

Ties that bind? The impact of contracting and project-based funding regimes on advocacy¹

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Abstract

New approaches to governance that have evolved in parallel to the expansion of the community sector offer the promise of meaningful coproduction of public policy. However, surveys of workers in community organisations highlight their frustration at what they perceive to be their increased marginalisation from policy-making domains, in particular greater constraints on their capacity to engage in advocacy. This paper examines the impact of the current regimes of government contracting and funding on the Australian community sector by exploring the dimensions of these perceived constraints on advocacy. This involves tracking the evolution of governance models applied to the community sector over the last three decades and then focusing on the government response to advocacy under the current funding regime. The paper argues that in the current environment, government – community relations will require both sectors to make concessions and adjustments. Governments must accept that the use of contracting monopolies to stifle advocacy and dissent will only serve to weaken their capacity to deliver and sponsor services that respond to community needs, while community organisations must accept that new governance regimes require new advocacy strategies.

Introduction

"It should be recognized that central control of public advocacy would have the effect of depriving government of quality independent input. If effective delivery of quality service is the primary goal, government policy suffers in quality, relevance and effectiveness where it is no longer able to draw upon independent input, and indeed criticism." (Einfeld 2001: 4)

Despite the warning implicit in Einfeld's statement, one of the most common themes that emerges in any current discussions with workers in community organisations in Australia is that they feel increasingly constrained in their ability to undertake advocacy work. Advocacy-related activities by community organisations are seen as subject to narrow dictates imposed by current approaches to the management and governance of public services (Melville 2001, Carvahlo 1998, Lyons 1997), and recent moves by the federal government to introduce new legislation that foreshadows disqualifications for charities "attempting to change the law or government policy" has only served to reinforce the sense of constraint.

Government attempts to control dissent by community organisations is not a new issue, and indeed has been a complaint of community sector

organisations since the rapid expansion of their activities in the 1970s, but in the new millennium the debate has taken on an even greater stridency. New contracting and governance provisions have channelled community sector input into narrow consultative and funding streams which appear to exclude dissenters, and there have been sustained attacks on the integrity of community organisations by conservative think tanks and commentators. While Einfeld (2001) sees advocacy as an essential element of the processes that lead to effective public policy, commentators such as McGuinness decry the "propaganda activities of [community organisations] devoted to the destruction of capitalism" (McGuinness 2003a).

The aim of this paper is to reach a greater understanding of the operation of advocacy in the current community service environment through the identification and analysis of emerging trends. It builds on earlier work by Earles (1999), Melville and Perkins (2003), Melville (2001, 1999), Sawer (2002) and Lyons (2001, 1997) on the advocacy dimension of the work of the Australian community sector and the impact of new models of government funding, by exploring the dimensions of these perceived constraints on advocacy. This involves tracking the evolution of governance models applied to the community sector over the last three decades, and then by focusing more closely on the nature of, and government response to, advocacy under the current funding regime. In so doing, the paper seeks to identify constraints and evaluate debates about their legitimacy.

Advocacy Defined

The capacity for non-state actors to act collectively to realise social and political change has long been of interest to political scientists and sociologists. Initially focused on lobby and interest groups, more recently the focus has shifted to the study of the nature and role of social capital and civil society, in which community organisations play a key part. There is, to quote Goss (2001: 5), a certain romanticism about civil society, but the discourses associated with these approaches do serve to underline that community organisations intervene in the policy process through a range of direct and indirect dynamics. Brown et al. (2000) list a wide range of activities which include overt political mobilization and resistance, as well as those that promote mutuality, civic virtue, trust and moral obligation. Foley and Edwards (1996) distinguish between civil society discourses that place emphasis on action that is independent of the state and those discourses that emphasise the civilising habits engendered by associational life. A range of authors indicate that community organisations can act as a counter-weight to state power, open up channels of communication and participation, provide training in democratic processes and promote pluralism. In this way, citizens gain the confidence to

express their views and to participate in the wider political system and thereby ensure that “weak voices” are heard in the policy process (Habermas 1974, Verba et al 1995, Putnam 1993 & 1995, Lipset 1994, Warren 2000).

The range and form of political participation is shaped by the interests of both community organisations and government institutions. On one hand, community organisations seek to intervene in policy processes through a range of collaborative and conflict strategies (Casey 2002), while on the other hand governments seek their intervention, albeit primarily through pre-determined institutional channels. In general, the state defines the rules of engagement and creates the institutional contexts that can foster, hinder, or suppress participation. (Tarrow 1992, McAdam et al. 1995).

The focus of this paper is on the direct, more politically-focused and active interventions of community organisations that have the expressed goal of influencing policy directions. While it is acknowledged that these activities are often also directed at private sector organisations, the focus is on the interventions aimed at influencing public sector processes, at local, regional, national and supranational levels. Also, any discussion of organised collective action must acknowledge that while it is the course of action chosen by the majority of people or organisations wishing to influence government, many others, primarily those from powerful elites, choose individual strategies such as political donations and “back rooms deals” that are outside the scope of this article.

These interventions go by a range of labels that include “advocacy”, “lobbying”, “activism” and “political participation”. This paper chooses to use advocacy, the term most widespread in the vernacular of Australian community organisations. Advocacy is “an attempt to influence the decisions of any institutional elite on behalf of a collective interest” (Jenkins 1987: 297). Attempts to influence can evidently take many forms and can include developing public policy, supporting minority or local interests, overseeing government, coordinating or collaborating with other groups in the sector. Lyons (2000) notes that community organisations can advocate in their own material self-interest or for what they interpret to be the public good. At the same time, while a community organisation may claim that the set of ideas it advocates for will, if embodied in policy, advance the public good, other organisations who do not believe in those ideas, will accuse it of only seeking to advance some hidden interest. Community organisation advocacy can be conceptualised as criticism of a recalcitrant government or as the independent output that any government needs as “intelligence” that will help ensure the responsiveness of services (Einfeld 2001). It should be noted, however, that

any particular activity is deemed to be advocacy can be as much a result of which label sits comfortably with the community organisations and governments involved as with any academic definition.

Just as there is no easy delineation of advocacy activities, it is also difficult to delimit the organisations that work in advocacy. Many community organisations are likely to claim that they are "non-political" and that their goals are to service their client target groups and not to influence government policies. The exact proportion of organisations that have advocacy as their main objective is difficult to establish, and figures vary widely between researchers (Knoke 1990, Van Deth 1997, Taylor 1999, Melville 2001). The Commonwealth Government's Inquiry into the Definition of Charities and Related Organisations (COGA 2001) allocated a chapter in its report to this issue but did not manage to clearly delineate when advocacy, in the terms of the proposed legislation discussed later in this article, is "more than ancillary" to the purposes of the entity. The differences in definitions and methodologies used in such studies make comparisons between such research difficult and any figures quoted should be regarded as indicative. At best, we can say that survey research finds that a substantial minority of community organisations has advocacy as a primary activity (Parry et al. 1992, Van Deth 1997).

While attempts to classify organisations according to the level of their advocacy work can be useful, we should not lose sight of the fact that the wider conceptualisations of what constitute political activities mean that, by default, most community organisations engage in some advocacy work. The simple articulation of a demand is equivalent to exerting pressure upon a part of the political system (Kimber and Richardson 1974), given that, as Knoke notes (1990: 220), "social groups lobby and lobby groups socialize". There is always a potential for political engagement and at any moment circumstances may impinge on the least apparently political organisation which will then mobilize itself in response. Almost any organisation will act as a pressure group if certain situations adverse to its interests present themselves (Baggot 1995). The campaign by licensed clubs in New South Wales against a proposed new taxation regime on poker machine revenue, clearly demonstrates how easily the latent advocacy potential of the community sector can be activated given the right conditions (*Sydney Morning Herald* 2 October 2003).

Evolution of the community sector

The choice of the term "community sector" to define the organisations addressed in this article also follows accepted Australian vernacular. Analogous descriptors such as "nonprofit", "non-government", "third-sector", "voluntary", "independent" and "civil society" are also used in Australia and

other English-speaking countries to refer to organisations that are separate from government, do not distribute profits and seek to provide a range of public goods and services to, or on behalf of, members and groups of interest. These criteria are met by thousands of organisations that include hospitals, charities, business associations and small self-help organisations and numerous commentators have noted the problems in defining such a disparate sector with overly simplified labels (Lyons 2000).

Notwithstanding the definitional problems, the Australian Bureau of Statistics (ABS) recently released data on Australia's nonprofit sector in the form of a satellite account to the National Accounts. In the 1999-2000 financial year the ABS found that Australian nonprofits employed just over 600,000 people, had an income of \$33.5 billion, contributed \$20 billion, or 3.3% to GDP and made an economic contribution that was larger than the communications industry, and about equal to the agricultural industry (Philanthropy Australia 2003). While in Australia it is nominally the peak organisations in the community sector that are specifically charged with advocacy duties, the broader conceptualisation of advocacy outlined above means that this article seeks to describe the situation faced by the wider set of community organisations. The broader focus is also justified by recent shifts in government attitudes and funding which is likely to result in less advocacy by peaks and a transfer of this role to more grassroots community organisations (Melville and Perkins 2003).

The last three decades has witnessed a "global associational revolution" (Salamon et al. 1999) that has brought community organisations into the centre of discourses about the social and political organisation of modern industrialised societies. A broad field of research now emphasises the benefits that flow from the existence of large and well-patronised networks of voluntary associations. The key terms currently used by scholars in this debate are "social capital", defined by Putnam as the "networks, norms and social trust that facilitate coordination and cooperation for mutual benefit" (Putnam 1995: 66-67) and "civil society", defined by Warren (2000) as the domain of social organisations within which voluntary associative relationships are dominant.

Lipset argues that without citizens strongly tied to civic associations, new democracies would not be able to overcome the dilemmas of collective action. And without substantial participation in these associations, it is also impossible for the citizenry to prevent the central power apparatus from continuing to dominate civil society (Lipset 1994). It is thus said that social capital is at the heart of a sustainable society and a necessary underpinning for the long-term effective operation of a market economy and democratic

polity. While many civil society discourses see democracy as a by-product of a network of organisations, more instrumentalist views such as communitarianism see civil organisations as the creators of democracy (Parry, Moyser and Day 1992).

The reasons for the associational revolution have been varied. Some commentators have focused on economic analyses that identify excess demand for public goods and the notion of contract failure, in which ordinary contractual mechanisms do not provide consumers with adequate means to police producers, leading to consumer distrust and establishing a marketplace for nonprofit service organisations (Hansmann 1987, Weisbrod 1974). Other commentators focus on sociological analyses that identify greater social diversity and post-industrial social concerns that generate new collective social responses (Touraine 1988, Offe 1985, Melucci 1988), while yet others have argued that the contraction of the welfare state and demands for greater flexibility and efficiency in service delivery has simulated the expansion of the nonprofit sector (Quiggin 1999, Casey 1998).

The associational revolution has coincided with a period of intense reform of the public sector and the emergence of new modes of public management and service delivery. The reforms are not part of a uniform set of ideas but a conglomeration of different and often conflicting belief systems (Yeatman 1987, 1990, Hood 1994). In Australia, a range of terms have been used to describe these ideological beliefs, the most common being "economic rationalism" (Pusey 1991), "neo-liberalism" (Baldwin 1993) "corporate managerialism" (Bryson 1987, Considine 1988) and "New Public Management" (Hughes 1992 & 1994, Yeatman 1993 & 1990, Hood 1994). Most importantly for the community sector, the reforms have resulted in governance approaches which dictate that community organisations should play a key role in the delivery of services and in ensuring accountability and legitimation.

The associational revolution and public sector reforms have been driven by similar social and economic changes in society and there has been a symbiotic relationship between them. Community organisations have been part of the clamour for a more responsive and accountable public sector and, at the same time, they have provided an important part of the means by which governments could divest themselves of the immediate responsibility for service delivery. Governments have embraced the idea of what Considine (1997) termed "market bureaucracies" and promoted quasi-markets of competitive tendering that bring community organisations into contractual relationships.

As a result of these intertwined dynamics, there has been a quick evolution of the role of community organisations in policy making in Western democracies over the last three decades. Various authors have traced the evolution of public management paradigms and service delivery regimes (Considine 2001, Kooiman 1993, Kettl 1997). Working in similar territory, we can identify four distinct eras that reflect changes in dominant attitudes to community organisation participation in policy-making.

Conflict (approx.: 1970-1985)

There have been community organisations in one format or another since modern industrial society emerged, but the 1970s saw the rise of new activist organizations in Western democracies, as formerly unstructured social movements gave rise to new social movement organisations and community organisations.

While there had been a long tradition of praising the role of associations in democracies since the work of Tocqueville in US in the early 19th Century (Warren 2000), the more common view in the 1970s was that the political activism by community organisations was superfluous to the democratic process and that these organisations were essentially in conflict with democratic institutions. Instead of associations being praised, warnings along the lines of those articulated by some of Tocqueville's contemporaries against the evils of factions were heeded, and community organisations were generally seen as a disturbance to orderly policy making and that their influence was to be resisted.

This era was also dominated by an adversarial paradigm of the “old” or “material” politics associated with tradition organisations such as trade unions and political parties contrasted with emerging groups espousing post material concerns. Scholars of new social movements argue that new social organisations have emerged both as a challenge and an alternative to the “conservative” labour movement, raising new issues like peace, women's rights and the environment (Touraine 1988, Offe 1985, Melucci 1988).

Consultation (approx. 1980-1995)

By the beginning of the 1980s, the number of community organisations, and their political activism, had reached a critical mass and they could no longer be ignored by governments. In response, there was a move to incorporate the conflict created by the ever-increasing number of community organisations into the formal processes of policy making. Conflict started to give way to consultation and this was the era that saw the expansion of advisory and

liaison committees as a way of formalising the relationship between community organisations and policy makers.

Many of these consultation mechanisms still exist and they continue to be controversial. Some community organisations denounce the consultation mechanisms, claiming they are not genuine forums for participation but act more as marketing exercises that governments use to sell previously determined policies. However, consultation continues to be a central feature of current policy-making and service delivery. Consultation processes have become part of the standard operating procedures of government departments and have even become enshrined in legislation.

Collaboration (approx. 1990-present)

This is the era represented by the rise of New Public Management. The core strategies of public management now include *partnerships, compacts, accords and service agreements*, all of which seek to include community organisations as key collaborators in the delivery of public services. The general discourse is about "governance" and that "enabling" government should "steer not row", leaving the "rowing to others, including community organisations (Carvahlo 1998).

This is generally seen as a neo-liberal or economic rationalist agenda, but in fact it is a result of pressures from all parts of the political spectrum. While the conservatives pushed for privatisation, progressives pushed for community organizations to have a greater role in service delivery in order to provide more responsive services. While the right-wing ideologues attacked "big government" that kept control over large parts of national wealth (Peterson 1995, Conlan 1998), the left attacked "universalist government" that was unable to effectively redistribute resources to those most in need or to the full diversity of modern societies (Staeheli et al 1997). Wolch (1990) has argued that this devolution and privatisation of government functions has driven a significant expansion of a "shadow state" made up of a variety of "institutions associated with decentralised governance", including local levels of government, various business-private partnerships and nonprofit community organisations.

This new level of collaboration between government and community organisations in service delivery has two contradictory interpretations when discussing the policy process:

- One view is that the conditions created by contracting regimes and other collaborative relationships dictate that community organisations can do little more than follow the decisions made by government.

- The opposing view argues that if service production is no longer the preserve of government then policy making can't be either and that the level of trust that has been achieved between community organisations and government leads to a greater role for community organisations in developing public policies.

These contradictions have been the essence of the current debates over advocacy under current governance regimes. Considine (2001) tracks how such debates have led to the evolution from a market governance version of collaboration to a network governance approach. He argues that while network governance advocates use more contemporary terms like 'strategic partnership' and 'joined-up governance', the coexistence of market governance approaches undermines attempts to mobilise commitment, sharing information, or in focussing attention upon the real needs of suppliers and clients. These debates are analysed in more detail below.

Citizenship (from approx. 2000)

There is an emerging tendency in which governments by-pass community organisations as representative of constituencies and seek to get input directly from the citizens themselves (Bishop and Davis 2002). The policy relationships created are directly between government and individual citizens, while community organisations no longer mediate between them. This is heralding a new era of citizenship in which governments increasingly use direct polling and direct democracy techniques such as citizen's juries, peoples' panels, and online voting.

This direct democracy seeks to exploit the possibilities offered by new survey techniques and e-democracy technologies (OECD 2003), but it is also seen as a way of taking away power from community organisations and is a reflection of the decreasing faith in their capacity to represent citizens' interests. Because of the close relationships created by the collaborations described in the previous section and because of the complexity of the organisations needed to deliver services, many community organisations are increasingly being seen as out of touch with the needs of the broader community and as pursuing only their own commercial benefit and not the wider public interest. Scandals over child abuse in church-related organisations, as well as over the remuneration of executives and the use of funds raised from the public, such as the Australian Red Cross Bali appeal, have only served to highlight the sense of separation from wider community concerns.

Recent publications such as the *Engaging Citizens in Policy Making* (OECD 2001) and *Making Local Governance Work* (Goss 2001) focus on direct relations

with citizens, while community organisations and other citizen organisations receive little mention. Under these paradigms, community organisations, in effect, “compete” with citizens in seeking access to government.

While the four eras represent different historical periods, elements of the ideas they represent continue to co-exist and form part of the internal debates both within the community sector and in wider society. There continue to be debates about the impact of consultation mechanisms and contracting on the effective participation of community organisations in policy making. Also, the recent debates about proposed legislation in Australia that may restrict lobbying by charities clearly demonstrate that the legitimacy of advocacy by community organisations continues to be questioned. McGuinness (2003b), for example, claims that “[community organisations] don’t want democratic accountability... what they want is power without responsibility”.

Advocacy under current regimes

The existence of constraints on advocacy work by community organisations has been a familiar theme since the emergence of a strong community sector in the 1970s. In the past, the discourse has been expressed in terms of lack of resources, exclusion from decision-making domains and the simple dangers of “biting the hand that feeds them” (Roelofs 1987). Also, given the early concerns about the legitimacy of advocacy by community organisations, governments in many countries have used a variety of legislative and funding processes to restrict advocacy (Randon and 6 1994), although in Australia there has been little legislation in this area.

In the 1990s, a range of studies examined how “economic rationalism” or “managerialism” may affect the Australian nonprofit sector, in particular how it has ushered in new “contracting regimes” (Lyons 1997a, Nowland-Foreman 1998). A significant amount of analytical work on how contracting and project-based funding regimes has affected the ability of peak organisations in Australia to lobby and undertake advocacy work on behalf of their members has been conducted by Melville (1999, 2001). Other scholars have focussed on the implications changes to charity laws hold for advocacy (Lyons 2003, McGregor-Lowndes 2002, Industry Commission 1995).

But now, as a result of the contemporary governance modes of service delivery, a new discourse has emerged which attributes to these new modes even greater restrictions on advocacy. Advocacy is seen as less possible and there appears to be an emerging nostalgia for a previous “golden age” of advocacy.

At the same time, some authors claim that the possibilities for partnership offered by the governance approaches are creating new opportunities for advocacy through the co-production of services and that the evolution of our political systems are creating new forms of citizen participation that are still to be fully exploited by community organisations (Melville and Perkins 2003). The problem may not be that of government proscribing advocacy, but that community organisations have not been able to adapt to the new forms of articulating and communicating community interests.

The arguments that claim greater restriction on advocacy or conversely new opportunities are detailed in the following sections.

Restrictions

In addition to the rhetoric of activist groups, surveys have documented the restriction on community organisations and the repercussions they fear may be incurred by speaking out (Melville 2001). The new constraints have been attributed to a number of related dynamics:

- The increased use of contracting and competitive tendering, which effectively decouples the policy and service provision roles, constrains the possibility of independent action by contractors. In some contracts, specific provisions restrict or prohibit advocacy-related activities (e.g. the obligation to inform funders before issuing media releases or application of intellectual property law in contracts to require organisations to keep information they acquire in course of government subsidised work confidential). This translates into a loss of voice for community organisation as well as a diminished capacity to hear by the governments that continue as the monopoly purchaser of services (Carvahlo 1997, Considine 2003, Kouzim 1983, Lyons 1997).
- An increase in the number of community organisations and an increase in competitive tendering, which engender competition and secrecy between them, is seen as fragmenting the sector and constraining joint advocacy activities (Considine 2003, Lyons 2000).
- The move to project-based funding links increasing percentages of available funding to specific activities, which generally exclude advocacy. Advocacy can only be funded from the shrinking pool of uncommitted funds, private membership or fundraising. The new models of government funding therefore affect advocacy through the reduction in the sector's capacity to resource advocacy activities (Sawer 2002).
- The changing nature of the policy role in government has resulted in an increasing concentration of expertise in the public service and Minister's offices, which leads to even greater internalisation of policy processes. Government agencies are seen as more sophisticated in their management

- of consultation processes and continue to be accused of using them to capture/stifle independent advocacy.
- A new culture of more aggressive government-community sector relations is emerging which appears to give license to a more open silencing of dissent. This aggressiveness parallels changes in the internal dynamics of the public sector organisations, which have led to recent accusations of a "compliance culture" that suppresses dissent (Dobell 2003).
 - The increased complexity of work in the community sector has led to "advocacy/participation fatigue" among workers and, given the new demands on the community sector, priority is given to management and business-oriented skills rather than to policy development and advocacy skills. Whereas in the past, the typical profile of a community sector program coordinator was that of an activist, the typical profile now is more that of a business manager.

New opportunities

At the same time, there is the opposing view that that the new level of engagement between government and community organisations provides new possibilities for influencing the policy process and previous forms of advocacy are being replaced by more effective participation processes. The emergence of "partnerships" between government and community organisations suggests that there has been a move from mere consultation to effective co-production of policy and services which better incorporates the views of the community sector. The community sector is seen to be gaining a new voice in decision making through the re-alignment of government and non-government governance structures. Contemporary approaches such as participatory governance (Reddel and Woolcock 2004) and social governance (Stanley 2004) are predicated on significant non-government participation in policymaking.

Mulgan (2003) indicates that co-production is not only about service delivery but also about the building of evidence that informs policy reform. Citizens and community organisations become more intimately engaged in public services and so become fundamental to shaping new agendas. While New Public Management and governance paradigms had already incorporated concepts such as stakeholders and customer satisfaction, Mulgan uses a public value approach to further accentuate what he sees as the crucial and multi-faceted role of public participation in determining policy directions. Mulgan writes for a UK perspective and much of his discourse is predicated on the existence there of formal Compacts, which establish channels of community sector engagement with the public sector and codes of practice for

national, regional, and local governments and community organisations (Home Office 1998).

In an Australian context, Bishop and Davis (2002) in mapping policy participation note that there is no single methodology for policy participation, but that it is shaped by the problem at hand. They identify a series of discontinuous techniques and identify five types of participation: consultation, partnership, standing, consumer choice and control. Each of these types has specific participation instruments which potentially provide community organisations opportunities for advocacy.

Many of the arguments about new opportunities are predicated on the pluralist discourses of policy networks and associative democracy. As a result of the associational revolution more organisations exist and as a result of new governance structures more opportunities for consultation and collaboration exist, so as a consequence the power distribution in policy making should shift. The literature on the virtues of associative democracy maintains that free association, as exemplified by community organisations, is the preferred basis upon which an alternative means of social and political governance can be developed (Hirst 1994, Cohen and Rogers 1995). In a Latin American context, Bifarello (2002) uses the term associative networks to describe the dense fabric of interchange among community organisations and between government and non-government sectors that decentralises policy formulation.

Emerging structures of government and governance offer a range of new possibilities that are yet to be fully exploited by community organisations. For example, the increase in ministerial policy staff evident across Australian governments creates a new climate of contestability in policy advice and if community organisations can offer policy alternatives they can often get a sympathetic hearing. Even the direct democracy mechanisms with their emphasis on individual citizenship are seen as part of the new opportunities for community organisations. While the rhetoric is about reaching individual citizens, the reality is that those mechanisms usually end up being dominated by representatives of organised collective action. A quick analysis of the register of "citizens" participating in policy summits, citizen's juries, and even online discussion groups quickly reveals the organisation affiliations of participants.

Are there constraints and are they legitimate?

The debate about the current state of advocacy can be analysed in two separate but interrelated domains. The first domain is the debate over the

veracity of the claims that advocacy is being constrained. What is the balance between the restrictions and the opportunities presented in the previous sections? Are the constraints on more traditional forms of advocacy being offset by the emergence of new pathways for community organisations to advocate on behalf of their constituencies' interests?

The second domain is the legitimacy issue. What is the justification for constraints and what are their possible consequences? Are the restrictions part of an ideological backlash by governments and elites to reign in structures that question them? Or conversely, are the constraints necessary as they serve to increase accountability and ensure that unrepresentative community organisations are not able to gain undue influence? Is democracy being stifled or protected by constraints on community sector advocacy?

In the first domain that tests the veracity of the claims of constraints, it should be noted that much of the literature extolling the virtues of the coproduction of services and policy under new governance regimes tend to be generated primarily by government departments and entities such as the OECD that take an essentially statist perspective (see Mulgan 2003, OECD 2001, OECD 2003). To the contrary authors such as Considine (1988, 1990), Carvahlo (1998) and Lyons (1997) tend to warn of the perils of outsourcing and contracting regimes for community sector advocacy.

Considine (2001) cautioned that the "customers" of the emerging contracting regimes have limited capacity to influence the systems that serve them through competitive market models. Carvahlo (1998) noted that the analogy of government steering not rowing was based on fundamental contradiction between rhetorics of empowerment and control and that without trust the community sector would end up like Roman galley slaves, working to the beat of government drums. Lyons (1997) indicated that contracting regimes were destroying the social capital potential of many community organisations by locking them into purchaser-provider relationships with government, which precluded genuine policy partnerships. The analysis of these commentators is supported by recent field research among workers in community sector peak organisations (Melville and Perkins 2003, Sawer 2002). At the same time, Lyons (1997) does note that the evidence from the American experience shows that the outcome for nonprofits under a contracting regime is quite complex. In some instances it is dependent on the degree to which the state needs the services the nonprofit sector can supply. In other words, the autonomy of nonprofits can in fact be strengthened in a competitive contractual environment.

Other commentators have argued that the expanded service delivery role of nonprofits will undermine advocacy capacity by placing further pressure on funding, staff and administration resources. Lake (2002), Keating et al. (1989) and Mohan (2002) all point to how increased government outsourcing of welfare functions will not only severely limit the ability of nonprofits to deliver the program outputs now expected of them but also produce a debilitating tension between program delivery and institutional preservation. This in turn will undermine these organisations' ability to challenge entrenched power relationships and political regimes on which, in many cases, they depend for funding and political support.

In the second domain that looks at legitimacy of the constraints, those who seek restrictions on community sector advocacy use language reminiscent of the 1970s era described earlier in this article. The earlier critique which calls into question the legitimacy of community organisations to engage in any form of political advocacy appears to be re-emerging. Moreover, those who argue that the restrictions are legitimate also argue that they are not currently sufficient. The Institute of Public Affairs (IPA), a research organisation openly critical of many of the better known international advocacy organisations such as Greenpeace and Amnesty, has increasingly been focusing on domestic community organisations. In July 2003, the IPA was awarded a contract by the Prime Minister's Community Business Partnership Scheme to undertake research to develop a trial protocol for public disclosure of community organisations' standing with government (IPA 2003). Chief investigator of this protocol research, Gary Johns, observes that community organisations are often "self-selected, unaccountable and poorly rooted in society" and any political power conferred on these groups could "destabilise democracy" (Johns 2002: 4-5). To address this situation, Johns calls for community organisations to prove their "standing by way of expertise or representation" (Johns 2001: 1). Johns proposes a protocol that will require community organisations to prove why they have a legitimate claim to engage in political advocacy, and, conceivably, disqualify them from receiving government funds if they do not meet certain proscribed criteria.

Recently there have been other initiatives that have the potential to heighten tensions among some government - community sector relationships. In the legislative arena, new charity legislation was proposed in 2003 that listed among the disqualifying purposes any activities "attempting to change the law or government policy" if it is "more than ancillary or incidental to the other purposes of the entity concerned" (*The Australian* 31 July 2001). The activities of community organisations are also the subject of a review in three Australian states of the Associations Incorporation Legislation (by which most nonprofit organisations are incorporated). As Lyons (2003) has observed, the

proposed changes to tax law are a response to, but also in contradiction to, the government's own Inquiry into the Definition of Charities and Related Organisations. The Inquiry recommended "that charities should be permitted to engage in advocacy on behalf of those they benefit". The recommendation continued, "conduct of this kind should not deny them charitable status even if it involves advocating for a change in law or policy" (COGA 2001). The Inquiry did recommend, however, that charities be prohibited from having purposes that advanced a political party or a candidate for political office (*Australian Financial Review* 31 July 2003).

Another federal initiative which is likely to heighten controversy over how to interpret the Federal Government's view of the role of community organisations is the proposal to fund a new council for charities and other nonprofits. In late 2002, the Howard Government, through the Community Business Partnership scheme, provided seed funding to establish the new council. Critics of this move, which include the Australian Council of Social Service, argue that the council was established without adequate consultation, is a waste of resources, threatens sector independence by creating a representative body that is too close to both government and business; and, could become a mechanism through which governments can divide and control the sector (*The Australian* 31 July 2003, Lyons 2003, *Sydney Morning Herald* 8 November 2003).

Yet there are also instances of government attempts to recognise the contribution of the sector. In a speech to the Sydney Institute in mid-July 2003, the Treasurer, Peter Costello, spoke on the topic of "Building Social Capital" in which he expressed concern about "the running down of the culture of engagement" (Costello 2003). In anticipation of a paper on social capital which the Productivity Commission was to release later that month (Productivity Commission 2003) he spoke of the importance of "networks and associations" in building trust and underpinning a market economy. He noted Robert Putnam's claim that this source of social capital and thus trust may be declining and went on to deplore the possibility that such a "culture of public engagement" may be shrinking in Australia. He argued that governments "should be careful to do no harm" and that "if the government has a choice between delivering services in a way that enhances engagement and one that does not, then, all things being equal, it should prefer the former" (Costello 2003). Despite this apparent endorsement of social capital, several commentators have observed that the Treasurer has made no attempt to review the practices of the government against these espoused sentiments, while others have argued that it was a way of cynically disguising attempts to get communities not governments to fund a range of goods and services (see Lyons 2003, Rollason 2003).

Conclusions

The last three decades have witnessed a significant evolution of the community sector. Community organisations have moved from the periphery into a central role in discourses of service delivery and policy development. Organisations that first emerged from social movements in the 1970s as fringe entities have quickly become the mainstream; they are now considered the core of what has been come to known as the Third Sector and play a key economic, social and political role in modern industrialised societies.

While new approaches to governance that have evolved in parallel to the extension of the community sector offer the promise of meaningful coproduction of public policy, surveys of workers in community organisations highlight their frustration at what they perceived to be their increased marginalisation from policy making domains. Contracting and project-based funding have decoupled the policy and service roles and instead of providing community organisations with greater participation in both, may have led to a new concentration of policy in government hands as they manage a new monopoly over contracting. While some argue that, because of the new governance regimes, community organisations have never been so central to policy making, others argue that they have never been so excluded.

These opposing views may not be mutually exclusive and current policy making and service regimes may in fact produce divergent impacts. Coproduction may reflect the experience of a small subset of "winners" in the competitive tendering stakes. Some emerging partnerships between government and community organisations may be the precursor of a new neo-corporatism that favours a selected few of what governments as contractors consider to be the more successful and reliable community organisations. This may become a form of "social democratic corporatism" (Garrett 1998) that seeks to stabilise links between state and civil society and is seen to serve to build the political consensus and stability needed for longer-term decision-making. Such neo-corporatism appears to affirm the insider-outsider dichotomy (Grant 1995), but the question remains whether the respectable, reliable, and responsible insiders – defined as such by the state agencies that contract to them – simply end up captive to the interests of the state.

The durability of the opposing discourses also symbolises the continuing ideological cleavages. Einfeld's (2001) defence of advocacy and McGuinness's

(2003a, 2003b) denouncements are the contemporary Australian reflection of the constitutional debates in the United States over a century ago between those that warned against mob rule and others that extolled the virtues of popular democracy, and it is unlikely that any amount of evidence will convince either camp of the opposing view. It also reflects the fact that Australia currently lacks formal statements of the relationship between government and the community sector, such as those offered by the UK Compacts.

While the concerns currently expressed by the community sector appear to confirm the worst forecasts issued about the impact on advocacy of contracting and market bureaucracies issued by a range of authors from the beginning of the 1990s, the other reality is that some of the distress is a sign that many community organisations are finding it difficult to define their advocacy role in the changing political contexts. Melville and Perkins (2003) indicate that while many peak organisations they studied appear to be successfully adjusting to new realities, others are "unrealistic", "recalcitrant" or simply frustrated that the same old lobbying tactics don't work in a new policy environment. This reflection on peak organisations could well be extended to the community sector in general.

The future balance will require concessions and adjustments. Governments must accept that the use of contracting monopolies to stifle advocacy and dissent will only serve to weaken their capacity to deliver and sponsor services that respond to community needs, while community organisations must accept that new governance regimes require new advocacy strategies. The boundaries of the ties with government have to be fully explored and community organisations can learn to exploit new opportunities offered by both governance regimes and the new forms of direct democracy.

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