

Memo for the November 17 Accountability Workshop: Global Administrative Law Seminar.

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November 1, 2006

Unfortunately, I had a previous commitment that I could not escape, and therefore must miss the Accountability Workshop. In this memo, I share some comments on Richard Stewart's paper that I sent to him in September. The fact that these comments originated in a personal letter to Professor Stewart accounts for the form and the tone.

Your paper on accountability and the discontents of globalization is in my judgment a major piece of scholarship. If you were writing for political science journals, it would provide the basis for two important articles, one on accountability as a concept for the analysis of global governance and the design of institutions, the other on “adversary legalism,” favored in the US, in contrast to the EU emphasis on corporatist practices of consultation and closed deliberation. I am going to focus in this letter on the first of these two themes, as developed in Part II of your paper, with only a few remarks about Part III.

The first thing to say is that I think you are right to limit the use of the term, “accountability,” which has become such a fad that it can mean everything or nothing. Its use is a prime example of what Giovanni Sartori referred to long ago as “concept stretching.”¹ The coherence of the concept gets lost in the process – technically, the “unit homogeneity” of the phenomenon is lost, which makes it impossible to generalize about its features or causes in a meaningful way. It is like “anti-Americanism,” which I have recently been studying. As you note (and you are scrupulously accurate and fair to our argument), Grant and I tried to limit the use of the term, by contrasting it with checks and balances, balance of power, and other ways of limiting abuses of power. You go further, making accountability refer to highly institutionalized situations in which account holders have specific entitlements. So peer, market, and reputational accountability don't qualify. Not surprisingly, although I am sympathetic in general to your desire to define terms precisely without undue conceptual stressing, I have some questions. They fall into two categories: the status of definitions, and the role of dichotomies.

¹ Giovanni Sartori, “Concept Misformation in Comparative Politics.” *American Political Science Review* 64 (1970): 1033-53.

Definitions

I am a nominalist with respect to definitions, like Humpty-Dumpty. “When I use a word,” he said, “it means exactly what I want it to mean, neither more nor less.”² So I would not have said, as you do on the top of p. 19, that transparency, reason-giving, and expanding participation “are not” accountability mechanisms. To me, saying this reflects an essentialist fallacy. One way to avoid essentialism is to follow ordinary language. But ordinary language could well sustain the claim that these mechanisms should be considered as accountability mechanisms: after all, you complain about the widespread abuse of the term! Another, which I think you must rely on, is the alleged superior analytic utility of a limited definition of accountability. Your definition may be better, but in my view it cannot be said to be “correct.”

You make a strong utilitarian argument for the value of a conception of accountability limited to four mechanisms deriving from delegation (electoral, fiscal, supervisory, and hierarchical) and one institutionalized in law (legal). Indeed, there is a set of features that these mechanisms have that is not shared by market, peer, or public reputational accountability, and one of the strengths of your paper is that you identify the core of this set: “substantive entitlements” (p. 24), specified as: 1) a specified accountant and account holder; 2) specific requirements to render account; and 3) a right of the account holder to evaluate and impose sanctions. In what Grant and I called market, peer and public reputational accountability, such a core does not typically exist, whereas it does exist in the mechanisms to which you wish to reserve the term.

Wisely, you do not discard the other mechanisms, but put them in a different category of “other responsiveness-promoting measures.” This gives you three broad categories of action to overcome the broad problem of disregard: inclusion in decision-making, accountability mechanisms, and other responsiveness-promoting measures. My own preference would be to speak rather of decision-making inclusion, “specific accountability,” and “diffuse accountability.” Specifying two varieties of accountability seems truer to me to ordinary usage, it points out the similarities as well as differences between the latter two categories of mechanisms, and it avoids the awkward phrase, “other responsiveness-promoting measures.” It also creates a parallel with discussions of specific and diffuse reciprocity, which turned out to be a good way of making similar distinctions with respect to that concept – rather than limiting reciprocity to interactions between specified individuals or other entities.³

The “bottom line” here is that I agree generally with the distinction you so cogently draw between accountability-type situations involving specific entitlements and those without such entitlements; but I would rather create two distinct types of accountability than relegate market, peer, and public accountability to a category of “other responsiveness-promoting measures.” This disagreement is really not very

² Lewis Carroll, *Through the Looking-Glass*.

³ Robert O. Keohane, “Reciprocity in International Relations.” *International Organization*, vol. 40, no. 1 (Winter 1986): 1-27.

important substantively, although if you accept my argument below, you might be more inclined to my nomenclature.

Conceptualizing: Dichotomies and Continua

More important, in my view, than definitions is how to think about how the categories that we create relate to one another. When you mentioned “substantive entitlements,” I asked myself: what is the key dimension along which (I will use my language now) specific accountability and diffuse accountability differ? I believe, perhaps because I am a political scientist, that the key dimension of difference has to do with power – that is, with resources that can be used to facilitate or constrain action by others. If so, then the continuum I am looking for relates to how much effect the account holder can have on the accountor (your terms) by providing or withholding resources. This puts hierarchical, supervisory, fiscal and electoral accountability, along with legal accountability, potentially at the strong end of a continuum: at the limit, withholding these resources can eliminate the role played by the accountor (e.g., depriving him of office) or prevent him from taking effective action. Peer, market, and reputational accountability – the diffuse forms – constrain the accountor but do not remove him from his role, nor do they necessarily prevent him from acting.

Notice that this is an ideal-type analysis, which I think is an advantage. Some examples of supervisory accountability may be weak – only constraining the accountor to some extent. Some examples of reputational accountability may be strong – removing legitimacy and making the accountor helpless. But the modal situations are different.

This conceptualization has the big advantage of refusing to reify the various types of accountability. It makes it clear that we are talking about a continuum with modal mechanisms of different types at different points on it. But we are not talking about “all or nothing,” and we do not exclude the possibility that in a given case, a normally weaker form of accountability can be more effective than a normally stronger one. Tenured academics, to take our own case, are more effectively held accountable through peer review and reputation than through supervisory or fiscal mechanisms. The danger with sending up a dichotomy – even if we used my terms of diffuse and specific accountability -- is that it could lead us to assume, for instance, that supervisory mechanisms are *necessarily* more effective than reputational ones. Relegating reputation, markets, and peer pressure to “other measures” only accentuates the problem.

I think that such a conceptualization would help you on p. 24. You acknowledge that the argument to consider an institutionalized package of “responsibility-promoting” arrangements as an accountability mechanism is “seductive.” But while appearing to be seduced, you pull back because you have to “draw the line” somewhere (p. 24). Yet the inclination to “draw the line,” however natural, appears arbitrary. Why draw it there? If we think of the concepts as displayed along a continuum, we put less weight on any given break-point, and the arbitrariness is thereby reduced.

Final remarks

I admired your argument in Part III, learned from it, and want to learn more. These are important questions you are raising, without obvious solutions. I only have one caution for you, which refers to p. 40, especially fn. 113. The fact that Commission proposals are nearly always ratified without change tells us *nothing* about the effect of the deliberative process. In equilibrium with full information, this is what we would always observe, due to the law of anticipated reactions. The Commission presumably canvasses opinion and listens to discussions and, in light of these deliberations, draws up its proposal so that it will command widespread support. Its proposal need not necessarily be what the Commission prefers: the Commission will put up the best proposal (from its standpoint) that will pass without significant change.

In any event, your paper is very cogent, substantive, and thought-provoking. I think that the idea that Benedict Kingsbury shared with me today, of having four or five specific examples against which to test various conceptions of accountability, provides an excellent way to proceed. Once again, I regret not being able to be at the November 17 seminar, but I look forward to hearing about the discussions.