ADMINISTRATIVE LAW AND CONTROL OVER GOVERNMENT

I

THERE is broad general agreement among Administrative Lawyers in the Common Law tradition about why this branch of law arose and why its continued development is necessary. For several well-known historical reasons, the administrative apparatus of the State has expanded enormously over the past century and a half, in all developed countries, and in developing countries more rapidly in a shorter period. This expansion of apparatus has been accompanied by an inevitable increase in the scope and distribution of discretionary power in the hands of government officials. Where so much power is vested in 'the Administration' and in individual public officials, ways must be found of keeping it under control. In the words of H.W.R. Wade:

> A first approximation to a definition of administrative law is to say that it is the law relating to the control of governmental power.[1]

Writers generally agree, too, that the most significant purpose in developing a system of administrative law is the protection of the individual citizen:

> Administrative Law poses that most important problem of our time: the relationship between public power and personal rights.[2]

or Wade again:

> The primary purpose of administrative law, therefore, is to keep the powers of government within their legal bounds, so as to protect the citizen against their abuse.[3]

— although most go on to make it clear that that is not the *only* purpose: the declaration of the legal limits of State action, the detection and correction of the abuse of official power, and the enforcement of the legal duties of public authorities, are the tasks of Administrative Law in whatever context.

1 H.W.R. Wade, *Administrative Law,* 5th edn. Oxford: Clarendon Press, 1982, p. 4.

2 J.A.G. Griffith and H. Street, *Principles of Administrative Law,* 5th edn. London: Pitman, 1973, p. 2. See also: D.E. Paterson, *An Introduction to Administrative Law in New Zealand.* Wellington: Sweet & Maxwell (NZ) Ltd., 1967, p. 1; S.A. de Smith, *Judicial Review of Administrative Action,* 3rd edn. London: Stevens & Son, 1973, pp. 40-43; B. Schwartz, *Administrative Law,* Boston: Little, Brown & Co., 1976, p. 19; J.F. Garner, *Administrative Law,* 5th edn., London: Butterworth, 1979, p. 24; M.P. Jain, *Administrative Law of Malaysia and Singapore,* Singapore: Malayan Law Journal (Pte) Ltd., 1980, pp. 4-5; H. Whitmore, *Principles of Australian Administrative Law,* 5th edn., Sydney: The Law Book Co. Ltd., 1980, p. 12; D.C.M. Yardley, *Principles of Administrative Law,* London: Butterworths, 1981, p. 16; etc.

3 Wade, *Administrative Law* (1982), p. 5.

Some writers give Administrative Law a yet wider brief, including what others would exclude, namely, the internal management and control of public authorities (so that Administrative Law is simply the law governing the operations of administrative authorities, as is *droit administratif);* but we need not go into that for present purposes.[4]

Another difference of emphasis among writers on administrative law is the degree to which they recognise that control over governmental power is not the province of law *only.* Garner, for instance, seems not to consider other modes, or to subsume them all under administrative law:

> It is the object and purpose of administrative law to answer that question; how and by what means is government itself within a given society to be brought under effective control?[5]

Wade distinguishes between two modes of control:

> If discretionary power is to be tolerable, it must be kept under two kinds of control: political control through Parliament, and legal control through the courts.[6]

and then points out that Parliamentary control of the administration is gravely weakened by the dominance of the majority party.[7] Whitmore is frank:

> The likelihood is that the concept of cabinet and ministerial responsibility to Parliament will be found more and more inadequate as a means of controlling this vast administrative machinery. Emphasis should be placed on the proper development of administrative law instead of the incantation of outmoded principles.[8]

Other authors recognise that the constitution and the political system afford a wide range of extra-judicial safeguards against the abuse of public power. S.A. de Smith notes that 'critics of the performance of English courts in the field of administrative law have sometimes given inadequate attention to this factor',[9] and instances not only the system of tribunals and extra-curial public hearings, but also the practice of consultation of interest groups before important decisions affecting their members are made; and,

> At the individual level, public officials (notably local officials, but also civil servants in some departments) are more readily accessible for informal interviews and advice in connection with applications and permits than are their counterparts in most countries; the

4 W.A. Robson, *Justice and Administrative Law,* London: Stevens & Sons, 1951 (1st edn., 1928), p. 32; B. Schwartz, *American Administrative Law* (1962), p. *5;* Wade and Phillips, *Constitutional Law* (7th edn., 1965), p. 587; Garner, *Administrative Law* (1979), p. 24; Jain, *Administrative Law of Malaysia and Singapore* (1980), p. 12; Whitmore, *Principles of Australian Administrative Law* (1980), p. 3; Wade, *Administrative Law* (1982), p. 5; etc.

5 Garner, *Administrative Law,* (1979), p. 24.

6 Wade, *Administrative Law* (1982), p. 4. See also B. Schwarzt and H.W.R. Wade, *Legal Control of Government; Administrative Law in Britain and the United States.* Oxford: Clarendon Press, 1972, pp. 13-14; Jain, *Administrative Law of Malaysia and Singapore* (1980), p. 7.

7 Wade, *Administrative Law* (1982), p. 7.

8 Whitmore, *Principles of Australian Administrative Law* (1980), p. 13.

9 de Smith, *Judicial Review of Administrative Action* (1973), p. 40.

> personal gulf between the Administration and the administered yawns less widely.[10]

Yardley, too, under the heading of 'Political Safeguards', points out that

> Some of the most effective political campaigns on specific issues, such as the siting of an airport or the construction of a relief road, have been waged in the press, on television and by public meetings and petitions, rather than just within the walls of the Palace of Westminster.[11]

Perhaps the most explicit catalogue of extra-judicial 'safeguards' in an administrative law textbook it that of Griffith and Street:

> The Administration is responsible and accountable for its actions. Finally, its responsibility is to the people. In theory, and practice, its responsibility is to Parliament. But the Administration must listen to voices other than those of elected representatives or noble lords. It must listen to the voice of organised groups in the State and the pressure on the Administration outside Parliament is very strong. The selection of facts by the Press and the comments made on these facts; the statements of employers and of trade unions; the shrieking of prophets and the low murmur of experts of all kinds; the pronouncements of the holders of public offices; the reports of advisory committees, working parties and Royal Commissions — in fact the whole discussion, official and unofficial, of public affairs presses upon the Administration.[12]

Now: this list is interesting and enlightening, as are the remarks of de Smith, Yardley and others in the same vein. But they surely prompt the question: how many different ways *are* there, by which modern government may be controlled? Is it feasible to construct an exhaustive, list, preferably categorised according to a scheme of types? The influence of pressure groups, the pronouncements of VIPs, the reports of Royal Commissions, debates on television, judgements in courts of law — these are all very different kinds of thing. How can we *classify* them?

de Smith seems to distinguish between different *levels* of application; at the level of decisions affecting large groups, and at 'the individual level'. What difference does this make? What 'levels' should we consider?

Griffith and Street go on to say that the effect of these political pressures on the Administration is imponderable.[13] If we did have an appropriate classification scheme, would it be feasible to go further, and make estimates (however crude) of the relative significance, or weight to be attached to each type, in achieving the aim of control over government? Can we grade the *quality* of control each might give us?

Griffith and Street themselves take us a step further. A great deal, they say, turns on the meaning which is attached to the word "controls":

10 *Ibid.*
11 Yardley, *Principles of Administrative Law* (1981), p. 28.
12 Griffith & Street, *Principles of Administrative Law* (1973), p. 23.
13 *Ibid.*

> 'Banks control a river; a driver controls his car. The influence of a parent over a child may be greater than the power of a prison guard over a convict. The Members of the House of Commons can force a Government to resign, but a Government with a working majority is in very little danger of such defection by its own supporters. Nevertheless, the Government will not openly flout the wishes of its back-benchers and is more likely, if it cannot persuade, to drop the controversial measure.[14]

This is a bit cryptic. What meanings *can* be attached to the word 'control'? Are there kinds and degrees of control, as Griffith and Street imply? How would that affect the issue?

This article is an attempt to answer these questions. How many different ways or devices are there, for regulating the regulators, governing the governors? Juvenal's question, *Quis custodiet ipsos custodes?*[15] echoes down the centuries. At what different levels is it necessary or desirable to keep control? Is there a way of grading the quality of the control obtainable with different types of device? What kinds of control *are* there? Where does Administrative Law stand, in relation to other methods of control over government?

The writer is not a lawyer, and so the approach is not lawyerly. The article can, however, be seen as an expansion of the brief remarks about non-judicial modes of control over government, by Griffith and Street, de Smith, and others, from one whose professional interest lies there; and so might be found useful by those whose professional interest lies in Administrative Law.

II

Let us begin with the question of what control is, and what kinds there are. In this discussion, *control* means limitation of excess, or correction of deviation, or the capacity to change the world-as-it-is, in some particular manner, into the world-as-you-would-have-it-be. Control is not a synonym for being in command, or at the top of some hierarchy — unless, of course, the position is accompanied by the capacity. The relevant body of theory is *cybernetics,*[16] or the general theory of information and guidance. Cybernetics claims to deal in principles that are relevant whether we are talking about inanimate matter (galaxies, man-made machines), organic matter ('Nature', including the human organism), or complex interactions of both (terrestrial weather, animal societies). We cannot do justice to such claims here, and readers are not required to accept them. Let me introduce just three basic ideas from control theory.[17]

14 Griffith & Street, *Principles of Administrative Law* (1973), p. 24.

15 "Pone seram, cohibe. Sed quis custodiet ipsos Custodes? Cauta est et ab illis incipit uxor." Decimus Junius Juvenalis, *Satires* vi. 347. ("Bolt her in, keep her indoors. But who is to guard the guards themselves? Your wife arranges accordingly and begins with them.")

16 Gk. *kubernetes,* L. *gubernator,* Steersman — the etymology of the English words 'governor' and 'government'.

17 For an introduction to control theory, see W. Ross Ashby, *An Introduction to Cybernetics,* London: Chapman and Hall, 1956; Stafford Beer, *Cybernetics and Management,* London: English Universities Press, 1959. The pioneers of control theory were: J. Clerk-Maxwell, 'On governors', *Proceedings of the Royal Society* 1867/68, vol. 16, pp. 270-283; Norbert Wiener, *Cybernetics; or Control and Communication in the Animal and the Machine,* New York: John Wiley & Sons, 1948.

The first is the distinction between being 'under control' and being 'in control'. A fully dynamic system (that is, a set of elements each of which has the capacity to vary independently) is 'under control' if it is not running amok — out of control — to self-destruction or to exhaustion; if its variability is being kept going, but within bounds. There need be no 'ideal state' or picture of perfection, from which the system departs and to which it is brought back. It could be that each variable, each element, is linked with every other variable in such a way that its own incipient changes affect them and are damped down; so no 'swing' ever gets further than a certain 'threshold' value before it is checked and begins to swing back. Global weather is such a system. It consists in variations in the temperature, barometric pressure, and humidity of the air in the lower atmosphere, and different combinations of values of the three variables produce characteristic weather events in particular places at particular times. Because we are a planet of the Sun, revolving diurnally, the three variables could never take up the same values simultaneously all over the globe; and yet we can see that they *average* the same, over the globe, and over time (as near as we need bother about). So whenever values vary from this notional mean in one place (which is constantly), there must be compensatory variations elsewhere, or later. Swings can be violent, if adjustment lags or is not smoothly achieved because of external factors (e.g. sunspots), or the occasional internal disturbance (volcanic activity).

So, in a cosmic way, everything is 'under control';[18] and yet it is not under *our* control, we are not 'in control'. Perhaps global weather is *in principle* controllable; but we just do not know enough, and we do not have enough *power* at our disposal, to intervene in this cosmic equilibration to our own advantage; to 'steer' or limit the weather locally.

Griffith and Street's banks controlling their river is an instance of this kind of control. In the absence of human intervention and in times other than flood, the river's wanderings are maintained within the thresholds prescribed by its banks (though, if there is but a trickle of water, it is 'free' to find its own course within these thresholds). The differences between this example and the weather example is that we *do* know enough about such a system, and we often have enough power at our disposal, to intervene in our own interest: we can construct artificial banks and conduits, and oblige the river to flow within thresholds we lay down for it. We are accordingly 'in control' — except in these places and on those occasions when the river's power exceeds that which we can muster.

The second idea that comes from control theory is that if someone is exerting control over some such dynamic system, he is doing so because he can somehow match in his control devices the number of different states (or distributions of the values of the variables) that the system may be found in. In fencing parlance, he has a parry for every thrust.[19] This is Ross Ashby's *Law of Requisite Variety.*[20] The variety, or possible number of states of the system, generated by the movements of eleven men on a football field, even if constrained by

[18] D. and K. Stanley-Jones, *The Kybernetics of Natural Systems,* London: Pergamon Press, 1960.
[19] Stafford Beer, *Decision and Control,* London: John Wiley, 1966.
[20] W. Ross Ashby, *Design for a Brain,* London: Chapman and Hall, 1952.

the rules of football, would be beyond matching if you didn't happen to have a control device consisting of another eleven men.[21]

The root idea of 'matching' can be found in the very word. Modern English *control* is derived through the early French *contrerolle* from Medieval Latin *contrarotulus,* or 'counter-roll': an exact copy of an original document ('roll' because before bound books all documents of any length were in that form) would be made and kept separately, so that any unauthorised changes in the first document would become apparent. The sense of an 'unmanipulated version' is still found in the use of 'control' specimens in scientific experiments. The idea of control as the detection of discrepancy between an authentic version and the version in question, with the purpose of achieving correction of deviations, remains the basis of control theory.

Hints have already been dropped that there are two basic ways of being 'in control', represented by the words 'steering' and 'limiting' (keeping within bounds, or 'shepherding'). In the first, a line is laid down, and deviations from that line are checked. In the second, two lines are laid down, and only variations which cross one or other threshold are checked. Thresholds (limits, bounds) can be far apart, allowing 'great freedom of action'; or close together, almost equivalent to laying down a standard to be kept to. In principle, there can be more than two thresholds — any number in fact, though it is difficult to envisage more than a few physically — establishing a 'space' within which movement is uncontrolled.

Any control device that aims for correction of deviations or 'steering' can be imagined as having three essential parts: one, a register or repository of the authorised or desired value of a variable or state of things (often called the *Director);* two, a description of the current value of that variable, or the actual state of things, from which any discrepancy can be gauged (often named the *Detector);* three, a means of employing some resource or power in order to eliminate or reduce the discrepancy, to bring the actual into line with the authorised state of affairs (often named the *Effector).* The paradigm is (of course) the equipment of the helmsman on a ship: the given compass-bearing (which is set *for* the control device, not by it), the actual heading of the ship as indicated by the compass needle, and the wheel or helm which moves the rudder (plus power to provide forward motion).

The three elements of a control device use information of two kinds, and energy: normative or prescriptive information, what should be; empirical or descriptive information, what is; and power of some kind (motion, strength, weight, leverage, sanction, 'clout', etc.). The information can be good or poor (clear or vague, recent or 'dated', complete or sketchy, etc.); and the power can be strong or weak (selective or unselective, instantaneous or delayed, greater than/equal to/less than the disturbing force, etc.). A control device is only as good as its weakest element. Quite adequate sanctions are not deployable if detection is poor; conversely, if detection is good and swift, control can be maintained with less expenditure of corrective energy — truths well known to penologists. You may, for another instance, have a roadworthy car and know exactly where you are, but if you don't know how to get to where you want to be you are lost, just as much as if you don't know where you are.

21 This example is also owed to Stafford Beer.

So that is the second idea drawn from cybernetics: that good control requires good knowledge of what to aim for, good knowledge of the facts of the case, and a sufficient measure of ability to change things.

A threshold-avoidance device also needs directors, detectors and effectors, instanced by the equipment used to monitor the movements of vessels in shipping lanes or aircraft in air traffic lanes and height zones; or (the paradigm) the shepherd and his dog. To detect incipient excesses, intermediate 'shadow' thresholds can be interposed, whose crossing triggers a warning. Stock control and budgetary control systems are threshold-avoidance devices. Again, the efficacy of the device is only as good as the efficacy of the weakest element.

(Where a system is 'under control', by mutual limitation of dynamic variables, and yet no one is 'in control', the mechanism is called neither 'steering' nor 'shepherding', but *homoeostasis,* 'balancing', or equilibrium maintenance; within wide or narrow limits, and showing more or less stability. But we need not go further into the theory of homoeostasis for present purposes. An equilibrium can be influenced or manipulated;[22] this can be called 'doctoring', from an analogy with similar intervention in bodily homoeostatic processes.)

The third idea from control theory has to do with ranges of *sensitivity.* An audiometer which can tell you which of two insect chirps is the louder will not be able to tell you which of two thunderclaps is the louder, because its needle will be off the scale for either — unless you can tune the instrument for different ranges of sensitivity: say, loud noises, speech-level, and slight sounds. The same goes for the sensitivity of effectors. It is difficult to pluck your eyebrows with a bulldozer, or fill in a valley with tweezers.

There is a link with the rapidity of change, or *volatility* of a system. A modern supertanker vessel has high inertia and low volatility in motion, so that the helmsman can only avoid present peril by turning the helm half an hour ago, as it were; whereas the fun in a Space Invaders game consists in matching the rapidity of your steering adjustments to the challenge of the machine, in whatever range you have set it. This third idea from cybernetics suggests that a control device which is poor or useless in one sensitivity range may be adequate or good in another.

The idea of 'ranges of sensitivity' parallels that of different 'levels' hinted at by de Smith and others. It is clear that administrative lawyers see control of official action as being most pressing at the level of the individual case — the protection of the rights of a named or nameable citizen against abuse of governmental power. Yet it is equally clear that (particularly when they speak of non-judicial modes of control over the Executive (Cabinet), but also in many discussions of decided cases where public authorities have been deemed to have exceeded their powers,[23] and pre-eminently in judicial review of legislation and

[22] See A. Dunsire, 'A cybernetic view on guidance, control and evaluation'; C.C. Hood, 'Controls people use'; both in F.X. Kaufmann, G. Majone, and V. Ostrom eds., *Guidance, Control and Evaluation in the Public Sector,* Berlin & New York: de Gruyter 1984 (forthcoming).

[23] Of which the most celebrated English examples in recent years are perhaps the *Tameside* case [1977] A.C. 1014 and the Greater London "Fair Fares" case *(Bromley L.B.C. v. G.L.C.* [1982] 2 W.L.R. 62).

in class actions, where these are allowed) administrative lawyers see control of official action necessary at a more general level, the level of statutory provision or policy or programme or object of expenditure — which might of course adversely affect the rights of individuals in due time, but need not yet have done so. Preventive action at the programme level could avert much individual injury — and whether it did or not, illegality or excess at this level is a perfectly intelligible concept in its own right, and thus requires a control capability.

There is an even more general level in question. When Whitmore speaks of 'the incantation of outmoded principle' and a 'proper development of administrative law'; when Wade and others discuss the effect of the two-party system in the Westminster Model of the relationship between Executive and Legislature; when Griffith and Street remark on the role of the Press and so on — they are all adverting not to individual cases or even to specific items of policy or legislative programme, but to the influence of *institutions* upon the conduct of government, or the nature of the polity or *regime.* The concepts of 'freedom of assembly', of speech and so on, are rights that can as it were be reduced or focussed into the rights of individuals, but their primary guarantees are not to be found in actions for tort or trespass or anything of that nature, but in the political institutions, and in what Montesquieu called the *spirit* of the laws.[24] A mechanism for control — i.e. the engineering of change — at this level is obviously also desirable.

Thus we appear to require at least three ranges of sensitivity in control over government: Range [, at the level of the individual case; Range II, at the level of policy or programme; and Range III, at the level of institutions or regime. Intermediate or further ranges might be designated, but let us confine ourselves to these three.

These ideas, then, can provide us with a crude measure of the *quality* of control available in any specific situation: the quality of each element (director, detector, effector) considered independently, at each range of sensitivity. Let us refer to the three elements as *norms* (N), *facts* (F), and *leverage* (L); and let us use a simple grading of quality, High, Medium, and Low. We shall remember that we are looking for evidence that government is under control, not necessarily that some identifiable person or group is exerting control over government; and we shall remember that the quality of a control device is only as good as the quality of its weakest element.

The remaining piece of apparatus we need is a classification of means or modes or mechanisms for keeping control over government — a putting of Griffith and Street's list (supplemented from other sources) into a logical order, scheme, progression, or even *scale.*

This is no easy matter, and it has (perhaps surprisingly) not been done before, to the writer's knowledge. One conventional classificatory scheme that is sometimes applied to this topic of controls over government is based upon Separation of Powers: we could refer to legislative controls, executive controls, and judicial controls. But where would we

24 Montesquieu, Charles Louis de Secondat, Baron de *De I'Esprit des Lois,* Geneve: Barrillot, 1748; transl. Nugent, ed. Neumann, *The Spirit of the Laws,* New York: Hafner Publishing Company Inc., 1949.

accommodate the comments of the Press, the statements of employers, the shrieking of prophets — or, for that matter, assassination?[25] And that scheme is not a scale or a progression; it is a somewhat stultifying classification, not an enlightening one.

Indeed, the Separation of Powers is itself a device for the control of government: an institutionalisation and domesticating of inherent conflict. Actual armed conflict — warfare — and its less overt derivatives are also a mode of control in their own right — if, that is to say, might *is* right. The Americans have developed the idea of distributing 'might' in all directions, so that the 'checks and balances' of the Founding Fathers have mutated into 'adversarial bureaucracies' (deliberate overlap of jurisdictions — 'set a thief to catch a thief), or politics seen as a kind of market-place — 'mutual partisan adjustment'[26] and pluralism. The English use of committees in administration, the collegiate or 'board' form so derided by Bentham,[27] provides non-specific control in something of the same way: safety in numbers, the mutual check of a measure of 'publicness' among peers; energised and strengthened by the social control mechanisms of elite schooling and the 'clubland' ethos (or 'old-boy network'). In Stalin's Russia, a similar secondary network, of the Party rather than the class, shadowed all the formal links and divisions of the State apparatus, and performance was measured on different scales, sometimes mutually-contradictory (the 'double-bind').[28]

In the Scandinavian countries, and in the United States, statutory publicness of official information of many kinds opens the doors and windows of bureaucracy to the citizen, and encourages an investigative Press and 'whistle-blowing', or non-judicial discovery of documents, records, and other evidence. The ubiquitous keeping of records, which to Weber was one of the hallmarks of bureaucracy,[29] began with financial records and enabled the use of 'audit' (originally the *hearing* of 'vouchers', or witnesses to fact), and the very root meaning of 'control', as already noted; extended beyond financial transactions to performance of almost any measureable kind, this generalises the mechanisms of accounting to 'controls' over many aspects of administration.

As the Absolute Monarch emerged in post-medieval Europe, the careful enumeration and codification of the powers of the King's direct agents (as contrasted with his vassals) generated *droit administratif,* the *legal* control of officials. The listing could go on. These are all mechanisms of control over government, designed or evolved as such. How can we order them?

25 Recalling a famous description of the Russian Constitution as 'Absolutism tempered by assassination' (Ernst Friedrich Herbert von Munster, 1766-1839, Hanoverian envoy at St. Petersburg).

26 Charles E. Lindblom, *The Intelligence of Democracy, Decision Making through Mutual Adjustment,* New York: The Free Press, 1965.

27 In several works. For discussion, see A. Dunsire, *Administration: the Word and the Science,* London: Martin Robertson, 1973, pp. 62-64.

28 J.F. Hough, *The Soviet Prefects,* Cambridge, Mass: Harvard University Press, 1969; Reinhard Bendix, *Nation-Building and Citizenship, Studies of Our Changing Social Order,* New York: John Wiley, 1964.

29 Max Weber, *The Theory of Social and Economic Organization* (transl. A.M. Henderson and T. Parsons), Glencoe, I1l: The Free Press, 1947; E.L. Normanton, *The Accountability and Audit of Governments,* Manchester: Manchester University Press, 1966.

Looking for a *cybernetic* classification could mean one based upon types of prescriptive information (standards, norms, goals, objectives), or one based upon types of descriptive information (facts, research, feedback), or one based upon types of power (leverage, sanction, clout, hold, etc.). After trials, the last was chosen, and a five-part classification evolved in the following way, adapted from a suggestion by March and Simon[30] about how a group of people sets about arriving at a collective decision acceptable (at some level of aspiration) to them all, a way out of a difficulty they find themselves in. March and Simon suggest that they progressively employ four modes, designated (i) problem-solving, or the 'rational decision-making' way out; (ii) persuasion; (iii) bargaining; and (iv) 'polities', or perhaps 'politicking'; to which the present writer will add: (v) violence. These modes are a progression, in the following way:

(i) in *problem-solving,* all of the group have the same objectives, they agree on what a solution would look like, and if they pool their information and their ingenuity, the chances are high that they will find a way out of the difficulty which is satisfactory to all—like solving a jig-saw puzzle together.

(ii) if they do not all have the same objectives, problem-solving will not work, for what might be an acceptable solution for some will not be so for others. But if *some* objectives are shared, some members may be induced to 'prioritise', and sacrifice minor objectives in the interest of achieving assent to major ones — and might even come to see things differently, to change their minds, after explanation and discussion. This is the *persuasion* mode.

(iii) *bargaining* occurs when goals are not only not shared but where the priorities are mutually contradictory; opposing factions will not change their minds, but might be induced to do a trade-off—so much of my advantage against so much of yours — in the interests of preserving the group. A solution or way out is found which is fully satisfactory to no one but where no one goes away empty-handed.

(iv) if even bargaining does not produce a way out, the group may descend to *politics.* There are three discernible elements of this mode,[31] which are:

(a) *altering the definition of the group:* e.g. by enlarging it, or by removing the whole decision to another arena.

(b) *altering the definition of the problem:* e.g. by presenting it as only a special case of a wider problem (often called 'making a political issue out of it', or 'turning it into a party matter'), hoping then to change minds, or reform alliances, on the wider basis of (possibly irrelevant) wider loyalties or ideology.

(c) *altering the definition of the solution:* e.g. dropping all attempts to satisfy everyone even partially, and accepting a way out that is satisfactory to a *majority.* This is a use of strength rather than reason, but it is metaphorical

30 J.G. March and H.A. Simon, *Organizations,* New York: John Wiley, 1958, p. 180.

31 This passage does not follow March and Simon.

strength ('counting heads'), and much preferable to physical strength ('breaking heads') — which is, in fact, the last resort.

(v) if some members do not accept a political solution, or majority rule, they may attempt to get their way by force, or *violence* — 'solving the problem' by eliminating opponents.

For the purposes of the present exposition, it will be convenient to turn this into an ascending order, and designate five Control Modes based upon five different kinds of sanction, *viz:*

	CONTROL MODE	PROCESS
A	Physical adversarial conflict	Processes by which rulers are put in danger of, or fear of, violence;
B	Sublimated adversarial conflict	Processes employing the conventions of majority rule;
C	Mutual partisan adjustment	Processes depending upon mutual benefit, contract, or exchange;
D	Mutual collaborative adjustment	Processes which operate by changing rulers' minds or altering their priorities;
E	Collective cumulative adjustment	Processes based upon shared goals and standards agreed between rulers and ruled.

As with all such categorizations, there will be many devices in actual use which involve more than one such process and so cannot be classified in only one box; but that will not matter if we can characterise each box sufficiently distinctly — hybrid devices will simply have the characteristics of all the categories they belong to. Without prejudice to such arguments, here is an illustrative grouping to show how the classification of some of the devices already mentioned might fall out:

CONTROL MODE	PROCESS
A	Assassinations, riots, vandalism, terrorism, 'revolution'.
B	Voting at elections and referenda, divisions in Parliament, other Parliamentary procedures; publicness of information.
C	Interest group pressures, consultation, internal treaty-making.
D	Mass media campaigns, public opinion polls, petitions; shrieking of prophets, low murmur of experts, pronouncements by 'the great', peer-group pressures, secondary networks; public inquiries, advisory committees, official reports.
E	Audit, accountancy, performance measurement, ombudsman, *droit administratif,* Administrative Law.

The apparatus is assembled. Let us begin the tests.

III

We are going to try and evaluate various processes as controls over government, by estimating the potential quality of their three requisite elements in each of three ranges of sensitivity. As already said, we shall refer to quality of *norms* or standards (N), quality of *facts* or empirical knowledge (F), and quality of *leverage* or ability to effect change (L); and we shall use gradings of High, Medium, and Low, with the option of zero where no control capacity appears to exist at all.

The first question, then, is: How good is violence, or the threat of violence, as a control over government? Violence — bombing, terrorism, hijacking, hostage-taking, rioting, etc. — as a political activity, is on the increase, we are told.[32] The daily news bulletins are full of it. There are gradations, of course: warfare between states, civil war, violence used by relatively small minorities against agencies of duly-constituted governments, attacks on the person of monarchs, statesmen, and officials. We are here concerned only with violence used by citizens as a method of getting their government to do something or desist from doing something. And we must, if feasible, make judgements about violence in principle and in general, without getting into contingencies of situation and context.

Violence at Range III, at regime level — violent change in institutions— is usually called *revolution.* From numerous studies of revolutions and attempts at revolution, perhaps two main relevant conclusions can be drawn. One is that they are more potent in knocking down than in setting up, in being utterly sure that existing institutions must be destroyed, than in knowing what should take their place. Negative goals are clear, positive goals less so. Dissatisfaction with the actual state of affairs may be so high that people come to believe that almost *any* alternative would be more desirable. In our terms, this makes for indifferent steering or shepherding. The process is High on F but middling or Low on N. It can engineer change, but *what* change is not entirely predictable.

The other main conclusion is that violence is *not* what brings about a successful revolution, that you can overthrow a regime with only token amounts of actual violence or none at all, provided a *revolutionary situation* exists — and you are likely to fail, no matter how violent you are, if it does not. That is to say, confidence in existing institutions among citizens (especially among non-government power-holders) has to be so low, tensions of many kinds already so high, that acts of violence decide only when and where the release will occur. If there is no revolutionary situation, violence tends simply to be overcome by greater (but 'legitimate') violence in the hands of the authorities. The perhaps surprising inference about the *leverage* enjoyed by violence itself at Range III is that it must be reckoned as small. It has little independent ability to ensure change.

At Range II, the level of policies and programmes, very similar conclusions can be drawn. Here we are talking about urban rioting, arson, attacks on property, etc., with the aim not of overthrowing the government (although that kind of rhetoric may be used), but of ultimate

32 Juliet Lodge ed., *Terrorism: a Challenge to the State,* Oxford: Martin Robertson, 1981. As an excellent treatment and guide to a voluminous literature, see Chalmers Johnson, *Revolutionary Change,* 2nd edn., London: Longman, 1983.

protest against some policy or lack of policy, usually by a neglected, oppressed and frustrated minority. The problem is forced on to the agenda; attention is focussed on it *because of* the violence; it may be taken up by the media, or by other groups, or even by a political party. The *solution* may be unclear, or various. It is agreed that 'the government must do something', but *what* may be less specific. Once more, the process is higher on F than on N. And although it is often true that the violent action appears to have 'got results', it only does so where (as at Range III) it mobilises *other modes* of effecting change — it may demonstrate where there are votes to be picked up, or give some group an additional bargaining counter, or shame leaders into revising their priorities. In the absence of these secondary effects, the violence is simply put down. The leverage of Range II violence in itself is at best Low.

A fortiori, mass political activity which sets out to demonstrate strength of feeling against policy in a specifically non-violent way, by marches and rallies, occupations and sit-ins, vigils and pickets, but which does *not* put rulers in fear of danger to life or property, must depend wholly for its leverage on such 'trigger effects'.[33]

What of Range I? Here we are speaking of the offering or threat of violence in the attempt to obtain 'justice' or the rectification of error in an individual case. There are plenty of illustrations in almost any daily newspaper: indeed, it might seem the norm, that riots and demonstrations are triggered off by, or focussed on, what is seen as injustice to a particular person or small group — the idea of political 'martyrdom'. The physical action ranges from arson and murder (or assassination) to petty vandalism — graffiti, window breaking etc. In one celebrated English case protesters dug up hallowed turf on a cricket pitch to draw attention to a prisoner's case. As at Range II, sometimes it works, sometimes it does not; the key being whether it activates other modes — the voting process, the bargaining process, persuasion, or some form of legal process. This is to say that violence at Range I is not in itself an effective lever, but that as a striking means of discovery of evidence, it has potential strength. This strength will, however, ultimately only be as effective as the strength of the device it triggers off — which we shall consider as we come to it.

There is an inverted use of violence at the individual level — the use or threat of violence against an individual official, to get him to take or change a decision, whatever the type of decision. In certain societies, violence of this kind, along with bribery and corruption of officials, is so organised as almost to rank as a 'mode of control' of government. But the 'Mafia problem' will be seen here as one of how legitimate government can control its citizens, not the other way around; so it is left out of the scoring.

Summing up, then, on violence as a mode of control over government: there seems no reason to deny that information on aims or standards can be high at Range I, and information on current facts or current state of affairs also (potentially) high, at all ranges. But norms are more likely to be unclear at Range II and Range III, and the degree of leverage of violence as such, at any range, seems low. (These scores are summarised in the Table at the end of the article.)

33 R. Benewick and T.A. Smith eds., *Direct Action and Democratic Politics,* London: George Allen and Unwin, 1972.

IV

Eschewing violence as a way out of difficulty has become an item in many political creeds, to be replaced by the 'civilised' conventions of majority rule or, where that is inappropriate, 'getting round a table'. The basic notion that the person or faction or proposal with the most votes wins is almost a moral principle in itself. But it is worth reminding ourselves that we do not believe that majorities should rule in *every* sphere of social life — say, in scientific research, or in surgery, or even in philosophical argument.

Voting as a way out of a collective difficulty is endemic, but the most significant use of the process in the present context is its elaboration in the elections for government, or for members of parliament from which in turn the Government will be elected or chosen. In formal terms, as we have noted, this is usually regarded as *the* control over government, the way the guards are guarded and the governors governed. In principle, in a 'democratic' country, governments are deemed to do things and refrain from doing things, for fear that otherwise they will not be re-elected. Where there are no elections, we withhold the accolade of 'democratic' from a regime. And when we elect or re-elect a government, we are deemed to be giving not only a verdict on past performance, but also a 'mandate' (a form of instruction) for the future. "The people have made their choice" is powerful rhetoric, even in a court of law.

Yet all that the voter actually does is put an 'X' against one name on a ballot paper rather than another (or the equivalent in other voting procedures). All the rest is *construction,* arithmetic and interpretation.

Different nations have differing electoral systems and parliamentary procedures. It is impossible here to take into account the effects on the strength or weakness of control over government of such mechanisms as the various forms of proportional representation, or separate Presidential elections, or 'run-off' elections (France, El Salvador), or the veto power (Poland), or 'no re-election' rules (Mexico), or 'no crossing the floor' (Singapore). We shall confine ourselves to the 'Westminster Model'[34] as described in the caveats of Wade, de Smith, Yardley, Schwartz and Wade, Griffith and Street (in the works already cited), when they discuss 'political' modes of control over government. Conclusions applicable to other systems might well be similar to any we reach here, but they would have to be worked through separately.

In Westminster Model periodic general elections, then, the elector votes for one candidate rather than another for a single seat in Parliament. To get from the individual voter and the individual candidate to the mandated or ousted Government, we have to interpose (a) the catalyst of Party — party is what links one candidate with another and one election with another, and what distinguishes one potential Government from another; and (b) a second level of majority rule — not in terms of ballots cast this time, but of seats, or electoral votes at one remove: a kind of second use, or recycling, of the original 'X'.

[34] J.P. Mackintosh, *The Government and Politics of Great Britain,* 4th edn., London: Hutchinson, 1977. See also W.J.M. Mackenzie, *Free Elections,* London: George Allen and Unwin, 1958.

From the present point of view, this recycling provides the voter with two ranges of sensitivity. At the constituency level, he or she has a channel for taking up individual cases, for at least setting in motion a mechanism for correcting errors affecting individual citizens or small groups at neighbourhood level. The leverage is the MP's desire to be re-elected; one voter's vote is a drop in the bucket, and gives the individual citizen very weak clout indeed; but control, we recall, can be maintained even if no one is doing the controlling, and it is the *collective* implied threat of his constituents not to give him a majority of votes next time which keeps the MP up to the mark, and sets him working on their behalf. He becomes their representative, their champion, their lever, in the control of government.[35]

The MP in the Westminster Model traditionally has three roles: those of Tribune, Statesman, and Watchdog, corresponding to three historic functions of the House of Commons: Redress of Grievance, Legislation, and Control of the Executive. The Tribune speaks up on behalf of his constituents, or any other group of citizens in which he takes an interest, making sure that fellow MPs and Ministers know what their problems and grievances are. The Statesman expresses his views on the great questions of the day, contributes to debates on legislation and policy, supporting or criticising the Cabinet according to his views. The Watchdog poses probing questions, exposes irresponsibility and foolishness, and curbs Ministers' exercise of their powers. That is the formal constitutional position under the Westminster Model, and the three roles of both Member and House correspond closely to our three sensitivity ranges: individual, programme, and institutional levels of control.

It would seem, then, that the single X on the ballot is thus ingeniously transformed into a device tunable to all three ranges of sensitivity. Alas, it is not so. For in order to give the voter two ranges of sensitivity, we had to introduce the mechanism of party: the constituents' leverage over their own MP is transmuted into leverage over government only because the MP belongs to a party that hopes to form the Government. The same mechanism then distorts the use of that MP by his constituents as Tribune, Statesman and Watchdog. They are not in strong control of him, because the party also has its ways of making him toe the line. The price of recycling the vote of the elector for a candidate so that elections may become a way of choosing a Government, is that the formal institutions of control over the government are diminished in effectiveness.

This applies to such parliamentary procedures as Question Time, the Adjournment Debate, Supply Day debates, and even parliamentary control over taxation and expenditure. All kinds of occasion whose ostensive purpose is to hold the Executive to account, are in practice turned to other purposes, and made less effective as checks. This is the control-theoretical explanation of the caveats of our sample authors.

[35] Control at one remove, or more, is ubiquitous. A mounted policeman can use his horse to control a crowd only if he is first in control of his horse. A superior in control of his subordinates can employ his unit as a resource to exert control over something else. Machines that control machines, to as many levels of system as are necessary, are commonplace in automated engineering. See the discussion in A. Dunsire, *Control in a Bureaucracy,* Oxford: Martin Robertson, 1978.

The historical explanation is easily given. When the English House of Commons began, it involved no theory about electing the government. The Government was the King and the job of Parliament was to consent to taxation. So the full expression of the first function of the House is 'Redress of Grievance Before Supply': i.e., 'we will only grant your taxes if you will first correct your behaviour'. That is the making of a bargain (C-mode, below), and it has nothing to do with voting or majority rule. Ministerial Responsibility, too, is the expression of the historic struggle to maintain a check on Royal power. Then, when Parliament itself arrogated sovereignty, and the King dropped out of the running, the old institutions transmuted into the new. It is left to one part of the House (the Opposition, or minority parties) to do what it can to keep check on the other part (the Government, or majority parties), under the old forms.

Something of the older tradition nevertheless remains: present only to a small degree in Parliamentary Questions (more in Written than in Oral Questions), but to a greater degree in the Select Committees, where members occasionally transcend party in the interests of exposing some folly more monumental than usual, or some practice considered dangerous at the 'constitutional' level (Range III). When it is a matter of procedure rather than of programme, e.g. in the financial audit function, the correct accounting for public money spent, the prevention of corrupt practice and the like, the House and its servants are seen at their best — but in these spheres the Legislative and the Executive 'Powers' are not really in different camps, they work together to impose agreed standards of what correct conduct is. The government, in this sense, acquiesces in its own control (E-mode) — again, irrespective of majorities and minorities.

Party also dominates the legislative and 'Grand Forum of the Nation' functions of the House, under the old forms. But here, too, just occasionally (and more upstairs in the Committee Rooms than on the floor of the House), one can detect a note of genuine hope to persuade Ministers that they are misreading a situation, that wisdom would take another path, that consequences have not been fully explored. And just occasionally, a Minister *will* change his mind. This is the persuasion way (D-mode), actually operating through the devices specifically designed to allow for it (debates, discussions in Committee, etc.); and in so far as it operates as a control, it too is in principle unconnected with voting or majority rule.

But otherwise, when these occasional C-mode, D-mode, and E-mode situations do not obtain, the work of the House, so far as control over government goes, has to be seen as a long preparation for the next General Election. The behaviour of all, at the recycled or 'seats' level, is geared to providing the voter with a continuous barrage of information about what is (allegedly) going on and what ought to be going on, so that (in principle) when he comes to cast his actual vote again in due course, he will cast it in the preferred direction. Each contending party conceives itself to have an interest in keeping the voter well-informed both about Norms and about Facts, at Range II or programme level.

Here, too, we have to include those devices which, although not specifically linked to the efforts of the contending parties to influence the choices of voters, are designed mainly to provide citizens with

information, the ultimate use of which is to enable them to employ the democratic sanctions of the representative and electoral systems. Thus while a Freedom of Information Act or other statutory guarantee of publicness of information (or the activities of 'whistle-blowers' and investigative reporters, or other non-judicial revelations of what is going on) can have the result of a genuine change of mind on the part of the government (and so operate in D-mode), or be used in bargaining of some kind (C-mode), or provide the grounds for an action in law (E-mode), the main effect intended is that, on the mind of the voter or citizen — a demonstration of a difference between the situation as officially presented and the situation as it is revealed by these devices; with the implication that the voters can then use their leverage to turn out whatever rascals have been exposed to public view, whether elected or non-elected.

By the same token, processes which have their primary impact in other modes (for example, interest groups, the mass media, official reports) can have important effects upon the citizen's awareness of facts and norms, and influence his or her voting inclinations. Voters may not know what some of the policy positions of the parties are, or understand their implications, until an interest or cause group spends money to tell them. The publication of an official document might be a political 'non-event', as they say, until what it reveals is spelt out and highlighted by press and TV interpretation.

There is no denying that, at Range II, 'voting' scores potentially High on both N and F. When, however, we come to consider L, leverage or the ability to effect change, we run into a number of difficulties. On the one hand, there is a long time between elections, so that correction is sluggish at best; the voter has a choice only between manifestoes, not between programmes or policies within one party's manifesto; and the voter has no way of separating his or her choice of candidate at Range I (satisfaction or dissatisfaction on the individual case level) from choice of party at Range II.

On the other hand, it can be plausibly be held that the act of voting itself, the casting of the ballot, is not the effective lever: the sanction is the government's *fear* of a loss of majority, and that operates continuously, not once a quinquennium. The barometer of government popularity fluctuates from day to day and week to week ('a week is a long time in polities', as a British Prime Minister once put it), and the government (some say) reacts to each significant rise and fall. Others say: No. You may think they ought to, but they don't. Instead, there is a 'political business cycle': that is, governments get all their unpopular business out of the way early in their term of office, and feed the voters with their popular lines just before the election.[36] There is no finality to such arguments. But the very ambiguity suggests that voting must score less than High for leverage at Range II, even as *potential,* however good the information quality.

At Range I, the voter is not being fed with information to the same extent. However, we might say that personal experience substitutes, on the Facts element: people know where the shoe pinches,

[36] A. Downs, *An Economic Theory of Democracy,* New York: Harper and Row. 1957; A. Breton, *The Economic Theory of Representative Government,* Chicago: Aldine Publishing Co., 1974.

they know where it hurts. They are less able to say what exactly is wrong. That there is a discrepancy between things as they are and as they should be is manifest; but precisely what the desired state should be is something they need help on — and may go to their MP for it. This creates dependence, power in the reverse direction. As for leverage, voting is 'drop-in-the-bucket', sluggish, and diffuse as a control over the MP by the individual voter; and it is diluted by the 'party' aspect, as already mentioned. Voting at Range I: N Medium, F High, L Low, even collectively.

What of Range III? If we are talking of ordinary voting at a 'Westminster Model' General Election, then we need a mechanism, like 'party', to transform the X into a judgement on not only the candidate, not only the Government, but also the institutions, the political system itself. There is no such mechanism, except not voting (sometimes called 'voting with the bottom' — it stays in the armchair); and that just *could* be an expression of utter contentment with things as they are. Alternatively, what is known as 'exit' as opposed to 'voice',[37] or 'voting with the feet' — getting out or emigrating. This is rather weak as a *control* in politics, though the equivalent (taking custom elsewhere) is the classic way in the *market* situation.

Sometimes, however, a candidate or a party will esponse what is really a Range III measure (such as a change to Proportional Representation), and make it part of their manifesto, in which case the voter *could* have a Range III choice (by a Range II mechanism). So-called 'one-issue' General Elections have occurred, fought between parties but on a constitutional question, such as the second General Election of 1910 in the United Kingdom over the delay powers of the House of Lords, to which the same applies. But in all other situations, control at Range III is lacking: there is no effector.

It is for this kind of reason that the Referendum is found. This applies the mode of voting and the principles of majority rule to popular choice not between candidates but between specific propositions, usually at Range III level (the constitutional referendum). Some commentators associate frequent use of referenda with 'plebiscitary democracy' and populist management of public opinion;[38] and there are severe problems concerning the form of the question to be posed, and the position of a governing party under which the referendum took place. Nevertheless, within its scope a constitutional referendum provides the voters collectively with high leverage. Matters are less straightforward on Norms and Facts. It is often alleged that by its very nature an issue of this kind is too momentous for the ordinary voter to grasp, and where experience is a poor informant, prejudice fills the void. But those would be empirical matters in each particular situation; the score based on the *potential* value of the variable would be N High, F High, L High. Referenda give potentially High control at Range III.

Referenda, or special voting on Propositions, can also be held at the programme level, where voters are invited to cast a ballot for

[37] A.O. Hirschmann, *Exit, Voice and Loyalty,* Cambridge, Mass: Harvard University Press, 1970.
[38] D. Butler and A. Ranney, *Referendums: a Comparative Study of Practice and Theory,* Washington, DC: American Enterprise Institute, 1978.

or against a specific legislative proposal or budget proposal. Allegations that the level of information about the issues (both on aims and on facts) is generally low, and that votes are predominantly cast against *change,* are even more frequent in respect of policy referenda than in respect of constitutional referenda, and research findings tend to bear this out;[39] but that too must be adjudged an empirical matter, and within their restricted scope, Range II referenda must also be considered to give potentially high control over government.

The writer does not know of a referendum being used at Range I, that is, the individual case. But referenda are quite frequently found at quite low levels of policy aggregation: for instance, voting in a parish on the 'wet or dry' question, which if there is only one inn is *almost* an individual case proposition, and is certainly a far cry from Proposition 13 in California or the EEC Referendum in the United Kingdom.

Scoring in these B-mode processes is also summarised in the Table at the end of the article.

V

Mistrust of majorities has as long a pedigree as democracy itself. For Aristotle, 'tyranny of the majority' was as real a danger as the tyranny of an autocrat. More often, perhaps, such political fastidiousness has been a cover for a wish to preserve a very unequal distribution of property, or other source of power. Societies have never lacked individuals and groups whose personal standing in the community, based on wealth or following, makes them more than 'ordinary' citizens; or individuals and groups who, because they possess some quality or skill or commodity which the government needs, have a leverage against the government, a bargaining counter. This need not and usually does not operate via the parliamentary assembly or the political parties, and has no necessary link with majority rule or 'democracy' (save by the American doctrine of 'pluralism' — see below).

Bargaining with the government, the trading of *quid pro quo,* is as ancient as government also. Rulers have always had to contend with mighty subjects; and if several of these could bring themselves to sink their own differences and ally against the ruler, they could often overwhelm him (hence the maxim for princes,[40] 'divide and rule'). In modern times, overmighty barons are more likely to take the form of provincial states or cities opposing the centre, or huge companies, or unions of workers; or groupings organised for the express purpose of exerting pressure upon the authorities.

There is a prevalent disposition in some societies, at some times, to regard strong government and powerful rulers as undesirable in themselves, and the system where power-to-change-things is not centralised but widely dispersed as inherently preferable. The paradigm of such a system is the economic market-place, where levels of prices and volumes of trading are not determined by 'power' but are the outcomes of competition among rival sellers and rival buyers. Many

39 *Ibid.*

40 The genre of *Furstenspiegel* (Mirror for Princes), of which the best-known example is Nicolo Macchiavelli, *The Prince* (1532).

American political scientists[41] have discovered that a 'market model' better explains what actually happens in the US political arena than the more conventional theories of representative government and majority rule; and the doctrine of *pluralism* elevates this discovery into a normative theory of society. Pluralism is a system where there is not any single seat of power but many: where the State or government as an institution in society is paralleled by (for example) almost as wealthy big industrial companies, by influential churches and other associations, by strong professional bodies, and so on. Outcomes are the result of 'mutual partisan adjustment',[42] where through myriad individual bargains and collective agreements each person and group pursues his/her/its own interest (and they alone know best what that is), within the constraints imposed on the pursuit of *their* interests by other persons and groups. The system is kept in equilibrium because nobody is powerful enough to capture the whole, and it is kept from catastrophic error and violent swings of political fashion because there is no all-important focus of central decision.

The principle of maintaining stability in a dynamic system by the interaction of mutually-incompatible tendencies is one we began with: global weather works that way, and it is a ubiquitous mechanism in 'Nature' generally, including the internal workings of the human body as well as at the ecological, terrestrial, and astronomical levels.[43] Things are under control, but they are not under anyone's control. In political terms, government concentrates on defending the society from its external enemies, but does not lay down norms for its own citizens, or police deviations from them. The people are freer, and there is less government to be governed in turn by the people. Many Americans, in particular, are wont to think of *this* system (i.e. the minimum of government) as 'democracy', and any system of strong centralised government — however carefully representative and/or responsible — as fundamentally undemocratic.

The other side of the coin is that, precisely because there is no mechanism for laying down such thresholds as minimum standards of social provision for families, or such targets as guided economic growth in selected sectors, welfare or development are the outcomes of pressures among which majority rule may be a comparatively weak force. Excesses can be averted, but *steering* is not good.

The full pluralist model does not fit the situation of either the United Kingdom or the Republic of Singapore, whose governmental institutions and Constitutions tend to give priority to majority rule in the laying down of social standards and the directions of development; and to control of government by means of the 'redress of grievance' or correction of errors. But the phenomenon of 'mutual partisan adjustment' and bargaining between government and groups

41 Arthur F. Bentley, *The Process of Government,* Chicago: University of Chicago Press, 1908; Robert Dahl and Charles E. Lindblom, *Politics, Economics and Welfare,* New York: Harper Bros., 1953; David B. Truman, *The Governmental Process,* New York: Alfred A. Knopf, 1964.

42 Lindblom (1965), see n. 26 above; also his *The Policy-Making Process,* Englewood Cliffs, NJ: Prentice-Hall, 1968.

43 W.B. Cannon, *The Wisdom of the Body,* New York: W.W. Norton, 1932; H. Kalmus ed., *Regulation and Control in Living Systems,* London: John Wiley, 1967; Stanley-Jones, *The Kybernetics of Natural Systems* (1960).

is by no means unknown in them. British political scientists[44] are accustomed to classify pressure groups into two kinds, though the labels vary: one kind of group (interest groups, protective associations) comprises people who come together in mutual support of their own status or pockets; the other kind (cause groups, promotional societies) are people who come together to push for some change they all desire but which does not primarily affect their own status or pockets. The prime examples of the first kind are trade unions and associations of manufacturers; of the second kind, animal lovers, environmental groups, historic building preservationists. For many groups the distinction is not a hard-and-fast one. Some analysts distinguish by the relative ephemerality of the coming together: many cause groups look forward to their own disbandment, mission accomplished, while interest groups see themselves as permanently needed. Other analysts divide by mode of operation: those who are powerful enough to bargain with government, and those who are limited to protest and demonstration. In the same policy field, there may be 'Acceptance' and 'Unacceptable', or 'Helpful' and 'Unhelpful'[45] pressure groups — meaning those whose activities are of use to (or even welcomed by) the authorities, and those which have nuisance value only. By and large, for this discussion we are concerned with groups which 'have bargaining status' — that is, generally speaking, interest groups (rather than cause groups), the Acceptable and the Helpful.

Bargaining between government and an association will occur where the association has something it can trade, in return for special consideration by government (perhaps consultation over the detail of legislation or regulation, or exemption from a prohibition, etc.). What it has to trade may be specialised information and advice, or the cooperation of its members in the implementation of government policy. Where a bargaining nexus cannot be a simple bilateral one, because one interest group's power is matched by the countervailing power of an opposing group, there may arise a trilateral bargaining area. When the three participating groups are employers, workers, and bureaucrats, we have the phenomenon known as 'neo-corporatism'[46] — a structure of bargaining about economic policy in which Parliament and the voting mechanism generally plays no part. Broadening this concept, it may be held that the great bulk of government policy in Britain is effectively thrashed out in bargaining networks which link capital, labour, professional interests, scientific and technological advisors, political and bureaucratic interests, and consumer interests, in what is called a 'policy community' (e.g. the 'health policy community', the 'higher education policy' community, the 'defence policy' community, etc.).[47] This is not strictly a 'pluralist' concept, for it recognises the primacy of one seat of power, namely, the government (that is, Ministers and civil

44 S.E. Finer, *Anonymous Empire,* London: Pall Mall Press, 1958; G.C. Moodie and G. Studdert-Kennedy, *Opinions, Publics and Pressure Groups,* London: George Allen and Unwin, 1970; R. Kimber and J.J. Richardson, *Pressure Groups in Britain,* London: Dent, 1974; G. Wootton, *Pressure Groups in Contemporary Britain,* London: Lexington Books, 1978.

45 M. Ryan, *The Acceptable Pressure Group,* London: Saxon House, 1978; J. Dearlove, *The Politics of Policy in Local Government,* Cambridge: Cambridge University Press, 1973.

46 T.A. Smith, *The Politics of the Corporate Economy,* Oxford: Martin Robertson, 1979.

47 J.J. Richardson and A.G. Jordan, *Governing Under Pressure: the Policy Process in a Post-Parliamentary Democracy.* Oxford: Martin Robertson, 1979.

servants); and it is concerned with achieving aims, or hitting targets, not merely avoiding excesses, or letting 'the market' decide. It can be seen as adding a plethora of 'representative' forums to the territorial representativeness of Parliament, and establishing alternative routes for holding government 'responsible'. But realistically, it operates by exchange and negotiation, by power bargaining and 'mutual partisan adjustment', not by majority rule and party.

It undoubtedly is a mode of controlling government, nevertheless. How good are interest groups, as a control?

The terminology used indicates that we are in Range II, the level of policy and programme. We need not doubt that the quality of norms, or clarity of aims and criteria, can be very high. The same is true of the quality of information about current practice and reality. Whether leverage is high or not, however, must be an empirical matter, in two dimensions. The first concerns the intrinsic power of the interest group. The more 'representative' they are (the higher the percentage of possible members their actual membership scores, and the more closely the positions they take correspond to the distribution of commitment among their members), the more they can 'deliver the goods', and the less able will Government be to do without them, or find substitutes for their cooperation.

Again, the more an interest group has its field to itself, without well-organised rivals contending for influence or pressing for opposite aims, the greater the intrinsic power. The National Farmers' Union and the British Medical Association in the UK tower over any rivals in their spheres of operation; whereas the Trades Union Congress is stood off by the Confederation of British Industry and *vice versa.*

The second variable concerns the pliability of government itself, how far it bends to pressure because it has no option, the extent to which its power base in the Party renders it susceptible to or immune to the bargaining strength of interest groups. In the Republic of Singapore, and in the UK under the present leadership, interest group leverage (for the same intrinsic power) is less than in other places and periods. The leverage for interest group bargaining at Range II is nevertheless potentially High, given suitable conditions.

Interest group activity at Range I, individual case level, will more often be in the industrial relations area than in the citizen *vs* State Area. An *ad hoc* 'cause' group may arise protesting over an individual case (of wrongful imprisonment or the like), and gain sufficient leverage to force government to bargain. At international level, exchanges of spies, prisoners etc. are the result of Range I bargaining. But by and large, bargaining at Range I between government and citizens, over an individual case, is either a minor feature (a taxpayer may drive a bargain over the timing of his repayments, for example), or else, under the heading of 'bribery and corruption', it is a major problem, too complex to go into here. In all of these possible Range I situations, the 'protest syndrome' is likely to dominate — that is, reaction against what is perceived to be the case, without full and clear information about either Norms or Facts. N Medium or Low, F Medium or Low; L — empirical, but very seldom High.

At Range III, interest group activity is low for the simple reason that such groups exist to make the best of existing institutional arrange-

ments, not to change them (whatever their occasional rhetoric). They may, indeed, be a conserving force, hindering change in the *status quo,* and so exert control over a reforming government. Cause group activity is more frequent at this level, such as campaigns for a change to a proportional representation electoral system; but these will seldom acquire the strength to bargain with government, and will operate rather in B-mode or D-mode (elections, or persuasion).

One particular kind of mixed interest/cause group is prominent at Range III, however, and may achieve bargaining status: that is the *communal* group, based on regional, local, ethnic, religious, or linguistic ties. These can sometimes acquire sufficient intrinsic power, or nuisance value, to be in a position to negotiate a 'treaty' for changes in representative systems, boundary changes, or even territorial autonomy, almost as if they were a foreign power. They are likely to be well-informed about both aims and facts, once they have moved beyond 'mere protest'. Their degree of leverage is an empirical matter; but we could note that, worldwide, probably more regime-level change is bargained on a communal basis than on any other basis.[48] Communalism (or 'nationalism') is a current thorn in the side of almost every large country's government, and a limitation on its choices. (We designate this form of bargaining 'internal treaty-making'.)

VI

In many collective decision-making situations, bargaining, or 'power-play', is considered rather ungentlemanly. In an academic Senate, or in one of the Inns of Court, there can be no doubt that difficulties are resolved because bargains have been struck; but they will be struck behind the scenes, over dinner, or by taking someone aside for a moment, or by dropping a word in an appropriate ear. In these quarters, one can admit to having been *persuaded,* but not to having been squared.

The *persuasion* mode is a category of processes whose effector power does not depend upon a trade-off or on the conventions of majority rule, much less on force, but simply on the power of words and images to alter people's perceptions and understandings, thereby inducing them to modify their outlook or intentions or objectives.

This is a wider canvas than might at first appear. We have talked about 'polities' in section IV above in its 'nitty-gritty' aspects, the mechanics of elections and manoeuvring and majorities. But there is a more elevated aspect of politics, in which individual cases, programmes, and institutions are discussed in terms of high principle, using concepts like freedom, equality, rights and duties, representation and responsibility; or in terms of rival visions of the ideal state, or ideology, summed up under labels like socialism, liberalism, conservatism; or in terms of grand historical movements like imperialism, colonialism, nationalism, independence, etc. Now the style of discourse and the lexicon is somewhat different for the academic seminar and for the party rally or hustings; nevertheless, any discussion of '-isms' is probably best taken as an attempt to persuade. Objectivity in politics is unattainable.

48 T.V. Sathyamurthy, *Nationalism in the Contemporary World,* London: Francis Pinter, 1983.

A word for all this that has sadly deteriorated in meaning is the Greek word *rhetoric.* Aristotle defined it[49] as 'the faculty of discovering the possible means of persuasion in reference to any subject whatever'. Nowadays it tends to be used of speech that is not in the least persuasive, because it is so vacuous and predictable; routine oratorical flourish or weary sloganising.

Yet the essence of the process of persuasion may be seen as another form of mutual adjustment: this time, not partisan or competitive, but cooperative or collaborative.[50] At some level, persuader and persuadee have to share aims and aspirations: the process is one of advocacy, in which each side adjusts its arguments to the arguments of the other side, with a view to (i) establishing the level and area of identity of goals; (ii) establishing whether the area of disagreement arises out of differences in perception of the facts, or differences in priorities among intermediate goals; and (iii) attempting to arrive at common perceptions of the facts, or common priorities. All 'collegiate' or committee forms of collective decision-making can be said to have this as their ostensive *modus operandi,* even if sometimes they work by pure problem-solving, or by mutual *partisan* adjustment, or by sublimated adversarial conflict.

It is not only political philosophy or committee debate that falls within the strict or Aristotelian definition of *rhetoric* or the art of persuasion: it is the whole output of civil service and other memoranda, reports of commissions and inquiries, petitions, statistics; a very large part of all teaching and preaching; all shrieking of prophets, murmuring of experts, and pronouncements of great persons; practically the entire output of the advertising industry; a large proportion of the publishing industry, the news media, press and broadcasting; all the work of the manipulators of signs and symbols, from traffic lights to flags and military displays.

Now either the government of a country is open to being educated and informed and advised and instructed by all this output, and is in fact persuaded by some of it, some of the time; or else it is not, and never does change its mind about anything once it is made up. If the latter, then the apparatus of parliamentary debate, the efforts of journalists and letter-writers and so on, are even more of a complete waste of time than we perhaps thought they were anyway. And if a government never succumbs to persuasion itself, why should it suppose that citizens will pay any attention to its own propaganda campaigns, or celebrations of patriotic pomp, or other attempts to mould attitudes, in which all governments indulge?

On the reasonable assumption that governments *are* sometimes able to be influenced to stop doing something or start doing something, and so on, then a measure of control is being manifested, in this D-mode.

We have to simplify this vast topic, categorise it so that we may discuss principles rather than cases. Let us first agree that we are not concerned here with how governments 'make up their minds' in the

49 Aristotle, *Art of Rhetoric* Book 1, Section 2.1; R. Goodin, *Manipulatory Politics,* New Haven: Yale University Press, 1980.
50 M. Polanyi, *The Logic of Liberty,* London: Routledge and Kegan Paul, 1951, pp. 164-5.

first place (how public policies are formulated, the process of decision-making in Cabinet, in government departments, etc.). There is a large literature on that.[51] There is no clear line between making up your mind and changing your mind, until a decision has been publicly promulgated. A publicly-announced *change* of decision on the part of government, after it has been promulgated, is very likely to be *presented* as being the result of persuasion, even if it really is the result of a threat of violence, or an electoral calculation, or a deal of some kind: and we are to investigate only the situation where it really *is* the result of persuasion.

Second, we can distinguish between changes of mind that result from a reassessment of priorities (even if nothing in the factual situation has changed), and changes of mind that result from a new appreciation of the factual situation (even if value priorities have not changed). We can call the former N-changes and the latter F-changes. Some changes will, of course, be both.

Third, we can classify the actors, those who are trying to persuade the government to change its mind: say, into 'public opinion', special publics, groups of petitioners, the mass media (call these 'public advocacy'); prophets, experts, 'the great', secondary networks (call these 'private advocacy'); and inquiries, advisory bodies, departmental officials themselves (call these 'official advocacy').

It would still require book-length treatment to work through all of these categories and classes methodically; we shall have to leave gaps and cut corners.

Let us begin with 'the public', and at Range II. 'Public opinion polls' are a regular feature of most modern societies, in which random or other samples of 'the general public' are asked their views on the government's priorities in some policy field or other. There is a common assumption (that is, an assumption common among the general lay populace) that if 'public opinion' is clear on some matter, then democratic theory states that government *ought* to respond and do what is wanted. Thus there is perennial bar-room outrage in Britain that though there is a clear majority (as measured by opinion survey) in favour of the restoration of capital punishment for at least some crimes, successive governments do nothing — indeed, successive Houses of Commons ("who are supposed to represent us") have voted *against* the return of hanging. Both MPs and Ministers tend to say that, in this as in other complex matters of government, ordinary members of the public are simply not well-informed enough about the issues, and indeed are often quite *misinformed* (in that they believe to be true things that are not true — in this case, concerning the deterrent effects of hanging), and are not able to come to a proper judgement. In our terms, they are saying that random samples of the population score Low on N and F, so that one need not answer the question of what value of L they are 'entitled' to: in practice, it is Low.

51 Y. Dror, *Public Policymaking Reexamined,* San Francisco: Chandler, 1968; B.C. Smith, *Policy Making in British Government.* Oxford: Martin Robertson, 1976; W.I. Jenkins, *Policy Analysis,* Oxford: Martin Robertson, 1978; A.B. Wildavsky, *The Art and Craft of Policy Analysis: Speaking Truth to Power,* London and New York: Macmillan, 1980.

The case is even clearer where no proper random or stratified sample has been taken. Many well-meaning individuals are confident that they speak for 'public opinion', simply because their friends do not disagree with them. Even a high volume of expressed opinion on some matter — in speeches, in questions at MPs 'surgeries' or on 'meet-the-people' occasions, in letters to newspapers or broadcasting phone-ins, and the like — need not be considered as *vox populi,* because the vocal ones are self-selected, and there may be a 'silent majority'.

Sometimes a spokesman claims to be speaking not for 'all decent people' or the like, but for a specified category of persons sharing some defined characteristics: not the 'general public', but a 'special public'. Just as there is 'a market' for skiing holidays or pick-up trucks, so there is 'a public' for Baroque chamber music or kite-flying. Such a group may be worthy of consideration, but not on the grounds that they represent public opinion. They have a self-confessed partial outlook, a declared bias; in so far as they do have a measure of 'clout', it is (paradoxically) *because* they are a minority. They might, that is to say, be able to shame government into more 'fairness' (if it is not too committed to its existing priorities, and does not feel challenged). Or they might succeed in altering government's perceptions (if they can show that government's own sources of information are faulty in some way). The same arguments apply to groups of petitioners. Petition organisers are frequently convinced that the sheer *number* of signatures is somehow efficacious, or morally telling; but this is usually just a version of the 'public opinion' fallacy.

A special public becomes a pressure group (interest or cause) if it becomes organised. Organised groups tend to be better informed on issues, and to formulate clearer objectives and tactics. But the very fact of their organising themselves raises barriers against their *persuasiveness:* they seem to be deliberately reverting to C-mode or B-mode types of action. They are 'taking on' government, and that is almost inevitably seen as a challenge; the mutual adjustment becomes competitive. Their D-mode N and F may be Medium or High, yet their leverage may be Low.

The organs of the mass communications media in many countries are apt to claim (editorially) to speak for 'public opinion'; but it is fairly obvious that unless they are reporting a public opinion poll (and even then, if they 'interpret' it), they are at best representing a 'special public' (their readership), at worst a self-opinionated individual. (Occasionally, however, a newspaper editor or broadcaster will achieve 'great' status — see below.) As with cause groups, they tend to be more persuasive when they are using their considerable research and investigative talents to uncover relevant facts, to raise the information level about how things are, than when they are purveying 'opinion'. This is sometimes thought to be the unique social function of a 'free Press': to have no particular axe to grind (no special cause, at Range II), but to ferret out what 'the public has a right to know' — which gives the Press a Range III function.

The actual achievements of the mass media in control over government in any country must be an empirical matter. The media are themselves all too susceptible to the reverse of that: control *by* government, in the interest of control over the people. Yet leverage on

government by the mass media, at Range I or Range II, seems almost *in principle* to be Low. This is partly because in so many countries there is a natural state of 'no love lost' between Press and politicians, who in several respects are rivals in the interpretation not only of what 'the public' or 'the citizens' want or should have, but also in the interpretation of the facts and 'meaning' of any specific situation. It is partly because, as with 'special publics' and minorities once they become organised, there is a barrier to persuasion if government's bargaining position or voting strength seems to be challenged (as they unavoidably are where newspapers are partisan). The Press and TV are either competitive with government, in which case they seldom persuade; or else they are supportive, aiding government to persuade bargainers and voters — in which case they are not a control mechanism.

What of 'public opinion' and the mass media at Range I, the individual case level? Random public opinion can sometimes be very vociferous over an individual case (especially if it concerns a child, or in UK, an animal), yet often with the vaguest grasp of either norms or facts; and with little leverage. A special public, or a number of petitioners or groups brought together in protest against a proposal for land use or an environmental issue, for example, are liable to have considerably more leverage as *persuaders* at Range I than at Range II, simply because the grouping is 'one-off' and ephemeral, the issue is local and can often be accommodated with priorities unchanged, and the matter does not threaten national bargaining or electoral positions. The mass media, likewise, are potentially more effective as persuaders of government at the individual case level, so long as they refrain from 'making a political issue of it'; *their* F, as high as ever, can engineer F-change in government so long as no N-change is required; so L can be better than Low, even if built-in rivalry prevents a High score.

Summing up so far, concerning public opinion and the mass media: what we are seeing is that attempts to alter government's perceptions of the facts are more likely to be successful than attempts to alter government's priorities, provided the quality of the persuader's own information is demonstrably higher than that of government, and that the interaction does not become competitive or challenging. These conditions are more likely to be met at Range I than at Range II or Range III.

Turning now to prophets, experts, and 'the great' — individuals *in* the community (not in government), but not claiming to speak *for* it. By 'prophets', Griffith and Street presumably meant people with a clear vision of where we are heading if we don't change our ways, and a blueprint of the change in priorities needed to avert disaster and maximise potential gains. Typically, the changes required are too radical for government even to contemplate, without imperilling its own electoral or negotiating positions. The gap between any level of identity of aims, and the adjustments of proximate aims needed, is too great for persuasion to take place. 'Experts', on the other hand, tend to operate on government's perceptions of current facts rather than on their priorities. If the paradigm shriek of the prophet is "Repent, for the End is Nigh", the paradigm murmur of the expert is "If that's what you want to do, here is what you need to know". This is superficially persuasive in itself; but before being persuaded, government will typically wish to hear argument between the outside expert and its own experts, to judge whether its priorities of aim are indeed being

preserved and whether the expert's information is indeed superior. Chances of success are clearly higher than for the prophet — provided the exchange does not become too competitive; and they are higher still at Range I, where the prophet has no standing at all.

'The great' is a difficult category to define, yet it undoubtedly exists. They are people who by virtue of long experience in public life have acquired standing, and sometimes wisdom. They may be eminent industrialists, renowned academics, senior judges, religious leaders, respected editors or broadcasters, former statesmen, foreign ambassadors, or traditional rulers. They are not experts, as such, and do not typically contribute superior information to that of government, though they may suggest different interpretations. They are not prophets, and they do not shriek; their *forte* is the word in the ear. Indeed, they are typically diffident about offering specific advice about specific policies or programmes. Their wisdom operates rather in the zone of the effects at Range III of performance than at Range I or Range II: "that behaviour will project you as this kind of government: is that what you want?"

Peer-group pressures from other governments, friends of one's youth, and secondary networks (social or ideological) operate in the same zone: individual cases, or specific policies and programmes, are referred to Range III appreciations, or regime level. Whether government is persuaded or not may depend upon the degree to which it remains *open* to persuasion (i.e., is 'rational'); but generally, as with other devices, it hangs on the size of the gap between what it is being asked to do and what it is committed to do. Too large a gap, and advice becomes challenge: toes dig in.

The leverage of private advocacy, as control over government, like that of public advocacy, is conditional: again higher where the focus is government's perceptions of the situation rather than their priorities of aim (F-change rather than N-change), and higher at Range I than at Range II; but dependent also on the degree of N-change envisaged, whether at Range II or Range III. To translate this into scores in the Table at the end, we can only come to a general judgement about the extent to which in practice government is kept under control by the shrieks of prophets, the murmurings of experts, the confidences of the 'great', at each Range — and estimate the top *potential* quality of Norms and Facts. Experts operating at Range I might score N Medium, F High, L Medium. Prophets at Range II would not score High anywhere, but Experts might score, again, N Medium, F High. Neither is likely to score more than Low on L — governments may be persuaded, but only where they are all but indifferent already. Similarly at Range III: 'the great' may be higher on N than on F, but leverage — at maximum, Medium.

With these findings about the conditionality of advocacy, we can perhaps merely test briefly whether they apply also to 'official advocacy': the apparatus of public hearings and inquiries, advisory committees and bodies, Royal Commissions and the like, set up to find facts and offer recommendations — most frequently at Range II, but occasionally over an individual case, and more rarely, on a question of institutions. And it will probably be agreed (even as being a commonplace observation) that, indeed, the recommendations of official bodies of this kind are accepted the more readily, the less they require departure from

existing government priorities. Governments may genuinely change their minds, where inquiries unearth really new evidence; but the temptation is always to set up the inquiry in such a way that calm will remain undisturbed. (The government, that is, may attempt to keep control of the outcome, rather than risk having the outcome persuade them of the need for change.)

The influence of departmental officials towards changes of mind is of a different kind. (We are not speaking of the influence of officials in the *making* of policy.) After promulgation, civil servants are virtually in command of implementation, and it is sometimes alleged that it is the bureaucrats at the 'delivery end', or at 'street-level', who really determine what the impact of a policy will be (whatever the intentions of the 'policy-makers' at the top).[52] Whatever the truth of that, the evidence which civil servants collect in the process of implementation, about how a policy is working, about the anomalies and gaps uncovered by field experience, about changes in contingent circumstances since policy intentions were framed, and so on, provides the material on which they will base proposals for amendments to current policies — which, if accepted by government, are a *kind* of change of mind. This 'correction after feedback' is, like other persuasion, either a matter of reassessing the facts while retaining the objectives, or of altering former priorities.

Feedback from implementation, collected by civil servants, overlaps with 'grassroots feedback' collected by politicians; but the former tends to have more rapid access to the policy process. As a control over government, it is clearly important: it can be seen as 'self-regulation', or 'automatic' adaptation to change in environment. All servomechanisms or self-regulating devices[53] (of which the paradigm is James Watt's steam-engine 'governor') employ 'negative feedback' — an overshoot or undershoot sensed and fed back to the input with its sign (+ or —) reversed. Here, administrative feedback originates at Range I and is 'recycled' to provide policy or programme correction at Range II. It does not seem to me that civil servants (as such) have any control capacity at Range III, though they may act as 'whistle-blowers', either surreptitiously (by means of 'leaks'), or after leaving the service.

In translating these findings into scores for the persuasion mode that will be in the same measures as those for the modes discussed earlier, we have to accommodate the apparent difficulty that whereas leverage in the bargaining or voting or violence modes was independent of the quality of information on norms and facts, in this mode leverage is *contingent* upon quality of norms and facts, and sensitive also to two things: the absence or presence of competition or threat, and the degree of correction to be made — the more the adjustment required, the less the leverage. What I think this means is that, in D-mode, leverage is basically low or very low in most cases. If there is high awareness of cooperation and collaboration, persuasion can result,

[52] G.C. Edwards and I. Sharkansky, *The Policy Predicament: Making and Implementing Public Policy,* San Francisco: Freeman, 1978; S. Barrett and C. Fudge eds., *Policy and Action, essays on the implementation of public policy,* London: Methuen, 1981.

[53] O. Mayr, *The Origins of Feedback Control,* Cambridge, Mass: MIT Press, 1971; S. Bennett, *A History of Control Engineering 1800-1930,* Stevenage: Peter Peregrinus, 1979.

provided conditions are met. If that awareness is impaired, persuasion is unlikely.

The explanation of the Table entries is as follows: Range I reports administrative feedback, with quality of information both in Norms and in Facts High, and Leverage also of High quality. Range II refers to reports of committees and the like, where the knowledge of facts may be higher than the knowledge of government's aims, and leverage likewise is less than High. At Range III, official advocacy is rare: but at this level, leverage is at its lowest, and the temptation to manipulate highest.

VII

In this final E-mode, government binds itself in advance to correct its behaviour, if that can be demonstrated to be at variance with previously laid-down and agreed standards. Government joins in its own control, accepting that certain norms are to be maintained and ends served; and provides the mechanisms for following out the logic of that position. If you share goals, have identical perceptions of the facts of a situation, agree on the framework of discourse (the calculus, mode of moving from premise to conclusion), and so have in common what counts as a solution, then dealing with a problem is a matter of working out where the argument takes you.

One such framework of discourse (or 'paradigm' in Thomas Kuhn's sense)[54] is what goes by the name of 'scientific method'. There is by no means total agreement on what this means, but it includes, at the least, two significant elements: first, the scientist accepts and builds upon a corpus of previously-established knowledge; he is conscious of his role in refining that knowledge, and not only passing on what has stood the tests of time, but adding to it where he can; second, the scientist opens his own work to the scrutiny of his peers, and takes into account the discrepancies in method or conclusions that may be pointed out to him. Scientists adjust their ideas in the fore-and-aft dimension, and laterally, so that 'science' is self-righting, self-correcting.[55]

If the processes of bargaining are 'mutual partisan adjustment', and the processes of persuasion are 'mutual collaborative adjustment', then the processes of science can be said to be 'collective cumulative adjustment'. Scientists 'stand on the shoulders of earlier scientists; and although the field of competing theories at any one time may look anything but collaborative, in the long run, experience is cumulative in a way that is not paralleled in the market or in the political arena.

Governments, by and large, bind themselves to accept what 'science' says because they have faith in the incorruptibility of this method. The process of 'working out where the argument takes you' is seldom a simple matter, and may require not only laboratories and the apparatus of scientific research, but also special languages and modes of communication known only to specialists. The process of getting from

54 T. Kuhn, *The Structure of Scientific Revolutions,* Chicago: University of Chicago Press, 1962.

55 These thoughts are adapted from G. Majone, 'Mutual adjustment by discourse and persuasion', in Kaufmann/Majone/Ostrom eds., *Guidance, Control and Evaluation in the Public Sector* (1984); Majone himself quotes from Polanyi, *The Logic of Liberty* (1951).

premise to conclusion may be inaccessible to the layman. But the process is, in the crucial sense, penetrable and reproducible: if another scientist starts from the same place and follows the same steps he will arrive at the same conclusions — and judge while he does so whether the steps were appropriate ones. But to be on the safe side, governments employ scientists of their own, who belong to the community of science, but who also serve government (e.g. in 'secret' scientific work for Defence).

It is not only scientific research which has this status. A number of bodies of knowledge and practice lay claim to operating in the same basic way: an agreed framework of discourse, a well-tested and reproducible process of establishing the truth, an appropriately precise and well-defined set of categories and terms, and ways of monitoring standards of operation that justify public trust. We call them 'the professions': medicine, law, architecture, engineering, accountancy, and so on. Government sometimes has a hand in certifying and policing these professions; but in return, government in general submits its *own* activities to their scrutiny, and consciously employs, amongst its civil servants, people who owe allegiance both ways — to their hierarchic superiors, but also to their professional peers and disciplines.

This does not, however, apply equally to all professions. There are what we can call the 'hard' and the 'soft' professions. The harder professions gain their rigour from two attributes: the first, their base in the exact sciences, and the degree to which in their special language of discourse they can substitute for the numinousness of *words* the consistency and particularity of *numbers.* Mathematics has its 'philosophical' areas but its main function is as a vehicle for the manipulation of ideas in digital measurement, communicable without loss of information. The second attribute of the harder professions is the extent to which their specialist knowledge has become so standardised over the centuries (as in the case of many forms of engineering, much clinical medicine, and accounting) that the practice of the profession is less sensitive to the personal experience and judgement of the practitioner; less dependent upon the supervised acquisition of unarticulated knowledge, of 'feel' and 'grasp' and other non-mechanical skills, and of responsible attitudes, that is the function of lengthy professional apprenticeship in the 'softer' professions. It is precisely because it is necessary to provide a guarantee of a certain minimum performance of 'professional judgement' where the process of establishing the truth is less standardised and less reproducible by others than in the harder professions, that rigorous entry qualifications are prescribed, training programmes laid down, and codes of professional behaviour developed. It is no coincidence that the softer professions — law, the clergy, music, the arts generally, education, the social care professions — are those that must (or at any rate, still) rely on verbal communication, or even less articulable media. Not that the harder professions have no need of professional ethics, or that the softer have no base at all in science or numbers. (Argument rages about whether social science *should* 'ape' the physical sciences.) My point is merely that, as a matter of fact, government is not as submissive before the softer professions as it is before the harder ones — with one exception: that of the law. This is clearly significant: a 'verbal' discipline, by which government allows itself to be limited. To reinforce the point, there is one other profession to which democratic government submits in this sense,

although it is not based in the exact sciences; this is Accountancy, which does use numbers.

Accounting as a control device is so old and ubiquitous that it nowadays is possibly more often referred to in its metaphorical sense of 'being held to account' than in its literal 'numbers' sense. *Account,* the word, comes through Old French *accompte* from the Latin *ac-computare,* to reckon together, to calculate or compute. *Account* has always carried the double meaning, of counting (adding up), and delivering or presenting the addition, rendering the reckoning; and so, very easily, to accounting for or answering for one's stewardship — with its implicit notion of being measured against an ideal or standard. Later, the conventions of double-entry bookkeeping bring the 'account' very close to the device of the counter-roll or master-document kept for comparison — a conjunction of ideas translated by medieval mis-spelling into the word 'comptrol', in which the intrusive *p* comes from *computare* and the rest from *contra-rotulus* (*cf.* the Comptroller and Auditor General, a British parliamentary official).

In the original meaning, what we now call a 'cheque' referred to the stub, or counter-foil; a similar check device was the 'tally', a stick notched to register the amount involved and then split, one half going to each party to the transaction. The accounting by the medieval sheriffs of England for the taxes they raised on behalf of the King was done at the Exchequer, probably so called for the design of the table on which the money was checked: a set of rulings, like a chequerboard. The history of accounting is one of the development of more and more sophisticated check-devices and forms and 'books', many of them designed to enable comparison of two computations of the figures. A key to survival in the economic jungle of the early industrial re-volution was learning to keep records of other things than 'money in' and 'money out': raw materials, hours worked, output per machine, and so on.[56] Jeremy Bentham devoted many pages of his *Constitutional Code* to specifying the scores of different 'books' that should be kept, and the kinds of entry that should be made in them, in each department of government.[57] At this time too, accountancy began to develop its own version of 'separation of powers', the placing in distinct organi-sational hands of the functions of budgeting, requisitioning, purchasing, cash handling, and auditing, as checks on error and corrupt dealing.

So there has developed the many-faceted apparatus of modern managerial control functions, from simple audit for arithmetical accuracy to output budgeting, from early time-and-cost studies of pin-manufac-ture by Charles Babbage (1792-1871: inventor of the first digital computer or 'difference engine'), to systems analysis and the use of the microchip computer. They are not all regarded as 'accounting', but they all derive from 'bookkeeping'.

Government, then, accepts that it is 'accountable'. How good is accounting as a control over government? Here is another device, or set of devices, which is designed to operate at Range I, the individual

56 S. Pollard, *The Genesis of Modern Management,* London: Edward Arnold, 1965. See also C.C. Hood, *The Limits of Administration,* London: John Wiley, 1976.

57 J. Bentham, *Constitutional Code* (1830); in J. Bowring ed., *The Works of Jeremy Bentham,* 10 vols., Edinburgh: William Tait, 1843, vol. IX, p. 230.

case level, and achieves any sensitivity in other ranges by 'recycling' or summation. The basic device, however, can be employed to monitor several different *kinds* of standard: from simple attentiveness and accuracy (the absence of indifference or carelessness), through probity and rectitude (the absence of malversation and misappropriation), to efficiency and value-for-money (the absence of profligacy and waste). It is not difficult to see that criteria and norms are sharpest for the first group, still pretty sharp for the second, but more a matter of contention in the third. Strength of control will differ likewise — even if the leverage is high. Effectiveness will also depend, of course, upon the extent to which government is willing not only to acknowledge the validity of the objectives, but also to 'open its books' to the control agency so that the Facts can be ascertained, and finally, to correct any misbehaviour, enforce restitution, improve performance, etc. All of this must be an empirical matter; what we can say is that the numerical basis of the mechanisms make for *potential* high clarity of Norms (N) and accuracy of observations (F), and that the acceptance of the values of accountability by the government gives it *potentially* high leverage (L).

A singular feature of this way of controlling government is that there is no Range II capability. The controls are over the *processes* of government, over procedures rather than substance. Thus they may affect and condition the quality of policy formulation and implementation/delivery, indirectly; but they are not controls over programme or policy content, as such. The 'recycling' or summation of the operations at Range I has its effects at Range III, as a judgement on regime. Even there, 'accounting' (or 'comptrol', to use this neat hybrid) does not have its own E-mode leverage; it would have to operate *via* another mode (D, C, or B).

Some of the mechanisms of 'accounting' control (notably, that of the inspector of books, or auditor) have been extended from the 'numerical' sphere to the purely 'verbal'. The Swedish official known as the Ombudsman operates like an auditor, but the misconduct he investigates is not necessarily financial, and the books or documents to which he has access are not only 'accounts' *stricto sensu.* (He preceded the ordinary policeman, or crime detective, by many decades.) The New *Zealand* and then the British governments imported the ombudsman, as a control over government, operating at Range I on behalf of individual citizens, and chose 'maladministration' as his field of interest. On current experience[58] aims are limited and not crystal-clear, and although access to Facts is good, leverage is relatively Low. Like other forms of holding to account, it is mainly procedural in nature; it therefore has no Range II capability, or independent Range III capability. (Attempts at providing a Range II accountability, by means of 'policy evaluation' and 'programme performance measurement', have been under way for some time, particularly in the United States;[59] but so far, in comparison with more traditional accounting, N, F, and L scores are negligible.)

And so we come to Law, or legal process. Government uses Law, as it uses Accounting, in the control of its own operations and through

[58] F. Stacey, *Ombudsmen Compared,* Oxford: Oxford University Press, 1978.
[59] K.M. Dolbeare ed., *Public Policy Evaluation,* Beverly Hills: Sage, 1975: R. Rich, *Translating Evaluation into Policy,* Beverly Hills: Sage, 1979; D. Mazmanian and P. Sabatier, *Implementation and Public Policy,* Chicago: Scott Foresman, 1983.

them, the control of citizens. But the apparatus of the Law is also used by citizens to control government, and it is this aspect in which we are interested here (sometimes dignified as The Rule of Law). Law only rules if Power lets it: but just as few governments are willing to admit that they are not democratic, so also few would assert that they are not bound by the Rule of Law — that is, they accept the forms and methods and procedures of Law, even as they claim sovereign rights to use these forms to determine what in any instance the substantive law shall be.

In a real and historical sense (as distinct from Hobbes' or another philosopher's mythical sense), it can be claimed that the concept of law precedes the concept of government.[60] The root of the word in the Northern European languages is the idea of 'laid down things'; and the same idea, of things set down or set in place, is found in the root meanings of *statutum, gesetz,* doom, the Greek *themis.*[61] They may be 'laid down' by a pronouncement of what the community has 'always' done in given circumstances, or by a pronouncement of what the community shall henceforth do; but in either case, the validity of the pronouncement will turn on its *form* — and the authenticity of that (the 'second order of Law' in Hart's terms) again turns on what is 'laid down', either by custom or by a written constitution. Beyond *that,* there is the consideration of what customary rules shall be perpetuated, what shall go into a written constitution: here things are less 'laid down', and Power may have its say. But Power clothed in the forms of Law is 'legitimated'; it is doing things properly, and can expect the people in turn to keep their side of the bargain.

Respect for lawfulness may have survival value, both at the individual and at the community level. There is a basic shift in human perceptions (which may be rooted in the way the brain uses what the eyes see), by which what is observed to happen 'usually' or 'as a rule' becomes what is expected to happen (predicted to happen, a 'regularity'), and then what *ought* to happen (a norm or prescription), with departures considered deviant. Thus do we find out what is safe — ontogenetically, in the development of the child, and phylogenetically, in the survival of the species. Similarly, there is a strong connection (even today) between the particularities of the law recognised in a territory, and the integrity and security of the community. Strangers, who do not know what the laws and customs of the place are, stand out and can be watched; the ability to determine what the laws and customs of the place are, unfettered from without, is the very definition of political independence.

Power and Law thus support one another at a fundamental stratum of national life. But more superficially, Power may also welcome an institution which aims to ensure that bargains are kept, order maintained, and force not used *other* than according to the forms of law, as a means of raising the quality of life generally. To a degree, the institutions of religion have also aimed at these effects; but save in a few modern theocratic societies (and in most of these, not until very recently), the Churches in modern times have been nowhere nearly as successful as the Law in gaining the *submission* of government. The difference, I think, lies in the superior professionalism of the Law.

[60] H.L.A. Hart, *The Concept of Law,* Oxford: Clarendon Press, 1961.
[61] *Oxford English Dictionary,* Oxford: Clarendon Press, 1933.

The procedures of the courts of law, from one point of view, perform the same basic function as any detector of discrepancy. They hold up a piece of conduct against what is 'laid down', and determine whether there is a mismatch in any particular. A girl picking out malformed biscuits coming from a baking machine does as much. But whereas the biscuit quality inspector may perform the operation on a thousand biscuits a minute, a court of law may take weeks over one case. The discrimination processes are 'blown up' (in the photographic sense) so that very small details can be examined; and then argument, as extended as need be, takes place, first as to whether mismatch exists ('beyond reasonable doubt'), and then, if it does, whether it constitutes 'malformation' (is contrary to law). Professional debate over just what is 'laid down' in respect of any piece of conduct, or class of event, is encouraged; and the most searching examination of what actually took place, including several tests of what is to count as evidence of that, is held (whether under the adversarial or the inquisitorial conventions), before Norms are compared with Facts and a discrepancy to be corrected is declared, and finally, the form and degree of the correction decided.

From another point of view, the procedures in a court of law are a development in a 'verbal' direction, as the procedures of scientific method are a development in a 'numerical' direction, of former methods (earlier than either) of arriving at truth, through 'trial' and 'proof, based on divination and magic. By and large, 'words' are all that lawyers have to work with: bits of physical 'evidence' can be produced, and visual evidence such as demeanour may be admitted; but even that requires to be put into words before it can be judicially noticed. Lawyers, over a millennium or two, have developed ways of increasing the precision of content of their professional language, and of decreasing transmission losses in meaning, so that — though far from perfection — the lawyers' use of words begins to command the same baffled respect as the scientists' use of mathematical formulae. There may be hordes to hoot with derision at that judgement: legal jargon is universally a by-word for the *wrong* approach to communication. And of course, there are lawyers who over-egg the pudding, and there are verbal flourishes and gratuitous Latinisms, perhaps, which do little to increase precision and much to fog comprehension. But I stick with the assessment: nowhere outside the philosophy study or the cloister are verbal terms routinely used with such predictability of effect and certainty of understanding as in courts of law — and there must be thousands of law courts for every logic seminar or seminary.

As with scientific method, so with legal process: the lawyer stands on the shoulders of earlier lawyers and *develops* the law (or, as some prefer, uses his techniques to *find* what the law is on a matter), by referring to legal sources ancient and modern, to precedent cases, and to long-standing conventional formulae such as the 'rules of natural justice'. Also like the scientist, the lawyer exposes his work to the criticism of his peers, through the mechanisms of reported cases, of appeals up the courts hierarchy, and of academic legal writing. Legal process, like scientific method, is designed to be reproducible and repeatable, in real-time or in conjecture, so that errors in procedure which impugn the appropriateness of a conclusion may be uncovered. As in science, the field at any one time (or in any one case) may be occupied by competing and mutually contradictory doctrines or principles, especially since the court of law, in the Common Law tradition

at least, is an arena of sublimated adversarial conflict. Each side is out to win, and employs selective rhetoric and argument to help it do so. Occasionally, mutual *partisan* adjustment will be resorted to, as in out-of-court civil settlements. But throughout, there is simultaneously a strong convention that advocates for either side are 'officers of the court', bound in mutual *collaborative* adjustment to seek the ends of justice. And legal process itself, *sub specie aeternitatis,* is a collective *cumulative* adjustment, over time, to the changing social patterns and mores of society. Like science, the law is self-righting and self-correcting.

There, surely, lies the explanation of why government should accord to this 'soft' profession the same standing as the 'hard' professions.

Given all that, how good is legal process as a control over government? The most cursory observation will show courts of law operating in all three ranges of sensitivity: the individual case, the programme or policy level, the level institution or regime. By and large, the countries of the Common Law tradition have inherited courts, procedures, and legal principles that are less well adapted to the protection of the individual citizen against actions of government than are those of the countries of the Roman or Public Law tradition.[62] This is well explored in the academic texts from which we began, and there is no need to develop the point further. Let me only say that it will not do, to take English practice as the best the Common Law can aspire to, in this regard, given the examples of the American Administrative Procedures Act, the Australian Administrative Appeals Tribunal, and other such developments.[63]

There are, however, broad distinctions between the two traditions which cannot but have effects, in principle, on the potential scores of Public Law and Common Law systems, respectively, at Range I. First, the existence of a separate network of courts for the hearing of citizen v. State disputes cannot but provide greater potential control over government, through the advantages of easier access and specialisation. Second, the relatively high overlap in recruitment, training, and career development of lawyers and higher civil servants in Public Law countries, as contrasted with the almost total career separation in England and relatively low overlap in other Common Law countries, cannot but increase mutual understanding and reduce mutual antagonism; and so improve control in Public Law countries (greater clarity of Norms, closer pursuit of Facts, more precise and effective Leverage).

Third, perhaps less tangible, the fundamental Public Law assumption that the exercise of administrative discretion is a manifestation of specific legal powers inhering in the office, as contrasted with an assumption that it is a manifestation of delegated statutory responsibility inhering in the Minister, cannot but increase both the readiness of the

62 J.B.D. Mitchell, 'The causes and effects of the absence of a system of public law in the United Kingdom' [1968] *Public Law,* p. 95.

63 In this discussion, I am greatly indebted to a paper delivered by Dr. Hugh Rawlings to a staff seminar in the Faculty of Law in the National University of Singapore in February 1984, and to subsequent discussion with him; and also to my colleague in the teaching of the course in Public Administration and Institutions, Mr. Andrew Harding. I am grateful also to Christopher Hood for comments on a draft of the article.

official to submit to judicial review, and the sharpness of the instruments available to judicial review. As has been made clear in a number of cases, the English civil servant typically considers a judicial reverse (on the grounds of unreasonableness or unfairness, perhaps) as a quasi-political interference, to be circumvented or overridden by legislative amendment.[64] He thinks first not of mending his ways, but of mending his fences. The doctrines of 'public interest immunity' perhaps derive from a like assumption, shared by judges.

Fourth, it seems at least plausible that the conventions of the inquisitorial method will serve better, in the judicial review of administrative action, than the habits of mind associated with the adversarial method. Reliance upon eliciting the facts of a case by unexaminable affidavit, for instance, is a particular handicap.

For all these reasons, I would be inclined to the view that, however innovative the non-English systems of Common Law may become, the *potential* of the Common Law courts, in control over government, is still less than the *achievement* of the Public Law systems. What scores one allots depends on how much one is influenced by meagre English achievements (which might rate N Low, F Low, L Low),[65] or by the promise of e.g. the Administrative Appeals Tribunal, in the direction of clearer objectives and more effective investigations. Legal process as such, however, clearly has a potential score at Range I of High in all three elements N, F and L.

An alternative, in the countries adhering to the Westminster Model of constitutional relationships (as already suggested) is the development of 'verbal accounting' control mechanisms such as the Ombudsman; or a combination of statutory 'freedom of information' and an investigative Press. It is a matter of opinion (or even of *taste)* which avenue of development (the non-judicial, para-judicial, or fully judicial) offers greater promise of more effective control.

When we move to Range II, the clearest illustration of control by courts of law over the policies of government (whether in the Common Law or the Public Law traditions) is the striking down of statutes for unconstitutionality (though this does not apply in England). But many individual cases (whether or not designated as test cases or class actions) become in practice reviews of policy or programme, especially when they go to Appeal or Supreme Court levels. Some celebrated recent English cases (between authorities at different tiers of the central-local hierarchy rather than citizen *v.* State) have been almost overtly party-political, even ideological.[66]

However, as a control mechanism at programme level, courts of law (and here we need not distinguish between the Common Law and Roman Law traditions) are, it seems to me, most imperfect devices. From one point of view, Separation of Powers explicitly and 'democracy'

64 C. Harlow, 'Administrative reaction to judicial review', [1976] *Public Law,* 116-133; Tony Prosser, 'Politics and judicial review: the Atkinson case and its aftermath', [1979] *Public Law,* 59-83. And, of course, others have concluded that judges hold and apply ideological criteria beyond 'the law': *cf.* J.A.G. Griffith, *The Politics of the Judiciary,* London: Fontana, 1977.

65 Contrary to the opinions of some eminent judges, *cf.* Diplock L.J. in [1982] A.C. at 641C, and others quoted in Wade, *Administrative Law* (1982), p. 589.

66 See n. 23 above.

implicitly enjoins distance between the norms of judicial decision and the norms of the political process. Judges *ought not* to be clear about their policy or programme objectives. They may perhaps be permitted a view of the 'public interest' or of 'public policy' which sets limits on their judicial discretion, or helps them define the law to be applied; they may, that is, *avoid thresholds,* but they ought not to *steer* towards definite policy goals. If the courts of law *are* useable in that way at Range II, we might say that there is something wrong with the regime. That reasoning implies a Low score at N.

By the same token, apart from any appraisal of how good the characteristic methods of the courts in acquiring evidence would be, when applied to discovering the relevant facts about substantive policy rather than an individual case, the courts are not the proper forum for that kind of discussion. They are bad at it, and they ought not to improve. (F Low).

The courts do have a role at policy level, and it is precisely the maintenance of safeguards against unconstitutionality, or defect of form or procedure in legislation or regulation, which goes to assure the citizen that the government policy with which they are required to comply is not mere majority rule or behind-closed-doors deal or ideological vision, but is proper law by due process. That is really a Range III effect, and leverage in this limit-setting type of control is potentially High in the 'democratic' polity. But since by 'programme' we mean substantive content rather than form, L at this Range must be Low.

At Range III, we are talking about constitutionalism itself, perhaps the highest achievement of human society in the civilising of the *imperium.* Government acknowledges that its authority is derived from and must be exercised in accordance with a basic law which can itself be altered only in conformity with its own provisions (short of revolution, or extra-constitutional 'start over'). It would seem that this is the supreme manifestation of the Rule of Law, the ultimate sovereignty of legal form and process, monitored by a court of law. A government which flouted its own Constitution, or set at naught the verdicts of its own highest judges on the legality of its actions, would forfeit international esteem as well as the confidence of the citizens. By the loose thinking that is endemic in these matters, it would probably be thought 'undemocratic'. And it would probably feel the need to 'legitimise' itself, by giving itself a new constitution which more closely reflected the actual distribution of Power — thus, in a way, restoring the hegemony of Law.

And yet: that hypothetical sequence shows that 'mere legality' is not enough of a control, at regime level. On the one hand, not everything that is significant about the character of a regime is set down in its Constitution (and some regimes have no written Constitution, as such, in any case). On the other hand, the fact that a practice of government is 'within the law', or legal according to the provisions of the Constitution, is not the only judgement that we might want to make on it. Justice and fairness, it is well known, may not be identical with what the law prescribes, at any range of sensitivity. Such practices as censorship and thought control may overstep some ill-defined threshold of what is generally acceptable, and yet remain within the law. Toleration of dissidence and the unorthodox may be a touchstone not

only of the government of a country but of its system of courts as well. By these kinds of criteria are political institutions judged, and the methods of courts of law are not well fitted for the correction of deviations, though they may provide a platform for their exposure, to be taken up in other modes.

We can signal these conclusions by scoring Medium for legal process at Range III in N, F, and L.

VIII

What this superficial survey shows us about control over government is, first, that comparatively few of the processes by which the citizens try to ensure that their governors are kept under control have operating capacity at all three ranges of sensitivity: at individual case level, at policy level, and at institutional level. The processes that do are those we have called Violence, Advocacy (Public, Private, and Official), and Legal Process. Of these, none potentially comes even near to its maximum impact (as measured by the cumulative potential strength of its weakest elements at each range of sensitivity) — although, if we were to add together the two complementary C-mode processes, the result would be the highest single score, and near maximum. Those which otherwise score highest are Official Advocacy (perhaps not quite qualifying as an independent control process), and Legal Process.

Second, the individual devices with the best potential at one or other range of sensitivity are Voting in Referenda, bargaining through interest groups (especially if with a communal base), and performance monitoring through Accountancy and its derivatives.

It would appear that no great reliance should be placed on Violence, or voting at General Elections, as controls over government.

If, then, one were looking for one generally-applicable control process to develop, adaptable to a wide spectrum of situations, access to which is not restricted to those with power, relatively ubiquitous, and enjoying considerable all-round respect, one would clearly settle on Administrative Law.

These findings are hardly novel, or authoritative, given the manner of the 'research'. They simply echo the (much briefer) recommendations of the writers quoted at the start. But two lessons can usefully be learnt from thinking through these matters in a control theory framework.

The first is that there are a lot more ways in which government is kept in check than 'polities' and 'law'. S.A. de Smith, in the extract quoted,[67] hinted that there are factors at work (such as the approachability of the official) which are rooted in social expectations and understandings, cultural traits and habits, which provide a kind of base of self-policing or mutual restraints, the mechanisms of a society 'under control', upon which more positive 'in-control' mechanisms are then superimposed. Institutions can have mutually-restraining opposed forces built into their very fabric, as with the largest in scale of such devices, the Separation of Powers doctrine itself; but the same device, found

67 See n. 9 above.

in almost any organisation, is the distribution of managerial control functions among staff branches like finance, personnel, planning, etc., each with its own axe to grind.[68]

Thinking of control as underlying and ubiquitous (rather than as only exercised from central 'control rooms' and specific devices), control as outcome of thousands of overlapping and reduplicated (technically, 'redundant') mutual-restraint transactions (rather than always as conscious steering or shepherding), is a more amorphous and less graspable concept altogether.[69] Yet it is the necessary underpinning of careful thought about control over government.

The second lesson is that thinking about control over government cannot be isolated from thinking about control *in* government and control *through* government. Government, the phenomenon that arises out of a felt need to set limits to the free behaviour of individuals, is thus itself an effector-device in a project of control. Government action, in response to developments in its environment which it wants to keep in check, is always a choice among several possible actions. One of these options may lead to more 'trouble, vexation and oppression'[70] for the citizen than another. An administrative lawyer should not be content to refine his techniques for obtaining redress for the troubled, vexed, or oppressed citizen: he should be willing to investigate what, in the government's choice of policy or instrument, is leading to the visiting of these evils upon the people, and begin to use Administrative Law as a cutting-edge in the refashioning of administrative methods.

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68 See discussion in Dunsire, *Control in a Bureaucracy* (1978).

69 See discussion in C.C. Hood, 'Controls people use', in Kaufmann/Majone/Ostrom, *Guidance, Control and Evaluation in the Public Sector* (1984).

70 A phrase of Adam Smith's (in *Wealth of Nations* (1776), London: Dent, 1910, p. 309); quoted in C.C. Hood, *The Tools of Government,* London: Macmillan, 1983, p. 142.

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APPENDIX

TABLE OF SCORES*

MODE	PROCESS	RANGE	QUALITY OF NORMS	QUALITY OF FACTS	DEGREE OF LEVERAGE	OVERALL
A	VIOLENCE	I II III	High Medium Medium	High High High	Low Low Low	Low Low Low
B	VOTING AT ELECTIONS	I II III	Medium High	High High	Low Medium	Low Medium
B	VOTING IN REFERENDA	I II III	High High	High High	High High	High High
C	BARGAINING	I II III	Medium High	Medium High	Medium High	Medium High
C	INTERNAL TREATY-MAKING	I II III	High	High	High	High
D	PUBLIC ADVOCACY	I II III	High High Medium	High High High	Medium Low Low	Medium Low Low
D	PRIVATE ADVOCACY	I II III	Medium Medium High	High High Medium	Medium Low Medium	Medium Low Medium
D	OFFICIAL ADVOCACY	I II III	High Medium Medium	High High High	High Medium Low	High Medium Low
E	ACCOUNTING	I II III	High	High	High	High
E	LEGAL PROCESS	I II III	High Low Medium	High Low Medium	High Low Medium	High Low Medium

* All scores are based on highest *potential,* not on average or typical actual performance.