Ministerial staff and the 'lattice of leadership'

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Discussion Paper 13/06 (April 2006)

In 1972, the Whitlam Labor government decided to enhance the personal staff of its cabinet ministers, an initiative that all subsequent governments built upon[1]. Ever since, there has been debate about the appropriate role of ministerial staff in Australian government. It has been an issue for four reasons. First, partisan staff within the executive core has seemed an anomaly, given the Westminster convention that distinguishes between the political executive responsible for government and neutral public officials responsible for impartial policy advice. Second, because ministers (from all parties) have understandably favoured personalised and flexible arrangements, an adequate system of management and control has never been instituted, but this generated some dysfunction. Third, as a corollary of the second point, there is concern over the capacity adequately to scrutinise the activity of ministerial staff—a concern rendered more pressing both by evidence of the important contribution they can make to strategic and policy decisions, and by government practices that have served to their increase their invisibility. Fourth, it is arguable that, in augmenting the power of the executive, they have not enhanced the contestability that is said to engender robust decision-making, but have instead had a funnelling effect of the sort that research suggests can threaten good governance.

Westminster convention?

It is true that the practice of interposing personal staff as a significant element in government was foreign to most of the Westminster polities until roughly the 1970s—but equally, the trend towards augmenting personal staff has been evident in all liberal democracies in the post-war period as the tasks of government and the quandary of how to support the executive have become more complex. We can also acknowledge that the supposed division between partisan political direction and impartial policy advice and administration is largely a myth, except in one respect: public service loyalty could be construed to include drawing the government's attention to the public interest (as opposed simply to the government interest) on the ground that long-term regard for government would be furthered by this attention. Indeed, one analyst of the public service in the 1945–1985 period, A.F. Davies, argued that it

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[1] Maria Maley, 2002, *Partisans at the centre of government: The role of ministerial advisers in the Keating government 1991-1996*, PhD Thesis, School of Social Sciences, Australian National University; Anne Tiernan, 2004, *Ministerial Staff Under the Howard Government: Problem, Solution or Black Hole?*, PhD Thesis, Department of Politics and Public Policy, Griffith University; James Walter, 1986, *The Ministers' Minders: Personal Advisers in National Government*, Melbourne, Oxford University Press.

had been successful precisely because it had consistently acted thus[2]. The concern for Westminster tradition, then, is not wholly spurious if it can be shown that there has been a retreat from the practice of telling ministers what they need to know as opposed to what they want to hear, especially if the advent of ministerial staff has been a factor in such a development.

Management and control

The development of the ministerial staff institution has been ad hoc and largely unplanned. In the Whitlam years (ALP 1972-75), ministers were free to appoint according to personal preferences. The Fraser government (L-CP 1975-83) initially undertook to cut personal staff numbers, but Fraser himself expanded and developed the prime ministerial office as a sophisticated policy resource, and staffing for the ministry at large was gradually increased. The Hawke and Keating governments (ALP 1983-1996) sought to introduce a level of formal process, first through instituting a Ministerial Staff Advisory Panel to vet appointments (1983), and then with legislation—the Members of Parliament (Staff) Act 1984 *(*MOP(S))— intended to regularise the basis on which staff were employed and to provide protection for public servants working in ministerial offices by providing a framework for movement between ministerial service and public service. The MOP(S) Act has not been reconsidered, and staff numbers are larger under the Howard government (L-NP 1996–) than under any previous regime.[3]

As staff numbers have expanded and diversified, there has been no corresponding effort to improve management of this significant and expensive resource. The MOP(S) Act has had a modest impact, but it assumes that ministerial staffers are from the public service (and will have imbibed the public service ethic), whereas many are now political activists, recruited from party or electorate office backgrounds, with clear political ambitions. Their employment is precarious; there is no induction, performance management or professional development; the co-dependent relation between ministers and their staff encourages competition and partisan zealotry; progress depends upon an ability to protect and advance the interests of their minister; and the system relies on the skill and energy of individual ministers in

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[2] James Walter, 1999, 'Bureaucracy and democracy in the American Century: A.F. Davies on administration and the "Knowledgeable Society"', *Australian Journal of Public Administration,* 58 (1). pp. 23-32.
[3] Ian Holland, 2002, *Accountability of Ministerial Staff? Research Paper No. 19 2001-02*, Department of the Parliamentary Library, Commonwealth of Australia, Canberra, pp. 5-11.

establishing frameworks within which staff roles are performed.[4] Given staff numbers, and the many competing demands on ministers, appropriate management is often lacking—a great deal is left to depend on staff agreements that are said to require staff 'to act with skill, discretion and integrity'.[5] And yet, there are now comprehensively documented cases where, evidently as a result of pressure to deliver what a minister (or the government) wants, staff have acted in ways entirely contrary to such expectations.[6]

Illuminating inquiries have been generated as a result of such incidents of dysfunction. These have found that the MOP(S) Act is no longer adequate as a guideline for governance,[7] and that that there are significant weaknesses in the management framework for ministerial staff which the government should 'move swiftly' to address by 'develop(ing) and implement(ing) a new management framework …'.[8] Three years later, there has been no substantive response to this recommendation.

Accountability

It is clear that ministerial staff can perform a vital role in supporting the important and intensely demanding work of the executive, and that some do so with skill, integrity and dedication. What has also become apparent, however, as a result of the inquiries mentioned above, is their ability to intervene in departmental processes; to mediate between the political and administrative domains; to drive, sieve and skew advice; and to insist upon what the minister wants as opposed to the public interest or the integrity of the policy process. Pat Weller's colourful conclusion is that ministerial staff have become 'the "junk-yard attack dogs" of the political system: the hard men and the hit men. They are politically dispensable, convenient scapegoats who will take the bullet for their ministers and protect them from

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[4] Anne Tiernan and Pat Weller, 2003, *Ministerial Staff: A Need for Transparency and Accountability?* Submission to the Senate Finance and Public Administration References Committee Inquiry into Staff employed under the *Members of Parliament (Staff) Act 1984*, p. 6.

[5] Tony Abbott, 2002, 'Address to Institute of Public Administration Australia', at www.apsc.gov.au/minister/abbott220502.htm

[6] For example, Pat Weller, 2002, *Don't Tell the Prime Minister,* Melbourne, Scribe Publications.

[7] *Report of the Senate Select Committee on a Certain Maritime Incident*, October 2002, p. xxxvii.

[8] Senate Finance and Public Administration References Committee, *Staff employed under the Members of Parliament (Staff) Act 1984*, October 2003, p. 53.

political fallout'.[9] This has provoked not only extensive review of ministerial staff but also calls for accountability measures.[10]

The core problem is 'a serious accountability vacuum at the level of ministers' offices arising from the change in roles and responsibilities, and the kinds of intervention engaged in by ministerial advisers'.[11] It is said that staff are accountable because their ministers can be called to account for action stemming from staffers' advice. It is also maintained that the details of interaction between a minister and his/her staff must remain confidential because this 'is necessary both to guarantee trust in the relationship and the robustness of the advice that staff provide'.[12] In practice, there is clear evidence of staffers exercising forms of executive delegation (in their minister's name)—giving direction to public servants, for example—while the government has imposed a barrier to their scrutiny by parliament. Since 1996, in a series of controversial cases, ministers have consistently defended themselves from criticism by maintaining that advisers did not pass on crucial information, then (on the grounds that they had not been properly informed) have denied responsibility for the actions of their advisers, while refusing to allow those advisers to be questioned by parliament.[13]

Calls for a code of conduct that would incorporate some statement of values, dispense with role confusion and put advisers on a professional footing have fallen on deaf ears. The government has maintained its opposition to instituting '…frameworks, mechanisms and procedures by which ministerial advisers may be rendered directly accountable to parliament in ways commensurate with those which currently apply to public servants'.[14] Finally, as yet another impediment to transparency, the government has rendered its personal staff more or less invisible: while it is possible to log into the public service web-pages to find the incumbents of most SES roles, the Parliamentary Communications Directory, once a means for identifying ministerial staff, is no longer made publicly available.

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[9] Weller, *Don't Tell the Prime Minister*, p. 72.

[10] For example: Holland, *Accountability of Ministerial Staff?*; Andrew Podger, 2002, *The Australian Public Service: A values based service*, 2002 IIPE Biennial Conference on 'Reconstructing "The Public Interest" in a Globalising World: Business, the Professions and the Public Sector', Brisbane, 5 October.

[11] *Report of the Senate Select Committee on a Certain Maritime Incident*, p. xxxvii.

[12] SF&PA, *Staff employed under the Members of Parliament (Staff) Act 1984*, p. 22, p. 88.

[13] For example: Michael Keating, 2003, 'In the Wake of "A Certain Maritime Incident": Ministerial Advisers, Departments and Accountability', *Australian Journal of Public Administration*, 62(3), pp. 92-97.

[14] *Report of the Senate Select Committee on a Certain Maritime Incident*, Recommendation 10.

The lattice of leadership

Liberal democracy is characterised by the balancing and sharing of power, designed in theory to prevent the dominance of overweening individuals and collusive groups. It is realist in accepting that élite self-interest is always part of the equation. But adverse potentials can be contained and the public good advanced if institutions restrain élites (hence the checks and balances between the different arms of government), if civic virtue is encouraged and if systems ensure accountability. In looking at ethics in contemporary governance, John Uhr has developed the useful concept of 'the lattice of leadership'—leadership diffused *across* institutional spheres, but constrained to work collectively for the common good, with each élite challenged to do its best by being held to account by leaders in another sphere. When one element, typically executive government, becomes too dominant, the ethical constraint of the lattice breaks down.[15] He also suggests that prudential leaders guard against mistakes by taking the broadest range of advice and by reaching the best judgment in the circumstances, having regard to all the evidence—a precept that has long been tested in studies of how policy fiasco can be avoided by robust competition between policy alternatives[16].

Paul Kelly has provided a cogent overview of how John Howard has consolidated power though his prime ministerial project: using public sentiment as his frame of reference (and justifying prime ministerial power as serving the public will); embracing a narrow vision of ministerial responsibility; running a tight, secretive and collective cabinet as an instrument of his authority, of obedience and unity; imposing more restrictions on the public service and augmenting political control over policy[17]. None of these elements is new. Howard builds upon trends already evident in the practices of his predecessors, but has carried them to a new level. One of the means of augmenting political control has been through expansive utilisation of ministerial staff. Most of the work cited above indicates that, at the behest of ministers, personal staffers have become more interventionist, while by administrative fiat, they are now less visible than ever. Yet they provide a firewall around ministers. More importantly, to judge by the cases explored by, for instance, David Marr and Marian Wilkinson, Pat Weller,

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[15] John Uhr, 2005, *Terms of Trust: Arguments Over Ethics in Australian Government*, Sydney, UNSW Press.
[16] T. Preston and P. 't Hart 1999, 'Understanding and Evaluating Bureaucratic Politics: The Nexus Between Political Leaders and Advisory Systems', *Political Psychology,* 20(1). pp. 49-98..
[17] Paul Kelly, 2005, *Rethinking Australian Governance—The Howard Legacy,* Occasional Paper 4, Academy of the Social Sciences in Australia, Canberra.

and James Walter,[18] instead of expanding the domain of advice and contributing to the sort of contestability that leads to robust policy, they have had a funnelling effect—narrowing the options only to those predetermined by an ideological agenda rather than seriously 'testing reality'.[19] On the one hand, then, there is ground for concern about the capacity of 'the lattice of leadership' to sustain ethical government, with ministerial staff being one of the elements distorting the system towards augmented but insufficiently transparent executive control. On the other, the interdependence of ministers with their staff and the apparent incapacity of public servants to serve as a counterweight can encourage a descent into 'groupthink' and policy fiasco,[20] the very predicament that vigorous contestability with appropriate accountability and transparency measures would avoid.

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[18] David Marr and Marian Wilkinson, *Dark Victory*, Sydney, Allen & Unwin; Weller, *Don't Tell the Prime Minister*; James Walter, 2006, 'Why prime ministers go too far', in D. McDougall and P. Shearman (eds) *Australian Security After 9/11: New and Old Agendas*, London, Ashgate, pp. 189-206.

[19] Compare J. Burke and F. Greenstein, 1989, *How Presidents Test Reality: Decisions on Vietnam, 1954 and 1965*, New York, Russell Sage Foundation.

[20] Walter, 'Why prime ministers go too far'.