

Response Paper: Week Five

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On Whose Account?

“...a prince who will not undergo the difficulty of understanding must undergo the danger of trusting.”¹

A paradox lurks at the heart of self-government. The more perfectly representative a legislature is, the larger and more heterogeneous it becomes. As legislative size and diversity increase, there is a commensurate increase in the time required to come to a decision. This reduces the scope of concerns that can be considered in detail by a democratic legislature. Consider the contrast with a monarch or autocrat, who need not deliberate to come to a decision but whose time and attention are severely limited. In the one case, we find a unitary power of decision but reduced capacity, in the other we find vast capacity but fragmented ability to decide. In both cases, reliance on others will be necessary, either because time and attention are always in short supply or because the ample time and attention available must be squandered in endless deliberation. Political leaders must rely on agents to carry out their objectives.

Accountability as a political and administrative mechanism can be defined as “an institutional relation or arrangement in which an agent can be held to account by another agent or institution.”² In a somewhat superficial etymological exploration, Bovens et. al trace the roots of accountability to the process of rendering accounts in tax payment.³ However, they do not take pains to distinguish between accountability and the related concept of accounting. It may be true that the subjects of William I were accountable to him for payment of their annual *assizes*, but this is not a particularly helpful elucidation of the concept of accountability. Philip Tetlock is

¹ George Savile, Marquess of Halifax, *Political, Moral and Miscellaneous Reflections*, Oxford Clarendon Press (1750-rep. 1912) p.214

² Bovens, Schillemans and Goodin. “*Public Accountability*.” The Oxford Handbook of Public Accountability (2014) citing Day and Klein 1987; Scott 2000; Mulgan 2003; Goodin 2003; Aucoin and Jarvis 2005; Bovens 2007; Philp 2009.

³ Bovens, Schillemans and Goodin. “*Public Accountability*.” The Oxford Handbook of Public Accountability (2014) p.3

closer to the mark, defining accountability as “the social-psychological link between individual decision-makers on the one hand and social systems on the other.”⁴ In a similar vein, Grant and Keohane introduce the useful distinction between two different parties entitled to hold decision-makers to account: performance of those who wield power may be evaluated by those affected by the decision *or* by those who originally delegated the administrative authority.⁵

Fundamentally, as Boven et. al write, accountability involves the expectation “that one may be asked, often by an authority or one’s superior, to justify one’s thoughts, beliefs, or actions.”⁶ They further distinguish public administration’s version of accountability by emphasizing its focus on systemic and structural forms. Boven et. al might have profitably discussed the many traditions of officials rendering account to their constituents, such as the Athenian *euthynai*, wherein officials were required to produce and explain their accounts while in office. Tyrannical power, incidentally, was said to be “*aneuthynos*” literally unaccountable.⁷

Gary Cox examines the scarcity problem that leads in the first instance to the empowerment of officials, and concludes that this delegation is forced by the scarcity of floor time in (modern) democratic legislatures. Solving this scarcity problem requires legislatures to evolve in inegalitarian directions. He argues that certain features of modern democracies are evolutionary responses to the problem of control, such as the emergence of parties and agenda-setting offices. Cox makes the useful distinction between veto power and proposal power, revealing a tradeoff between gridlock and external costs.⁸ Fundamentally, if legislatures delegate

⁴ Bovens, Schillemans and Goodin. “*Public Accountability*.” The Oxford Handbook of Public Accountability (2014) p.4, citing Tetlock 1992, p. 337.

⁵ Grant, Ruth and Keohane, Robert. “Accountability and Abuses of Power in World Politics.” American Political Science Review, Vol. 99 No. 1 (February 2005) pp. 31-32.

⁶ Bovens, Schillemans and Goodin. “*Public Accountability*.” The Oxford Handbook of Public Accountability (2014) p.4

⁷ Herodotus, *The Histories*, 3.80.3

⁸ Cox, Gary. “The Organization of Democratic Legislatures” in The Handbook of Political Science, Oxford University Press (2006) p.149.

negative agenda power they proliferate veto players, and if they instead delegate positive agenda power they take on external costs such as overspending and mistaken decisions. This analysis bears out Lord Acton's assertion – delegation is risky.

McCubbins, Noll and Weingast consider how legislatures might nevertheless retain political control over their bureaucracies. They restate Acton's central dilemma in terms of information asymmetries: "the legislature must sacrifice some control to capture the benefits of specialization."⁹ As they formulate the problem, officials' policy preferences "are often different from those of political leaders, and, if they have unique expertise, the former may use their superior knowledge to advantage themselves rather than to carry out the latter's policy wishes."¹⁰ They explore structural and procedural remedies, setting out positive and negative forms of agenda control: proposal control and reversion control. Proposed legislation becomes policy when it is preferred to the potential reversion.

McCubbins et. al make the cogent argument that proliferation of veto points increases the power of agencies, and they propose introducing institutional checks both *ex ante*, by (for example) delegating power among multiple agencies and *ex post*, by direct legislative sanction.¹¹ They also recommend enfranchising constituents in the administrative process, possibly by giving important constituents seats on agency boards. They warn, however, that "elaborate procedures with stiff evidentiary burdens for decisions and numerous opportunities for seeking judicial review before the final policy decision is reached will benefit constituents that have

⁹ McCubbins, Noll and Weingast, *Political Control of the Bureaucracy*, in *The New Palgrave Dictionary of Economics and the Law* (2002) pp. 1450-1455.

¹⁰ McCubbins, Noll and Weingast, *Political Control of the Bureaucracy*, in *The New Palgrave Dictionary of Economics and the Law* (2002) pp. 1451.

¹¹ McCubbins, Noll and Weingast, *Political Control of the Bureaucracy*, in *The New Palgrave Dictionary of Economics and the Law* (2002) pp. 1453.

considerable resources for representation,”¹² and they suggest as palliative measures the subsidizing of other representation and provision for independent staff analysis within the agency. They introduce what they call the mirroring principle – that the political forces that gave rise to a particular bureaucratic agency should be “baked in” to the agency’s structure, which will “endure long after the coalition behind the legislation has disbanded.”¹³

Undemocratic delegation of power to officials may be unavoidable in a modern state, but the solutions proposed by McCubbins and his co-authors seem worse than the cure, in the sense that they exacerbate this democratic deficit by privileging administrative stability over expression of the popular will. Consider the mirroring principle. By perpetually preserving a fleeting legislative majority in bureaucratic amber, the authors privilege efficiency and stability over a future legislature’s power of decision. Consider also their preference for *judicial* supervision of administrative agencies, inviting suits from the parties affected by administrative action. Legal process is an extremely costly and inefficient way to resolve disputes – consider the positional use of environmental impact statements to endlessly delay sorely-needed infrastructure projects. McCubbins et. al are effectively taking as given that the political process cannot accommodate these disputes. This seems unduly pessimistic, even for political scientists.

John Stuart Mill seems (uniquely) to have grasped the full picture. Mill insists that ultimate authority is unitary, and that the power of decision cannot be delegated. He argues that the unique competence of legislatures is the power of deliberation, and that “the only task to which a representative assembly can possibly be competent, is not that of doing the work, but of

¹² McCubbins, Noll and Weingast, *Political Control of the Bureaucracy*, in *The New Palgrave Dictionary of Economics and the Law* (2002) pp. 1454.

¹³ McCubbins, Noll and Weingast, *Political Control of the Bureaucracy*, in *The New Palgrave Dictionary of Economics and the Law* (2002) pp. 1455.

causing it to be done.”¹⁴ He even carries this principle to the making of the laws themselves, advising the nomination of a committee along the lines of the Athenian *nomothetae* to draft laws in detail and present them to the whole body. Writing that popular assemblies are “radically unfit” for governing, Mill argues that the proper purpose of a representative assembly is to “watch and control the government” (including administrative agencies) and to take action to discipline rogue agents. For Mill, the central objective seems to be to balance the benefits of popular control with the ever-increasing requirement for skilled legislation and administration.¹⁵ His solution, as we have seen, is to separate these functions by disconnecting control and criticism from the actual conduct of affairs.

Mill’s argument prompts profound reflection. One is tempted to respond that severing action from control is bound to produce a substantial democratic deficit, citing such examples as the unaccountable European Commission or the federalization of serious policymaking in the United States. However, it seems entirely possible that these grants of administrative power were simply not coupled with appropriately democratic mechanisms of supervision and control. As we have seen, Cox’s scarcity problem and Acton’s dilemma imply that governments *must* delegate. Mill’s scheme seems to be the most defensible manner in which to theoretically distinguish the functions that ought to be delegated and those that ought to be retained. Whether the feeling of popular control can subsist without genuine collective action remains an open question.

¹⁴ Mill, John Stuart “Considerations on Representative Government” in “Essays on Politics and Society” p.430.

¹⁵ Mill, John Stuart “Considerations on Representative Government” in “Essays on Politics and Society” p.433.