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The Engendering of a Chimera: Sources of Independence for Australian Commonwealth State Audit

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by

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Abstract

Through a well managed discourse of independence successive Commonwealth Governments have been able to have very extensive Executive intrusions in state audit accepted as benign and untainted by political interests, thereby maintaining an illusion of an unfettered, autonomous state audit function. This discourse of state audit independence has been successful in embedding an interpretation of independence at odds with the operational reality. A conditional form of independence has been promoted as substantive independence and has thereby created multiple and often conflicting beliefs about what is and what ought to be the nature of independence in state audit. The discourse has confused differences in the independence of the person of the state auditor and the independence of his Office.
INTRODUCTION

With the adoption of the main tenets of British state audit in 1901 by the Australian Commonwealth Government also came an implicit set of beliefs about the form of independence desirable for state audit and the sufficiency of the existing mechanisms to protect independence from threat (Tickner, House of Representatives (HR) debates, 6 April 1989, p.1155; Senate debates, 6 April 1989, p.1109). These beliefs have characterised Australian state audit until the present. However, recent, well publicised differences between the Commonwealth Auditor-General and the Executive Government have highlighted the imperfections and the ambiguous nature of the independence of state audit by exposing the level of Executive involvement in the operations of the Australian National Audit Office (ANAO) (Senate debates, 9 October 1991; The Australian, 10 June 1993; Canberra Times, 6 November 1993; Financial Review, 23 November 1993). Introduction of the proposed Auditor-General Bill into the Commonwealth Parliament in mid 1994 served to accentuate the contentious nature of Australian state audit independence (Australian Audit Office (AAO), 1989, Response to Report 296; Joint Committee of Public Accounts (JCPA), Report 331, September 1994; ANAO, Parliament's Right to Know, Audit Report No.43, 1993-4).

The period since the investigation by the JCPA into the Office of the Auditor-General in 1988 was especially testing for Auditor-General Taylor as he sought to have the Labor Government implement the Committee's findings which favoured more independence for state audit. At times the level of acrimony between the major players in state audit has led some influential members of the Executive and state audit to
question the continued existence of state audit in its present guise (JCPA, 1988, *Inquiry into the Australian Audit Office*, Minutes of Evidence, Auditor-General Monaghan, p.536; Australian National Audit Office (ANAO), 1991-2, *Annual Report*, p.x). Compared to the previous history of the audit office, these have been extraordinary times, bringing to mind the experiences of the Canadian Auditor-General, Maxwell Henderson, in the sixties and early seventies (Henderson 1984). Yet, despite the conflagrations of passions, clashes of egos (HR debates, Dawkins, 26 May 1993, p.935) and allusions to a dark future for state audit it has managed to withstand the assaults of its detractors, although it has not come away unscathed from these confrontations: staff numbers have been reduced by over 200 and staff morale has continued to decline (*Financial Forum*, October 1994). Throughout his ongoing differences with the Executive, Auditor-General Taylor maintained that his main concerns were to ensure that he was able to fulfil efficiently the requirements of his mandate on behalf of Parliament and that the independence of his Office was strengthened. In the absence of Executive enthusiasm for the reform of state audit, Taylor had sought to publicise the vulnerable position of his officers, as exposed by the JCPA (*Report 296, 1989*), and thereby to emphasise the crucial and well recognised role which independence plays in state audit (*Financial Forum*, October 1994).

The need in all forms of democratic governance for a state auditor *and* for the state auditor to be independent are undisputed in the literature and in practice (INCOSAI, 1983, Recommendations of the 9th Conference of INCOSAI, 1977, p.85; American Accounting Association (AAA) 1973, p.13; Bishop, Senate debates, 17 June 1991, p.4686; Australian Society of Certified Practicing Accountants 1994). To deny the relevance of independence to the office of the state auditor is to question the value of and, as a consequence, the need for the very existence of state audit. Pois in his study of the United States General Accounting Office (GAO), observed that:
there is such widespread acceptance of independence as a sine qua non of state audit that there seems to be little point to engage in the academic exercise of marshalling the arguments in support of this proposition (1981, p.70; see also Kimball 1976, p.40).

Unfortunately, adoption of a similar stance in Australia has tended to circumvent discussion of the genesis and the role of independence in state audit. By starting with acceptance of the importance of independence a presumption is made that independence is not only inherent to state audit but that independence in this context has a clear meaning. A recent paper by Funnell (1994) has shown that neither of these beliefs is correct within the context of Westminster governance.

Given the importance accorded to independence for state auditors (Heinig in Normanton 1966, p.402; INCOSAI 1983, p.89; Knighton 1979, p.6), whether in Australia’s form of Westminster governance or elsewhere, the resounding silence on this subject in the academic literature is surprising. There has been little or no discussion of how interpretations of state audit independence have been constructed and sustained nor has any concerted attempt been made to identify the groups and events which have played the greatest roles in the construction of meaning. The work of Parker and Guthrie (1991,1993) and Hamburger (1989), for example, examines influences on changes in the state auditor’s mandate, notably efficiency auditing, and emerging difficulties which these create for traditional understandings of the role of state audit. Their work, however, does not examine the nature of the independence which underpins the work of state audit. The current work seeks to fill this void. The silences which surround the study of state audit independence are all the more remarkable in light of the level of concern expressed about independence in private sector audit (Levin 1976; Sharaf and Mautz 1960; Nicholls and Price 1976; Cook and Winkler 1976; AAA 1973; Wolnizer 1994). It is as if state audit independence has been treated very much with Miss Havisham’s wedding cake in mind: while ever it is left untouched it will stand.
It is the purpose of this paper to examine the means by which successive Australian Commonwealth Executive Governments have constructed a discourse of state audit independence which has been successful in masquerading a limited or conditional form of independence as substantive independence. Independence has been, and continues to be, conditional primarily because the Executive controls the financial and human resource levels of the state auditor's Office. The paper establishes that acceptance of state audit independence as substantive has been accomplished by the Executive encouraging confusion between independence of the person of the state auditor, in Australia the Auditor-General, with that of his Office. To accomplish this the Executive has stressed personal characteristics of the state auditor and relevant provisions of audit legislation as both indications and guarantees of the independence of state audit, as opposed to the independence of the state auditor. Until recently this approach has been very effective in sustaining an image of an independent state audit function but without placing the state auditor beyond the reach of the Executive. After nearly 90 years of comparatively docile auditors-general the outspokenness of Auditor-General Taylor therefore was all the more shocking to the Executive.

This paper firstly examines the political importance of an independent state audit function and therefore its interest to the Executive. It then shows how the Executive has promoted state audit independence as substantive, rather than conditional, primarily through the public image of the person of the state auditor and by confusing the legislated guarantees of his independence with that of his officers. The paper finally establishes that Executive involvement in state audit has been given great potency through its control of the resources allocated to state audit.

THE POLITICAL DIMENSIONS OF STATE AUDIT INDEPENDENCE

Independence is a qualitative characteristic of audit: there are no universal criteria to detect its extent or even its presence. Any measurements of independence depend upon external referents or proxies which are designed to give it a form of empirical
verification. There is no absolutist, apolitical meaning to independence. Instead, it is a socially constructed belief with strong political dimensions, in the sense of being implicated in the contests of rival power groupings. Independence is of interest in audit mainly because it can be seen to be of sectarian service to interested parties, certainly not to improve the precision and engineering of audit for its own sake. This has caused interpretations of independence within state audit to be the target of capture by powerful interest groups. Accordingly, independence in the context of state audit has meant that which dominant interest groups have allowed it to mean; hence its nature as a discourse. In the case of state audit in Australia, it has been the Executive which has been extremely successful in creating and sustaining a discourse of independence, with attendant and privileged interpretations of independence, which has been very much in the Executive's own best interests.

Independence can be conceived as a relational state: one is independent from or in respect to something. For state audit the relational state is most often taken to be in reference to the Executive, although in Australia the state auditor has argued that he is also independent of Parliament (AAO, Annual Report, 1991-92. p.3). According to the AAO's Auditing Standards

an essential element in the independence of the Auditor-General is the absence of any direction by the executive government in relation to the Auditor-General's performance of his or her mandate. In particular the Auditor-General should not carry out, modify or refrain from carrying out an audit, or suppress or modify audit findings at the direction of a minister of the government (1987, para.2.2.2.2).

Mosher also recognises that independence in the context of state audit concerns the freedom of an individual or agency from outside pressures or influence in the reaching of its decisions and carrying out its activities. In this sense, independence is nearly synonymous with objectivity, freedom from hierarchical, political, special interest, personal, or other partial bias (1978, p.235).
It would follow, therefore, that in order to ensure the state auditor's independence from Executive pressures that the state auditor be administratively and financially independent of the Executive. This paper will argue that this has never been the case in Australia. Instead, the Executive has had recourse to numerous controls over the work of the state auditor; controls which it has had accepted as benign through a discourse of independence. Most importantly, the Office of the state auditor in Australia has never been financially independent of the Executive. Further, the state auditor in Australia has never enjoyed administrative control over his own Office; he has not been free from Executive prying and final say. Indeed, it was not the intention of the Australian 1901 Audit Act, or any subsequent amendments to the Audit Act, to create a state auditor who was beyond the influence of the Executive. This was not only inconsistent with the development of Westminster state audit from the mid 19th century (see Funnell 1994) but was also antithetical to Executive interests.

The work of Cooper and Sherer (1984), Chua (1986), Hopwood (1987, p.213), Laughlin (1987, p.480), Laughlin and Lowe (1990, p.16) and MacIntosh and Scapens (1990, p.468) has shown that accounting practices, of which auditing is a prominent component, can never be merely technical instruments. Rather, they need to be recognised as being consistently partial; that the strategic outcomes of accounting practices consistently ... favour specific interests in society and disadvantage others (Cooper and Sherer quoted in Likierman, 1989, p.626).

Consistent with this approach, hegemonic perspectives of state audit conceive it as a legitimising institution which provides a means by which current political arrangements can be sustained (for example see Richardson 1987, p.342). By dominating state audit, through the means detailed later in this paper, the Executive has been able to use the rhetoric of independence to legitimise its actions and thereby secure its position. For the Executive state audit has come to provide the means with which it can signal to the electorate its competent management and its respect for the conventions of Westminster financial accountability. State audit, therefore, fulfils more than the
obvious and far less contentious monitoring role with which it is characterised. Of course, the Executive is only interested in favourable judgements from the state auditor. Consequently, control or management of state audit becomes an important prize for the Executive. The imprimatur of the state auditor, however, would be of little value if he was perceived by the electorate to be influenced by the needs of the Executive. Projection of the state auditor as an independent officer as being beyond contest or dispute is therefore essential if state audit is to be of any use as a signalling device to the Executive.

For state audit to be politically useful to the Executive the extent of its intrusions in state audit had to be downplayed and disguised to enhance the appearance of independence. Community expectations of independence have been primarily conditioned by the appearance of state audit, as opposed to its substance, and the pious expressions of homage paid to it by the Parliament and by the Executive (for examples see HR debates: 13 October 1981, p.1914; 6 April 1989, p.1153 and 3 May 1989, p.1773). Nuances in the meanings attributed to state audit independence in apparently unreserved Executive expressions of support for state audit can easily be lost by the public:

it is common ground in this chamber that the independence of the Auditor-General is fundamental to his or her role and it cannot be compromised ... (T)here can be no question but that this Government will defend and preserve the Auditor-General's *functional* independence (emphasis added) (Walsh, Senate debates, 1 November 1989, p.2717; see also Button, Senate debates, 7 June 1989, p.3527).

A public ignorant for the most part of the very existence of state audit cannot be expected to appreciate the finer points of the nature of the relationship of the state auditor with the Executive and the Parliament (see Nehl, HR debates, 6 April 1989, p.1158). In particular, the public has been deceived into accepting a *conditional* form of independence for *substantive* independence.
SUBSTANTIVE INDEPENDENCE V. CONDITIONAL INDEPENDENCE

The discourse of state audit independence in Australia generally has been successful in promoting independence as *substantive independence*. For the purposes of this paper state audit will be defined as having substantive independence if: the Executive is not permitted to determine the organisation of the state audit office, including staffing levels and position categories; the Executive cannot influence the program and conduct of audits and the dismissal, payment and appointment of the state auditor are beyond the sole discretion of the Executive. Independence of this form requires that the state auditor be staunchly independent in attitude and that his Office is not directly financially dependent on the Executive. *Substantive independence* will only be present, therefore, if state audit independence encompasses legal, fiscal and political independence. Legal independence is derived from relevant statutes and can only be interpreted in this context. It refers to statutory provisions which are designed to protect the person of the state auditor and to identify and proscribe behaviour which could be construed as interfering with the duties of a public officer. Political independence is present if no successful overt or covert attempts are made by political actors to influence the work of the state auditor. Financial independence is examined in detail later in this paper. Substantive independence will also be affected by: the cooperation of auditees, parliamentary support, Executive reactions to unfavourable reports and the co-operation of central co-ordinating departments. State audit in Australia has never experienced substantive independence.

At the heart of substantive independence is a system of beliefs about the standing of the state auditor's authority as compared to potential sources of threat to his independence. Goldman and Barlev (1974) have interpreted auditor independence as the outcome of the ability of the auditor to withstand pressures by the auditee to influence the auditor. In the public sector the auditor's ability to resist these pressures is a function of the dependency of the state auditor on the Executive and the distribution
of power between the Executive and the state auditor: "the greater the dependency ... on the rewards and/or punishment that the other can mediate, the greater will be the power of the party to gain compliance with ... (their) wishes" (Nichols and Price 1976, p.337). For most purposes, constitutional imperatives determine that the advantage is overwhelmingly the Executive's way.

Contrary to the image portrayed in the media and in Parliament, Australian state audit independence has always been, and continues to be, a form of conditional independence, or functional independence as the Minister for Finance, Senator Walsh, preferred to refer euphemistically to the Auditor-General's independence (Senate debates, 26 November 1987, pp.2479). The state auditor is conditionally independent if he is at least capable of being free of detailed day-to-day direction in the determination and conduct of audit and if his appointment and dismissal are beyond the sole discretion of the Executive. In other words, the state auditor can be expected to be unhindered in carrying out the functions associated with audit. To operate under a conditional form of independence the state auditor will have limited control over his staffing levels and appointments and will be not financially autonomous. This is very much the form of independence to which the ANAO refers in its Auditing Standards (see sections 2.2.1.2, 2.2.1.3, 2.2.2.2, 2.2.2.9).

Not only has the state auditor in Australia never been beyond the financial proscriptions of the Executive but the Executive has seen this freedom as inconsistent with its constitutional right to determine spending levels for all organisations requiring appropriations from Parliament (Walsh, Senate debates, 26 November 1987, pp.2479-80). Given the imperfect nature of conditional independence, qualities of the person of the state auditor have assumed great importance for acceptance by interested parties of a belief in the independence of state audit in contradistinction to the independence of the Auditor-General.
CONSTRUCTING INTERPRETATIONS OF INDEPENDENCE
Psychological Interpretations of State Audit Independence: Independence is a State of Mind

Borrowing heavily from private sector practice, the discourse of state audit independence has portrayed independence principally in terms of the state auditor's professional and personal integrity, that is, his ability to carry-out his duties in an unbiased and honest manner. Wolnizer (1987) has shown how, early in the development of private sector audit, independence came to take on meanings more to do with the state of mind of the auditor than anything to do with the process of audit (see also Preston et.al. 1994). These beliefs were later embodied in the accounting profession's statements of auditing ethics which characteristically conclude that professional independence will exist only when a member "at all times performs his work objectively and impartially and free from influence by any consideration which might appear to be in conflict with this requirement" (ICAEW, 1988, Guide to Professional Ethics; Mautz and Sharaf 1961). To have an independent state of mind is to have "an attitude of impartiality and self reliance" (Ricchiute 1992, p.27). Australian auditing standards, which the Auditor-General accepts as binding (AAO, Auditing Standards, 1987), note that "(i)n order to achieve actual independence, professional ethics stress the importance of the auditor's attitude of mind" (Australian Auditing Principles (AUP) 32, para.12). This is amplified to mean that in both public and private sector audit (AUP 32, para.5) the auditors

should be straightforward, honest and sincere in their approach to their professional work. They must be fair and must not allow prejudice or bias to override their objectivity. They should maintain an impartial attitude and both be and appear to be free of any interest which might be regarded, whatever its actual effect, as being incompatible with integrity and objectivity (emphasis added) (Australian Auditing Standards (AUS) 1, para.16).
Achievement of impartiality is therefore heavily reliant upon the personal attributes of the individual. Without believing in and supporting the need to remain independent of any bias, personal interest, susceptibility to undue influence or pressure, the auditor is unlikely to achieve the *appropriate attitude of mind*. Personal attributes essential to the maintenance of an independent frame of mind include:

(a) *integrity*—the staunch observance of accepted standards of honesty which must underlie all professional decisions and actions,...

(b) *objectivity*—an unwillingness to allow prejudice or bias to influence judgment and the maintenance of a fair and impartial attitude; and

(c) *strength of character*—the ability to maintain integrity and objectivity in the face of pressure from others. The opinion of the auditor is vital to the credibility of financial reports, and the governing body, recognising this, may seek to influence the auditor. Without the strength of character to withstand such pressure the auditor will not be able to express an independent opinion (AUP 32, para.13).

An independent audit, therefore, could be assured if the auditor had an "independent mind" (Senate debates, 6 May 1987, p.2386 and 27 May 1993, p.1474; Windal and Corley 1980, p.30). Audit authorities accept that "an independent attitude ... (is) an imperative needed to add credibility to a communicated opinion" (AAA 1973, p.16). It is argued that it is this which will generate confidence in an auditor's work, not the technical aspects of audit (AAA 1973, p.16). In his work on private sector audit, Wolnizer has stressed that the notion of auditor independence has been interpreted so exclusively in terms of the personal qualities of the auditor that there has been little or no concern with the independence of either the tests carried out by the auditor or, more importantly, with the independence of the evidence used to reach audit conclusions (Wolnizer 1987, p.3). Independence has been overwhelmingly accepted as inhering "in the attitudes of, and relations between, persons" (Wolnizer 1987, p.121). In the case of state audit, the public might not be able to understand the audit process or why they should have confidence in it but they would be more likely to understand independence when it is given human form in the person of the state auditor.
Standards, rules, regulations and legislation (see below) aid in the achievement of independence but they are not certain guarantees. In the final analysis it will always be the personal vigilance and integrity of the auditor which will determine whether the image of auditor independence is maintained:

(T)he personal qualities of the auditor are integral to the maintenance of audit independence, but they cannot be maintained by rule or regulations and it is incumbent upon the auditor to ensure that integrity, objectivity and strength of character have been maintained (AUP 32, para.14)

Certainly this was the view of the Australian Auditor-General Steele Craik. When asked by the British Public Accounts Committee (PAC) whether, in light of his long career in the Treasury, his relationship with the Treasury impinged upon his independence Steele Craik replied

not in the least ... I am not necessarily influenced by what they say or by what they would like me to do. I do not feel that it impairs my independence in the least (Great Britain, 1981, Inquiry into the Role of the Comptroller and Auditor General, Minutes of Evidence, 11 June 1980, p.8).

The discourse of state audit independence has been particularly effective in forming a perceived bond between the state auditor's integrity and the quality of his independence and that of his Office. It is expected that if the state auditor is seen as independent then the audit his Office conducts will be viewed similarly. Consequently, features which bolster the perception of the state auditor's personal independence are the foundation of confidence placed in the audits conducted by his Office, not a given set of desirable characteristics of the technology of audit (AUS 1; AUP 32, para.9-11). The state auditor's unquestioned personal integrity is promoted as the guarantee of independence and objectivity in state audit. Certainly it is not usual to hold out his professional and academic qualifications, which have not encompassed audit, as guarantees of independence. As a result, there has been a high degree of 'blind faith' in relation to beliefs about the independence of the person of the state auditor but especially in
regards to the independence of his Office. It has involved the deception that a highly
reputable, dignified, honourable and experienced public servant who is appointed as
the state auditor, often in the closing days of a distinguished public service career, will
not submit to threats to his independence and that his independence and that of his
Office are one in the same. The public and Parliament are asked to accept that a long
serving public servant is able to turn his back on a culture and network of personal and
professional relationships which nurtured him throughout his career and take on a new
set of loyalties and beliefs which are aimed at giving him something which he never
enjoyed before as a public servant; his independence. Even the very close ally of the
British state auditor, the PAC, has at times found this hard to believe: "it cannot be
easy for a former civil servant to transform himself from a colleague of other
accounting officers into their external auditor" (Report, 1980, p.LV). This reliance
upon the difficult-to-refute professional and personal integrity of the state auditor has
made the discourse of independence very persuasive. The state auditor has come to
personify independence: to question the state auditor's independence is to question his
integrity and state audit itself.

When appointment of the state auditor has been immediately, and exclusively, before
retirement it has been suggested that this is another means of demonstrating his
integrity and enhancing his independence from the Executive. According to this
argument, at this late stage in the state auditor's career he has nothing to gain from
favouring the Executive. A contrary and more convincing interpretation is that the 11th
hour appointment of the state auditor has been used by the Executive as a reward for
meritorious public service and thereby often, though not always, provided a means by
which the Executive has been given a high degree of assurance of the way the state
auditor will fulfil his mandate. This should not be construed, however, as suggesting
that the state auditor has been a mere puppet of the Executive. A survey of the public
record will dispel quickly this notion. Rather, the appointment of a tried, proven and
loyal member of the public service has been an attempt by the Executive to ensure a
high degree of predictability in the views of the state auditor. The position of state auditor is highly sought after in the public service; it has long been seen as a pinnacle of public service positions (see for example Robinson 1924, p.148). Accordingly, it is less likely, although not impossible as Auditor-General Taylor recently demonstrated, that the state auditor would do something which would blot an otherwise unblemished reputation. Late career appointments, therefore, have been used by the Executive as a form of damage control and a recognition that political patronage still exists.

State audit is considerably more secretive than private sector audit, if only for the fact that there is a close relationship between the auditees in the Executive and the auditor's client, Parliament. In addition, Parliament customarily has been reluctant to get too involved in questions of audit, preferring instead to devote a very meagre amount of its time to reviewing the work of the state auditor and to rely on its standing committee the JCPA. Reid and Forrest have observed that

when the preoccupation of one side of the assembly is in the maintenance of the government's majority, and on the other side in its destruction, members are not favourably disposed to concentrate on housekeeping in public administration (1989, p.347).

In the absence of an ever vigilant champion for state audit, the electorate is encouraged to believe that the state auditor is promoting their interests as a consequence of the state auditor's public assurances of his independence. These are given weight by Executive and Parliamentary professions that the state auditor is indeed an independent officer.

The qualities of uprightness of character, probity and honesty ensure that integrity is a very amorphous and complex concept which is not easily challenged because it is not readily empirically verifiable or easy to interpret. Reliance upon the auditor's state of mind and integrity as both guarantees and evidence of independence is an advantage to those who directly and most benefit from a belief in state audit's independence being
substantive; it is very difficult to refute the existence of independence. A state of mind cannot be measured with objective criteria nor cannot it be observed directly (Cook and Winkler 1976, p.46). It is only the actions of the auditors which can be observed. Sharaf and Mauntz agreed that

important as the concept of independence is to auditing, it is one of those elusive ideas difficult to reduce to an easily understood definition. Thus one searches in vain for a comprehensive authoritative statement of the meaning of independence in auditing (1960, p.49).

A form of independence which is largely guaranteed by the attitude or state of mind of the state auditor will depend very heavily upon maintaining the appearance of being independent. Appearances are not only desirable but must be maintained at all costs (Nichols and Price 1976, p.335). Most authors are agreed that the value of audit is based on the perception that the auditor is independent:

the conclusion reached by a knowledgeable observer in evaluating an auditor's relationship is the ultimate test of whether such a relationship would cause the auditor's appearance of independence to be impaired. Appearance is essential to maintaining confidence in independence (Cook and Winkler 1976, p.47; AUP 32, para.9).

Appearances and not the reality of independence will ultimately determine the credibility of and confidence placed in the auditor: the "general impression is what is carried to the public and to the people whom we audit. This is the whole role; there is an important concept in this" (Great Britain, 1981, PAC, Minutes of Evidence of D. Somers (from the Exchequer and Audit Departments), p.37; see also Shockley 1981, p.785). If cracks in the appearance of independence of the state auditor cause the target audience start to doubt the veracity of the auditor's independence the state auditor has little else to provide a convincing case otherwise, as shown in the following section.

In order to maintain the appearance of independence, the evanescent nature of independence requires recourse to be made to surrogate measures of independence,
prominent amongst which are professional restrictions on associations between the auditor and the auditee which influence the quality of ie. the confidence which can be placed upon, the auditor's reports. To ensure this, the Auditor-General should not only resist external political pressures but also give the appearance of not "being responsive, to the wishes of particular political interests" (Monaghan 1985, p.15). The Commonwealth Auditor-General has interpreted this as refusing any requests by the Executive for the Auditor-General to undertake any functions which were outside his clearly legislated mandate (see for example AAO Annual Report, 1984-85, p.51). Thus, requests to undertake specific enquiries, something which the United States General Accounting Office (GAO) would do, the Australian state auditor has seen as "inconsistent with the Auditor-General's independent role" (Monaghan 1985, p.15). The auditor must not get involved in providing advice on how auditee departments are to carry out their duties or participate in the management of an auditee (AAO, Auditing Standards 1987, paras.2.2.3.3 and 2.2.3.10).

Both the surrogates chosen for the qualities of independence as discussed above and the metrication of these have been determined by the discourse of independence. The discourse directs attention to qualities of audit and the auditor which are to represent independence. Those who manage the discourse therefore are able to engineer the dimensions of independence which set the boundaries of admissible discussion.

Appeals to the exemplary character of the state auditor by themselves are still not enough to instil confidence in the independence of the state auditor and his Office. In particular, legislation is needed to give form to the state auditor's independence. It is demonstrated in the section following that the contributions of audit legislation to beliefs about independence create the impression, or even confusion, that they are there to guarantee the independence of the person of the state auditor and his Office when it is only the former which receives any recognition in legislation. It is upon this mistaken belief also that the discourse of independence has relied.
Legal Interpretations of State Audit Independence

The state auditor's independence is said to be guaranteed by provisions of the 1901 Audit Act (AAO, Annual Report 1984-85, 1985, p.6). His statutory independence results from the quasi-judicial method of his appointment, payment and dismissal and his powers of investigation and reporting. The Audit Act of 1901 stipulates that the Auditor-General will be appointed by the Governor-General but is silent on the means with which prospective candidates for the position come to the notice of the Governor-General (s.3). By custom the Governor-General has appointed on the suggestion of the Prime Minister. Both these officers are members of the Executive: the Governor-General is the representative of the titular head of the Executive while the Prime Minister is appointed by the Governor-General. In addition, in Australia the central financial and co-ordinating departments have been extremely influential in the appointment of state auditors, invariably from their own ranks. There is at the very outset, therefore, a contradiction in the statutory independence of the state auditor which the Executive has preferred not to give prominence: the state auditor is appointed from and by the very group of whose activities he is to monitor.

Whereas the selection and retention of an auditor in the private sector is of crucial concern to the investing stakeholders, there is no evidence that the electorate's concerns and level of audit consciousness can be raised to the same levels over the selection and activities of the state auditor. If not for the press drawing the attention of the public to the more sensational findings, most of the work of the state auditor goes unnoticed by the stakeholders. In these circumstances reliance on the assurances of the state auditor that he acts independently of auditees, in the sense of substantive independence, is even more relevant in the public sector where there is no direct relationship between the selection of the auditor and interested third parties, in this case the electorate, and there is no opportunity to participate in the audit process. Thus, unlike the private sector where the auditor is appointed by a meeting of the
investing stakeholders of the firm, in the public sector the electors which comprise the stakeholders have virtually no input in the selection of the state auditor. The link between the electorate and state auditor selection is very tenuous indeed. Certainly it is the elected representatives of the majority party in Parliament which may be seen to act on behalf of the electorate in the selection of the state auditor but these are members of the Executive.

The method of appointment of the state auditor in Australia has been a source of continual ambiguity and confusion in the relationship of the state auditor to the Executive and to Parliament. At various times the state auditor has been referred to as a public servant (Lusher, Senate debates, 13 October 1981, p.1914); an "officer of the Crown" (Steele Craik reported by Lusher, Senate debates, 13 October 1981, p.1914) and an "officer of Parliament" (Robinson 1924, p.152; HR debates, 17 November 1978, p.26; Bowen, Deputy Prime Minister, HR debates, 11 May 1987, p.2933). This last description, despite high level Executive statements to the contrary, seems to have been the most popular conception of the state auditor's constitutional position. This has carried with it the implication that the state auditor works as a constituent element of Parliament; that he is to do Parliament's bidding. Such an interpretation, however, confused the fact that the state auditor for operational purposes had a closer relationship to the Executive. After nearly a century of state audit in Australia the Executive's role in the appointment of the state auditor still has the capacity to confuse even Parliamentarians (Senate debates, 9 October 1991, p.1672).

As an additional prop to independence, in the original 1901 Audit Act no retirement age was specified for the state auditor who was allowed to hold office "during good behaviour". This was subsequently modified in 1926 to age 65 (Act No.18, s.(3); s.(5A)). It was given to the Governor-General to dismiss the Auditor-General but only on the recommendation of both Houses of Parliament sitting in the same session (s.7). The Auditor-General, however, could be suspended by the Governor-General without
the prior approval of Parliament. Should the need for this arise, the Treasury (after 1978 it was the Minister for Finance) was also implicated for the Act required the Treasury to lay before both Houses evidence to support the Auditor-General's suspension (s.7(2)). Given that dismissal of a state auditor is hedged with these very public restrictions, it is imperative for the Executive to take great care in selecting a predictable, if not compliant, state auditor.

The statutory provisions covering the appointment, dismissal and payment of the state auditor when combined with assurances of the state auditor's personal integrity and objectivity have been held out by both the state auditor and the Executive to be sure guarantees of the independence of the Auditor-General and, by association, his Office (Lidbetter 1986, p.9; Monaghan 1985, p.13). Report 296 of the JCPA suggested that it was "meaningful to discuss the independence of the Australian Audit Office in terms of the independence of the Auditor-General" (1989, p.57). This implied that the independence of the Auditor-General and the Office were one in the same. However, the original audit legislation and subsequent amendments did not mention conditions of service or the independence of members of the Auditor-General's office, apart from noting that the Auditor-General had the power to appoint persons to inspect and audit accounts (s.11(1)). Therefore, there are no legislative provisions designed to protect the independence of the state auditor's staff. Their only protection has been that which might be reflected from the Auditor-General. In contradiction to the legislative protections for the independence of the person of the state auditor, the independence of his Office has not been real, substantive or readily apparent. INCOSAI in 1977 recognised that this was insufficient to ensure the independence of state audit. Instead, they concluded that independence of the state audit office "is inextricably linked to the independence of its members" (INCOSAI 1983, p.89). Nowhere is the importance of this more evident than in the manner in which the state auditor receives the resources for his Office.
STATE AUDIT FINANCES AND INDEPENDENCE

The greatest threat to the operation of an independent state audit office in Australia, which the Executive has not sought to highlight, has been the state auditor’s dependence on the Executive for the resources necessary to meet his audit mandate (see Royal Commission on Navy and Defence Administration, 1918, Special Report, 30 December; AAO, Fourth Submission to the Royal Commission on Australian Government Administration (RCAGA), 1974, p.2; AAO, Annual Report 1984-85, 1985, pp.6-7; JCPA 1989, chapter 2). For budget purposes the Auditor-General's Office, although not him personally, came under the control of the Department of Prime Minister and Cabinet (PM&C) until responsibility was passed to the Department of Finance in 1988. Therefore, "(l)ooked at idealistically ... (the Auditor-General's) independence from the Executive" has not been “total” (emphasis added) (AAO, Submission 3 to the RCAGA, 1974, p.3). Under the 1901 Audit Act payment of the Auditor-General, not his Office, was to be taken out of the hands of the Executive and Parliament by making a direct charge on the Consolidated Revenue Fund (s.4). This avoided the need for the salary of the Auditor-General to be dependent upon the generosity of either the Executive or the Parliament when the annual appropriations were laid before Parliament. His Office, however, was left exposed to the vagaries of the Executive's mercy. Despite what would seem the very obvious extent of the Executive's financial role in state audit they have been successful, until recently, in convincing interested parties that this is more than balanced and checked by the personal independence of the Auditor-General as guaranteed by relevant legislation and his own integrity.

To Normanton, control of the resources of the state auditor, a non-Executive body, by the Executive has been a "constitutional anomaly" (1966, p.374). In Australia this created a "contradiction in the arrangements whereby an important auditee (the Department of Finance) is the adviser to Government on the AAO's resources" (AAO,
Accordingly, the AAO strongly recommended that there was

a need for new arrangements to be formulated which, as a minimum, give the public greater scope through their elected representatives to influence decisions affecting the allocation of resources to the AAO, while retaining appropriate restraint on resource levels (AAO, 1989, *Response to Report 296*, p.11).

Senator Walsh, when Minister for Finance, made it very clear that the finances of the state auditor would continue to be treated by his Government like any other department: "neither the Auditor-General nor anybody else, as long as I am Finance Minister ... will be given ad lib access to the Government's bank account" (Senate debates, 26 November 1987, p.2479). He informed the Senate that his government was opposed to financial autonomy for the state auditor: the state auditor could only expect to have "functional independence" ie. not be subject to ministerial direction in the conduct and programming of audits, an interpretation which seemed to accord with that of Auditor-General Monaghan (JCPA, 1988, *Inquiry into the AAO*, Minutes of Evidence, p.444). Recent state auditors have recognised that the realities of government mean that the state auditor cannot expect to achieve absolute financial independence (AAO, *Annual Report 1984-85*, 1985, p.6; JCPA, 1988, Minutes of Evidence, *Inquiry into the AAO*, Monaghan p.552). The Executive would always need to control the total revenue raised and total expenditures (see Pois 1981, p.21). However, it wasn't so much a "blank cheque" which the state auditor has been seeking as more openness and consultation in deciding upon the resources to be made available to his Office (Taylor, Paper for the Senate, 28 August 1989).

Increasingly since 1988, in the absence of control over his Office's resources, the functional independence of the state auditor, as alluded to by Senator Walsh, has been seen as a hollow pretence (Stone, Senate debates, 26 November 1987, p.2911 and Bishop, 1 December 1987, p.1111). Both sides of Parliament have agreed that financial
control of the state auditor's Office by the Executive has provided it with the
opportunity indirectly, and thus unobtrusively, to influence (or tyrannise as Senator
Baume described the Executive's part in state audit) the state auditor's independence by
hampering his work (Watson, Senate debates, 10 December 1987, p.2880; Tickner,
HR debates, 6 April 1989, p.1153; JCPA, 1988, Minutes of Evidence, Humphrey,
_Inquiry into the AAO_, p.475; Baume, Senate debates 6 April 1989, p.1229). These
concerns were also voiced at the time in the community (_Australian Financial Review,_
Editorial, 1 December 1987). On other occasions when this implication has arisen, the
Executive has been quick to reassure in enduring terms that it would not use its
financial controls to

interfere unnecessarily in arrangements of staff ... The Auditor-General
has been placed by the Audit Act in a very strong position, and his right
to report at any time direct to Parliament is a sufficient safeguard
against undue interference. _Greater power seems neither necessary nor
desirable_ (emphasis added) (_Royal Commission on Naval and Defence

More than seventy years after the report of the 1918 Royal Commission on Naval and
Defence Administration the situation had changed very little. By the completion of his
short term as state auditor, Monaghan was disillusioned by Executive control over
state audit resources. In his submission to the 1988 inquiry into the AAO, he firstly
commended the Executive's departments on their co-operation and "the formal
recognition of the independence of the audit function". He then expressed grave
concern about

the determination, by the auditee, of the resource provision to the
Commonwealth's external auditor, and the consequent conflict of
interest which confronts the Department of Finance.

I had entertained the notion that, in a practical sense, there could be
conventional understandings which would ameliorate the impact of the
_in-principle_ anomaly. But experience during the 1986-87 budget
processes led me to conclude that I had been mistaken in the earlier
view.
My complaint was with the processes engaged in and attitudes expressed by the Department, and the ill that these bode for the AAO's future.

In its approach to the 1986-87 budget processes the Department seemed driven by its cash-saving mission, with little discernible regard to the importance of the external audit function ... (JCPA, 1988, Minutes of Evidence, Inquiry into the AAO, p.536).

Apart from uncertainty about the constitutional position of the state auditor engendered by the method of his appointment, as noted above, the apparent close relationship between the Executive and the state auditor has continued to sustain confusion amongst supposedly well-informed senior officers in government departments as to the role of the state auditor in departmental administration. The Senate Standing Committee on Finance and Public Administration in 1991 highlighted the confusion and "misunderstanding of the role of an auditor". They thought it should be made very clear to all auditees in the public sector that audit is not a service to management .... The purpose of audit is to provide an independent report on management, not a service to it. Management freedom should apply to management functions but the appointment of the auditor is the prerogative of the owners (Parliament) (Quoted during Senate debates, 17 June 1991, p.4846).

As a result of a very public disagreement with the Treasurer, John Dawkins, Auditor-General John Taylor in May 1993 observed that departments are not giving good advice about the independence of the Parliament's auditor. Departments seem to believe that I work for them and therefore I should be more circumspect. They are giving advice which is coloured by self interest; ... (they are) not interested in public exposure of their faults (Financial Forum, Vol.2, No.6, July 1993).

If the heads of departments and their staff can still be confused by the contradictions in the state auditor's mandate and independence, then the general public's understanding also should be cause for concern.
In light of the long historical association of the Treasury with the state auditor in Australia it is hardly surprising that the state auditor, despite the obvious resource limitations he has faced, has not always been insistent that the system should change. Auditor-General Steele Craik believed that "(g)iven the continued co-operation by the Public Service Board and the Treasury, I see no particular reason to urge any changes to the status quo" (AAO, *Fourth Submission to the RCAGA*, 1974, p.3). The AAO referred in its *Auditing Standards* in 1987 to this being a sensitive area in relationships between the Auditor-General and the executive ... In some degree, arrangements for the Auditor-General's resource provision may be related to the executive government's financial situation and general expenditure policies. As against that, effective promotion of public accountability requires that the AAO be provided with sufficient resources to enable the Auditor-General to discharge his or her responsibilities in a reasonable manner (para.2.2.2.5).

Throughout the eighties the Senate became increasingly concerned about encroachments on the state auditor's independence through pressures on his Office's resources. As the antipathy of the Executive has increased towards the state auditor so the Senate has risen as his effective and watchful champion. This has caused a shift in the fulcrum of Executive accountability from the House of Representatives to the Senate. Historically the proportional representation system of voting by which the Senate is elected has meant that the Executive has not been able to control the Senate on the same consistent basis as it has the Lower House. It is in the Senate that the remnants of parliamentary control have found their last and often beleaguered bastion. In particular, the growth of the Senate's committee system has provided the Senate with the organisation and the bite it required to hold the Executive to account. The Coalition Opposition in the Senate maintained that
a strong and independent Auditor-General and Australian Audit Office are fundamental to the credibility of audit opinions and the effectiveness of the Auditor-General and his staff. Independence has diminished practical value unless the Auditor-General has the human and material resources to exercise his responsibility (Watson, Senate debates, 6 April 1989, p.1107).

The most worrying aspect of resource limitations on the ANAO and control of resource decisions by the ANAO's largest and most important auditee, the Department of Finance, has been the potential for this to be used to reduce the independence of the Auditor-General by limiting the number and type of audits he is able to conduct. Certainly this had been the case, the JCPA found in 1989, with the AAO's capacity to carry out discretionary efficiency audits (Report 296, p.62). The Committee pointed out that the AAO was the only department in a relationship of dependency with the Department of Finance (DOF) which had the responsibility to examine DOF's efficiency and effectiveness. In the circumstance it was easy to understand why Auditors-General tend to make mild statements in their reports on financial statements prepared by the Minister for Finance. Also of note is that no Auditor-General has ever subjected any part of the Department of Finance to an efficiency audit (JCPA, Report 296, 1989, p.68).

It has been hazardous for the Auditor-General to subject the auditee from which his Office gains its sustenance to sustained, detailed and frequent investigation. Auditor-General Monaghan complained about "an inherent conflict of interest in the present arrangements, where the Department of Finance is the main protagonist in the game" (JCPA, 1988, Minutes of Evidence, Inquiry into the AAO, p.391). "For this reason", the JCPA concluded, "it was wrong in principle for the Department of Finance to continue to have the final powers of advice on the Australian Audit Office ..." (JCPA, Report 296, 1989, p.68).

As the demands on his Office have grown, particularly in performance auditing, the Auditor-General has been forced to confront the Executive for the long neglect of state audit resources. At the same time he has exposed the inadequacy in the newly

CONCLUSIONS

A stronger state auditor is not something which members of the Government contemplate with enthusiasm, and something which the Opposition with its eye on gaining office might be aware of pushing too hard. The ‘trick’ is for the Executive to come up with the means of creating a convincing case for the independence of the state auditor without actually aligning the image with a corresponding substantive basis. In other words, the Executive wants the state auditor to act independently but not to be independent. It wants the state auditor to carry out his work of certification but does not want this to be beyond the control of the Executive. In the meantime, the ability of the state auditor to ensure that the Executive in all its guises is held accountable continues to suffer. Politics is above all else characterised by conflict and competition. Political actors do not engage in political competition with the intention of being content with grasping the prize for a limited period. The aim is to take the citadel of power and to fortify it against all forces which attempt to usurp power. This may also call for the incumbent to control any participants in the political process, no matter how benign their motives, which could prove to be sources of threat by being useful to the opposing forces.

The way ahead for the present Auditor-General promises to be even more difficult than over recent years. The present Government has shown, especially in light of the stresses which recent audit reports have placed upon the Government, that it will only reluctantly improve the conditions impinging upon the independence and therefore
effectiveness of the state auditor's Office. The Executive's historical neglect of the audit is now out-of-step with developments in other countries where state audit has become an essential component in strengthening accountability for efficient and effective performance. Mounting pressures for change indicate that it seems unlikely that the Australian Government will be able to hold out much longer and continue to withhold from state audit the substantive independence which it has always been denied. With substantive independence should also come the conclusion to the long charade which has been the discourse of independence in Australian state audit.

Notes

1 Unless indicated otherwise, the term state audit will refer to audit as practiced by the auditor of the central government. In Australia this is the Commonwealth Auditor-General.
2 Senate debates and House of Representatives debates refer to the Australian Commonwealth Parliament.
3 Senator Stone, formerly Secretary of the Treasury, referred to the British Audit Act prior to the audit reforms of 1983 as "virtually identical with our present system" (Senate debates, 1 November 1989). Auditor-General Steele Craik noted that most of the features of his office compared very closely with that of his British counterparts (see Lusher, HR debates, 13 October 1981, p.1915).
4 Prior to 1988 the ANAO was known as the Australian Audit Office (AAO). Throughout this paper ANAO will be the preferred term.
5 In Dicken's Great Expectations, the wedding cake kept for 50 years by the jilted Miss Havisham crumbled to dust at the first touch.
6 State audit is composed of two elements: the state auditor, called the Auditor-General in Australia, and the officers of the state auditor who carry out the audits.
7 The masculine form of address in relation to the Auditor-General will be used because no women have been appointed to this position.
8 Fay's 'self estrangement theory' determines that most people are unaware of the dichotomous existence they experience: that "human existence is split into two spheres, the manifest/ordinary and the hidden extraordinay" (quoted in Dillard 1991, p.15). The former is seen and sensed. The 'hidden' consists of those belief systems, conventions, social structures and practices which by their ancestry and diffusion remain unchallenged. These constitute the substance of a discourse. Kress (1985) defines discourses as "systematically-organised sets of statements which give expression to the meanings and values of an institution" (p.6). Discourses provide the means to construct a persuasive reality through their unobtrusive ability to define, describe and delimit what it is possible to say and not possible to say (and by extension- what it is possible to do and not to do) with respect to the area of concern of that institution ... A discourse provides a set of possible statements about a given area, and organises and gives structure to the manner in which a particular topic, object, process is to be talked about. In that it provides descriptions, rules, permissions and prohibitions of social and individual actions (Kress 1985, pp.6-7 in Yeatman 1990, p.164).
9 Mautz and Sharaf in their classic study of audit referred to audit independence having three parts: programming independence, which provides freedom from control or undue influence in the selection of audit techniques; investigation independence, which gives the auditor the freedom to select audit targets and reporting independence, whereby the auditor is not inhibited in the reporting of the results of audits (see Knighton 1979. p.6).
The ANAO in its *Auditing Standards* also refers to functional independence but does not define the term (1987, s.2.2.2.9). This is the only instance of the use of the term in the *Standards*. In an earlier section of the *Standards* the ANAO does note that "the Auditor-General would not look to the Parliament for specific guidance in the programming, planning and execution of audits" (s.2.2.1.3). The reader is left to tie the term 'functional independence' with this definition of the state auditor's independence. Auditor-General Monaghan later uses the term in his submission to the JCPA *Inquiry into the AAO* in 1988 (Minutes of Evidence, p.535).


For example Steele Craik (Auditor-General 1973-1981) came from the Treasury, John Monaghan (1984-1987) and John Taylor (1988-) from, at various times, the Public Service Board (in Monaghan's case he was a Commissioner of the Board) and the Department of Prime Minister and Cabinet (Taylor, JCPA, 1988, Minutes of Evidence, *Inquiry into the AAO*, p.569).

Sir Robert Menzies, as Prime Minister, thought it clear that the ... Auditor-General is not an officer of the Parliament in the sense that he is subject to the direction of either House, or in the sense that an attempt to obstruct him in the course of his duties would constitute a contempt of either House (HR debates, 5 November 1952, p.3).

In 1988 these responsibilities were assumed by the DOF at the urging of the Auditor-General. He had argued that by separating consideration of his resource needs from that of the Prime Minister's portfolio his Office would be less likely to suffer in the competition for resources. His hopes of more equitable and liberal treatment under the DOF were soon shown to be unfounded. (JCPA, Report 296, 1989, p.67). PM&C was still responsible for administering sections 3 to 9A of the *Audit Act* which cover the appointment of the Auditor-General.

Attacks such as this by Monaghan, and earlier by Brigden (see *Annual Report of the Auditor-General 1983-84*), were virtually unknown prior to the problems experienced with the introduction of efficiency auditing between 1978-84 (JCPA, 1988, Hewson, Minutes of Evidence, *Inquiry into the AAO*, p.604).

It also worried the British PAC in 1980 that "however independent of Government the Exchequer and Audit Department may consider its audit functions to be, the department cannot be truly independent of the executive if its numbers and gradings are controlled by the Civil Service Department" (the equivalent of the Public Service Board in Australia) (Great Britain, 1981, *Inquiry into the Role of the Comptroller and Auditor-General*, p.Li).
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