to establish, for the coherency of his approach to the common good, the right of religious communities to participate in public debates and, correspondingly, the facility for Christians to be able to demonstrate to all that religious freedom is not merely an immunity from coercion but more positively, a right to engage in discussion from the perspective of religion.

¹⁹¹ Late Rawls insists that when religious arguments are produced in public there must be a 'proviso' that 'in due course' non-political arguments will be produced that others could be reasonably expected to accept.

¹⁹² Note that this is a different usage of the term 'right' than that used by Hollenbach. Strangely Hollenbach does not seem at any point when engaging with Rawls to challenge Rawls' understanding of a 'right'. It could be a useful point of engagement for him to challenge Rawls by contrasting his concept of a right as empowering and positive.

reasonable, and therefore on what is acceptable argument in the public sphere (2002, p. 167). Expressed more positively

Religious communities that are committed to the civility of debate and argument have both the right and the duty to be fully present in this public exchange. (2002, p.169)

Christian communities possess resources in their traditions that can guide their efforts to respond to social challenges without posing oppressive threats to modern freedom (2002, p. 169). And

For society to try to exclude religious narratives and symbols from public simply because they are identified with religion would be to impoverish itself intellectually and culturally. It would *a priori* cut itself off from one of the most important forms of intellectual exchange necessary in a community of freedom. (1994b, p.338)

The third point to be noted in this context is how Hollenbach connects his thinking on the political and civil spheres with his understanding of the principle of subsidiarity. Using this principle it is possible to go beyond thinking which tends to polarise statist versus market-dominated thinking or naïve public/private distinctions. This is done by giving

... particular attention to the fate of civil society as the seed bed of the sort of freedom that is realized in the community. It promotes social empowerment through participation. (1994b, p.324)

He stresses that the subsidiarity principle demands active participation in multiple forms of human association. Moreover, this is threatened when any single institution gains power to

control the whole of human life – be that institution the state, the market, or for that matter, the church.

This practically is what the principle of subsidiarity means. And it carries the warning that the danger of encroachment by the state or the market into ever larger domains can be averted only when persons are empowered for common action by strong commitments in civil society. (1994b, pp.331-2)

9.6 Hollenbach – summary of main features

Hollenbach rests in the traditional Roman Catholic perspectives of the principle of subsidiarity and of the common good, interpreting it as mutual recognition. However, he realises that there is a need to engage with other perspectives and traditions. Moreover, he constantly suggests that tradition must be dynamic, forward-looking as well as backward-looking. This guards against the danger of ahistoricism.

And, although presenting a traditional Roman Catholic perspective, he does not engage, or does so only minimally, with the traditional arguments associated with the papal encyclical tradition from *Rerum novarum* onwards¹⁹³. He is more interested in developing his communitarian approach as a contrast to the liberal approach and as an envisioning concept in the face of social problems, using selected ideas from MacIntyre.

In summary, his project seems to be a ‘communitarian reconstruction of the political rights asserted by classical liberalism’ (1994a, p.144).

¹⁹³ For instance, in the book on the common good there is scant mention of the natural law or of the organic model of society, concepts that figure prominently in the encyclical tradition.

9.7 Conclusions from dialogues with Gula, Porter and Hollenbach

I have been in dialogue with three authors, Gula, Porter and Hollenbach. What conclusions do I draw? I am convinced that the natural law tradition is well-placed to dialogue with modernity. It is not a 'philosophical relic', overly focused on a metaphysical preoccupation with 'human nature'. It has developed and re-positioned itself, principally by focusing now on the person and by acknowledging historical consciousness and the culturally-specific. I am encouraged to take this position by Gula's concentration on the 'order of reason' and by the elegance of Hollenbach's concept of 'dialogic universalism'. Having established this position, I now feel entitled in the following, final, chapter to make a substantive case for the replacement of the NPM-based paradigm in use to date in the Irish public service modernisation programme by a common good/subsidiarity-based paradigm.

Chapter 10

Discussion and Conclusion

10.1 Introduction

This thesis has juxtaposed two developing traditions and used one to critique the other. It has explored the Irish public service modernisation programme and critiqued it using an evolving body of Catholic social teaching.

The civil service is a central institution of a modern democracy. The role which the civil service plays in a democracy is crucial to the citizens of that country. That role is also one of the determinants of the role of the state itself in society. The civil service role – including structure, ethos, and functions – will differ from one country to another. Culture, history and the relationship of the political to the administrative arms of government will demark the civil service. In Ireland's case the civil service is a product of a late nineteenth century British understanding of the role of the civil service, as formulated in the 1854 Northcote-Trevelyan report. It was designed to be impartial, apolitical and free from corruption. From its inception it has tended to be populated, particularly in its upper echelons, by well-educated, mostly male, middle class people who have valued the institution as conceived by its creators. For the first seventy years of the state's history that civil service was largely untouched by change. However, in the last decade of the twentieth century this was to change – significant alterations to the working methods and ethos of the civil service were sought in a modernisation programme created and implemented by the senior civil service. In this thesis I have sought to explore that

modernisation programme and identify the nature of the changes that have resulted from the process.

Catholic social teaching has its provenance in late nineteenth century ultramontane Catholicism. It began as an attempt to steer a middle course between 'individualism' and 'collectivism'. It was, as initially conceived, authoritarian, self-consciously magisterial and integralist inasmuch as it was suspicious of the state and inhospitable to democracy or human rights. This basic stance remained largely intact until Vatican II. The teachings of the council, particularly *Gaudium et spes*, were a watershed. A new anthropology was embraced, with focus on the human person as opposed to an objectivist human nature, with a conscience that was respected as the indispensable truth of the person. In this thesis I have sought to explore that change and present Catholic social teaching as it has evolved as an apposite paradigm to underpin the public service's perception of itself and its role in society.

10.2 The results of the Irish public service modernisation programme

The Irish public service modernisation programme set out to put efficiency and effectiveness centre stage in the life of the civil service. There is little doubt but that there has been success in doing so, as reported in the research by PA Consulting and by John Murray as cited in Chapter 3 above. Enhanced efficiency and effectiveness are to be welcomed. However, there have been other, unanticipated, consequences. I highlight three in particular, because I see them as having impoverished the civil service by weakening, perhaps even undermining, traditional strengths. The three are (1) the movement to the 'market state' and the consequent undervaluing of citizenship; (2) the down playing of the deliberative role of the civil service as compared to its

productive role; and (3) the espousal of an anthropology that overstates the place of selfishness in human motivation and therefore fails to value internal motivation.

10.2.1 The movement to a market state

The modernisation programme has gone a good way down the road of replacing the 'citizen' with the 'consumer' of state services – *pace* the language in much of the material emanating from civil service departments (see 3.9 above). The legitimacy of the state in such a scenario, tagged the 'market state' by Bobbitt (2002), is based on maximising the opportunities of its citizens. Some services of course could never fit this paradigm with any fitness, e.g. the criminal justice system. But there are a number of pervasive consequences following from the consumer paradigm. First, the ethos is one of rights, consumer rights. But there is no concept of duty, a duty which the citizen has to the state, to society and to anonymous co-citizens. Second, the consumer paradigm does not allow for participation by the citizen in the decision making of the state. Third, there is a danger of forgetting that the state has an obligation to future citizens – the climate change debate illustrates this well.

10.2.2 The danger of downplaying the deliberative role of the civil service

I have suggested that a governmental system needs a balance between responsiveness and deliberation, such that democracy can flourish. I have further suggested that the deliberative role of the civil service became ever more important as the political arm of government tipped increasingly to responsiveness. But, if we have moved towards a market state, where the state sees itself as maximising opportunities for the citizen, this demands that the 'servants' of politicians, the civil service, concern themselves

more with the deliverables that will ‘maximise opportunities’. This I have shown can impoverish democratic deliberation and decision making.

10.2.3 The anthropology underpinning the modernisation programme

NPM is underpinned by a number of theoretical sub-strata – public choice theory, agency theory, transaction cost analysis and managerialism. A common thread among these is the belief that individuals are self-promoters. All are presumed to be self-maximisers. Hence the need to build in protections against self-promotion in the dealings of individuals with each other across the transactions of a civil service department. This trait finds its most explicit instantiation in the Irish system in the elaborate metrics of performance indicators, for individuals, for sections of departments and for departments themselves. There are a number of unwanted ramifications of this approach. First, trust is downgraded, and therefore the dignity of individuals is downgraded. Second, internal motivation is pushed aside, thereby not only devaluing the person but also running the risk of losing the most potent driver of service. Third, an arid metrics is introduced, where measurement is always in terms of quantity and where the danger is created that comfortable targets will be chosen rather than confront seemingly intractable problems. And, fourth, there is an uncritical endorsement of competitiveness.

10.3 Changes in Catholic social teaching that enable it to dialogue with modern issues

I have described three stages of Catholic social teaching (see 6.3 above). My intent was to show a significant change in phase 3, highlighting developments during and after Vatican II. There has indeed been real change. I have highlighted hereunder four

changes which I believe are significant, in themselves and for my purposes – the escape from classicism, a new understanding of the place of social institutions in society, a changed anthropology and a more elaborate understanding of the common good.

10.3.1 The escape from classicism

In phases 1 and 2 there was a strong reliance on an organological interpretation of natural law. A given human nature was the determinant of a fixed law, discoverable by reason. In Vatican II and the years immediately after it the Catholic tradition ‘escaped’ this classic position. There is still some worry about ‘relativism’, notably in John Paul II. But in revisionist thinkers we see a deep desire to move away from a classicist perspective to a historically conscious one (see chapters 7,8,9 above). Accordingly, dialogue, accepting the cultural specific, is possible.

10.3.2 The place of social institutions and the state in society

In its earlier manifestations Catholic social teaching proffered the principle of subsidiarity as a defence against the incursion of the state in the affairs of lower associations. In its more recent manifestations the principle is presented in a more holistic way. Combining two beliefs, (1) that the individual is to be facilitated to flourish (the common good) (2) but in the apposite community (principle of subsidiarity), the teaching now sees a positive role for the state as well as for the multiple *civitates* of society.

10.3.3 A new anthropology

The two changes which I have highlighted in the immediately preceding paragraphs were possible because of the emergence of

a changed anthropology in Catholic social teaching. There was a shift towards the person, beings endowed with reason and free will and therefore privileged to bear personal responsibility (*Dignitatis humanae*, 2, 167-8), a shift towards the acceptance of human rights, with a concomitant demand that human freedom, equality and participation be recognised. This of course also had profound implications for the understanding of the role of the state. With the acceptance of democracy came the recognition of an independent and neutral role for the state and of the autonomy of the world, where there would be no integralist, suspicious church.

10.3.4 *A new understanding of the common good*

From *Rerum novarum* onwards the concept of the common good was always at the heart of the Catholic social teaching. However it was not explicated or explored in any detail. Rather it was taken for granted. We see change here from the time of Pope John XXIII onwards. His suggestion in *Pacem in terris* (1963) that ethnicity has a bearing on the common good is an acknowledgement of the need to balance universal and cultural features. He emphasises that the common good touches the whole man, the needs both of his body and of his soul. Section 60 of the same encyclical goes on to say that the common good is chiefly guaranteed when personal rights and duties are maintained. Vatican II is even more explicit in this connection and, in a break with phases 1 and 2 of the social teaching, recognises the place of rights and corresponding duties on a cosmopolitan scale. It says

Every day human interdependence grows more tightly drawn and spreads by degrees over the whole world. As a result the common good, that is, the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready

access to their own fulfilment, today takes on an increasingly universal complexion and consequently involves rights and duties with respect to the whole human race. Every social group must take account of the needs and legitimate aspirations of other groups, and even of the general welfare of the entire human family. (*Gaudium et spes*, 26)

The writings of John Paul II further progress the teaching on the common good. The encyclical *Sollicitudo rei socialis* points to deprivations which arise from the denial of

... the right to religious freedom, the right to share in the building of society, the freedom to organise and to form unions, or to take initiatives in economic matters – do these not impoverish the human person as much as, if not more than, the deprivation of material goods? And is development which does not take into account the full affirmation of these rights really development on the human level? (15)

So we see human rights and freedom as central to the concept of the common good in this third phase of Catholic social teaching

10.4 Moving from an NPM based paradigm to a common good/subsidiarity based paradigm

I obviously am proposing that it would be to the benefit of Irish society, the Irish state and the civil service for the Irish civil service to move to a common good/subsidiarity based paradigm. In doing so, I suggest, steps can be taken to avoid the downsides which I have described at 10.2 above – the prominence of the market state, the weakening of the deliberative role of the civil

service and the reliance on an anthropology weak on trust in people. Equally the move which I suggest would I claim, following the points made at 10.3, enhance the role of multifarious institutions in society, put an anthropology in place that respects human dignity and see human rights in a common good perspective.

I suggest that there are a number of guiding principles that should underpin this project. First, gains should not be lost. The promotion of effectiveness and efficiency was a central tenet of the modernisation programme. No doubt there have been improvements on these two fronts. This should not be lost in a paradigm shift. Efficiency and effectiveness can be aids to the common good. Second, there will be a need to review what has happened in the modernisation programme to identify if any of the valuable facets of 'old public administration' have been lost. Specifically, the OPA characteristics of being impartial, apolitical and free of corruption should be re-examined. And third, it must be understood that the incorporation of a common good/subsidiarity paradigm is not a *deus ex machina* for problem solving. Rather is it a philosophy that will attempt to ensure that

... citizens receive the institutional, material and educational support that is required if they are to become capable of functioning in each sphere according to their practical reason. (Riordan, 1996, p.124)

10.5 Introducing the alternative paradigm to civil service departments

A basic issue to be confronted in considering how a common good approach might be implemented is the issue of culture, in the sense of organisational structure and self-understanding.

Every organisation, including individual civil service departments, has its own culture. That culture will be the result of decisions taken in the past, the structures devised for each department, the shared beliefs of staff or indeed disagreements, the authority patterns in operation, the nature of the work, whether there is close contact with ordinary citizens and so on.

One of the current shapers of culture in the Irish civil service has to be the modernisation programme that has been in play since 1994. It has introduced processes that govern how individual civil servants go about their work, think about their roles and understand what the organisation wants of them. It has introduced mechanisms that determine how the department in question goes about its work but that also carry significant symbolic force. Some of these operate at institutional level, for instance the publication of strategy statements incorporating objectives and performance indicators to be reported upon in the department's annual report. Some operate at the individual level such as the Performance Management and Development System (PMDS), whereby each individual agrees performance targets for the coming year with his or her immediate superior and reviews progress against those indicators annually. It is a matter for research to ascertain whether these institutional processes are core, whether they have been credibly implemented.¹⁹⁴ As suggested earlier in this thesis, these processes are open to what I have called 'tick and bash' behaviour, whereby the letter of the law is complied with – the paper work is completed – while the 'real' work is what is actually taken seriously. And of course

¹⁹⁴ There is little research available to tell us if the systems have been implemented wholeheartedly. However, one piece of research conducted by the Institute of Public Administration in 2001 suggests 'The current state of play with regard to annual progress reports on the implementation of strategy statements is disappointing' (Boyle, 2001). It also says that reports focus almost exclusively on lists of achievements with little in the way of balanced discussion or identification of areas where progress has not been made.

there will not be uniform implementation across the various departments. However, either way, the context is an NPM one.

Now, if an alternative paradigm is to be introduced, if the paradigm which I suggest based on the common good and the principle of subsidiarity is to be introduced it must be done in such manner that the culture is shaped to accept it. And I would propose that this should be done in a subsidiary manner, i.e. that it should be done at the local level. It is not, I believe, a task to be undertaken in a top down manner. The current Secretary General of the Department of Community, Gaeltacht and Rural Affairs, Gerry Kearney, in a recent article (2008) has a suggestion for the initiation of culture change in the civil service. It is the model that I would see as appropriate for the initiation of the culture change I am proposing, a process that would have a reasonable chance of success in embedding a common good and subsidiarity approach in departments. I would not see a central department devising an approach to be handed down to line departments. This would run the risk of putting forward a “shadow statement” ‘... received but not owned by other departments and public bodies’ (Kearney, p.123). Rather it should be the role of a central department, the Department of the Taoiseach or the Department of Finance, preferably in consultation with representatives from across line departments, to initiate a process whereby each individual department could begin an internal debate and dialogue on the paradigm underpinning its understanding of its role. The central department could put forward an exemplar, outlining the elements of a common good and subsidiarity approach to public service. It would then be for each department to debouch on the elements of a such a common good and subsidiarity-based approach apposite to its own service and essential in guiding in a practical way in the delivery of public service.

This would not be a simple task. It would be a long-term operation. Nor is it a mere technical issue. It would be critical to success that it not be seen as a technical problem to be solved. Rather it would need to be seen as what Hugh O'Doherty and Marty Linsky (2008), two staff members of the Kennedy School of Government at Harvard, call an adaptive change. Technical challenges are amenable to having a clear definition and a clear strategy for a solution. Adaptive challenges however cannot readily be clearly defined and do not have easy answers. They arise when there is a gap between an organisation's aspirations and its current state. 'In order to address these challenges, responsibility for problem solving must shift from the authority figures to the stake holders who own the problems' (2008, p. 65). The obvious candidate for the initiation of this process locally would be the Management Advisory Committee (MAC)¹⁹⁵ of each department. It would be for each MAC to lead debate, focus contributions, endorse and subsequently enact the way in which a common good inspired approach would guide the department. A critical task for the MAC would be to identify likely areas of conflict between the proposed paradigm and the cultural beliefs that have been in play as a result of the NPM type modernisation techniques that have infiltrated departments over the last twenty years. Training then would be needed – for senior management to develop awareness of what is being embarked on, and for staff generally '... to inform and explore practical implications' (Kearney, p.124). The approach embraced would of course be promoted in induction courses for new staff and should be reflected in annual reports and other official publications of the department.

In essence a multi-pronged strategy would be created to support a new approach, with a number of challenges. (1) At one level

¹⁹⁵ The MAC of a department comprises the secretary general and the assistant secretaries.

there would be a need to 'discern' what a common good approach entails in the particular government department. This would demand that there be deliberation on where this civil service department can contribute to 'flourishing' in the community. This may call for a re-balancing between the deliberative imperative and the delivery imperative, more energy devoted to the 'what' to be efficient and effective about. (2) Equally, there would be a demand that all policies be 'level-proofed', i.e. consideration would be given to the appropriate level in society for the policy's implementation, not for instrumental reasons but to respect the dignity of persons and associations. The challenge would be to bring '... ideals to birth in the concrete social, economic and political circumstances of individuals and communities' (Verstraeten, 2005, p.96). (3) There would also be a need for internal focus, again questioning the anthropology at play and underlying personnel policies, and recognising that 'flourishing' also applies to the individuals that make up this association, this government department. These are adaptive challenges that would have to be confronted on a continuing basis.

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