
Political Accountability

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INTRODUCTION

Accountability as a concept is much used in every day commentary on politics.

Sometimes it is used in a specific sense to refer to the accountability of a person or institution for a particular end to another person or institution.

Sometimes it is used in the general sense to refer to the accountability of a person or institution to "the people" or to a set of values said to be integral to our democratic system, most notably honesty, openness and fairness.

It is often used in the context of the specific rules said to apply in the Westminster system of Government through collective and individual ministerial responsibility. Indeed, much of the importance of the concept is lost when it is treated only in this context as too much emphasis tends to be placed on the events which one might call "crises" (Votes of Confidence, Supply crises, Ministerial resignations or Government failures) rather than on the business of government where the real core of accountability is carried out on a daily basis through the delivery of services and programs.

There are many rules associated with accountability. Some relate to the lines of accountability (for example, the Government is accountable to the Parliament and the People). Some relate to the purposes of accountability (for example, the Government is accountable for its conduct and for the results it produces).

The content of these rules may be embodied in legislation or regulations or it may be considered through the prism of conventions, expectations or standards said to exist as principles of good government.

When it comes to agencies of accountability the matter is complicated further as we can note the existence of formal agencies such as the Parliament and the Courts and informal agencies such as the Media and the Political Parties.

When all of these definitions and distinctions are brought together we see a case for a particular type of government, one that is both responsible and purposeful. At one and the same time it is a case for democratic government, limited government and principled government. That it is a theory of politics and not just a set of organising principles should never be forgotten.

Note, however, that it is not a theory of no government or weak government. The Executive Government (Political and Administrative) is a major component of the system whose strength and integrity is important. Good systems of accountability sensibly applied enhance the authority of government and thereby give strength to government.

THE LINES OF ACCOUNTABILITY

With these general thoughts in mind let us move to the Australian system of government as it applies at Federal and State levels.

We can ask the question: is there a Canberra Model of power and responsibility? Or, should I say, being a strong supporter of the role of our State Governments: is there an Australian Model of power and authority?

Let me begin by looking at the lines of accountability. In doing this one can look at some simple facts:

- The People elect the Parliament from which comes the Government,
- The Parliamentary Political Party elects the Leader who becomes the Prime Minister (in the case of the A.L.P. the Parliamentary Party also elects the Ministry), and
- The Government appoints its own political staff but inherits a public sector where a good many of the senior positions, if not all, will have been filled by its predecessor.

Does this mean, then, that -

- The Government is accountable to the Parliament and People, and
- The Prime Minister - Premier is accountable to the Parliamentary Party.

Yes, it means all of these things, but we need to go further in looking at how the realities of power actually determine the way the accountabilities operate.

In effect, the Prime Minister - Premier is the lynch-pin of the system in terms of real power and authority. The Leader gives direction to the Government in the decisions that are made and, in effect, has power over the positioning and future of Ministers.

It is not surprising that this is the case. It is the very nature of politics and the media to describe governments with reference to their leaders. They are the focus of attention and are accountable on a day-to-day basis for the overall performance of the Government, its Ministers and its Agencies.

A good deal of modern government involves coordination across the agencies and in most cases of political significance this role falls to the Prime Minister or Premier and his or her department. To be Leader is to be "chief executive officer" of government priorities and process, not only within the Cabinet but also within the Government generally.

This political focus has been backed with extra administrative support to coordinate Cabinet and policy development and to manage communication within government and between the Government and the people. Media management has become a highly centralised part of government with strategies developed for rapid response as well as the projection of government priorities in an orderly way. It is inconceivable that the Prime Minister or Premier would "contract out" this most important function to another part of government.

What of the public sector chiefs? Are they accountable to the Government of the day? Over time they will be reappointed, replaced or relocated subject to rules that vary from jurisdiction to

jurisdiction but which do give the government of the day the final say. No longer does Australia have the all-powerful Public Service Commissioners of the past.

Although formal consultation with Ministers may be required and recommendations may come from outside the political executive, it is the Prime Minister or Premier who has the final say and to whom the chief executives (and chairpersons of boards) are ultimately responsible.

In effect the most important parts of the Executive Government in Australia at both Federal and State level are accountable to the Leader.

To whom, then, is the Leader accountable?

Reference to the Political Party in Parliament is not particularly helpful even though that is where the election takes place. Once elected enormous power goes to the office of Leader and the Parliamentary Party, like the Government generally, will look to the Leader for direction and guidance. With this power goes a degree of freedom in respect of policy and politics.

The fate of Prime Ministers and Premiers is largely in their own hands until Election Day. It is their role in our system to manage the accountabilities about which I talked earlier. They provide the definition and features of their own Government by the decisions they make and the processes they follow in making them.

THE RULES OF ACCOUNTABILITY

None of this, however, is done within a vacuum. There are other centres of power and authority in our system which play an important role in the accountability process.

There are the rules of accountability themselves:

- The laws, be they statute or common law,
- The conventions said to be necessary for our system to operate,
- The various codes and disciplines taken on board by the Government, such as Ministerial Codes of Conduct and Financial and other Performance Targets, and
- The expectations and standards that people have about government and its results, including ethical standards.

A distinguishing feature of the Australian system of government is the existence of a written constitution and the provision for judicial review. Scope for challenging legislation or decision has been expanded with the High Court's view in various free speech cases that responsible and representative government is "implicit" in the Constitution and provides a limitation on legislative and executive power. Similarly we have seen rulings that contain an implied guarantee of procedural due process.

All of this has meant that our Courts are well and truly a part of the political process and can be brought into play by the various antagonists. Their interpretations of the Constitution provide an element of uncertainty for the Executive in its decision-making.

The role of conventions in the system has been a matter of some controversy. In recent years we have seen some of the conventions compromised in the interests of others. For example Cabinet

confidentiality has been cracked open by the decisions of various Commissions of Inquiry determined to get to the bottom of matters of interest referred to them.

At the same time we have seen different interpretations of conventions depending on the circumstances. For example, individual ministerial responsibility has occasionally been interpreted to mean that Public Servants should not answer questions asked by parliamentary Committees of Inquiry. On this view Public Servants may very well be responsible for much that happens in their departments but they are not responsible to the Parliament. However, in saying it is the Minister who is solely answerable is not to say that he or she is solely responsible for what goes on within the Department!

The codes and disciplines governments apply to themselves are also subject to interpretation in particular cases but they do provide a benchmark around which accountability requirements can be debated. This is not just the case with Ministerial Codes but also with the range of financial and performance targets Governments now set for themselves.

Finally there are the expectations and standards that exist within the community not just in respect of what we may call public behaviour but what might have been seen in earlier days as "private" behaviour. Even unwritten moral codes are the basis for judgements about misbehaviour and possible resignation or dismissal of Ministers or Public Servants.

In the system overall these rules - be they legal or conventional and be they written or unwritten - act as frameworks for debate and judgement. Those judgements are being made all the time by the various agencies of accountability, be they formal or informal.

THE AGENCIES OF ACCOUNTABILITY

Of the formal agencies the following are important:

- Electoral Commissions,
- The Parliament, including both Houses in the case of a bicameral system,
- The Police Service,
- The Courts of Law and various Tribunals,
- The accountability agencies of Parliament including Corruption and Misconduct Commissions, the Ombudsman, the Auditors-General, Public Service Standards Commissions, and Freedom of Information Commissions,
- Various Commissions of Inquiry, including Royal Commissions established from time to time, and
- The more recently established Independent Regulators.

Under the Westminster Model the Ministers are individually and collectively responsible to the Parliament. Whilst this provides a useful framework within which to understand the formation and potential resignation of our governments it tells us little about the actual dynamics of power and accountability.

Already I have noted the pre-eminent position of the Prime Minister and Premiers within the Governments they lead. They are the foundation stone for accountability within the Executive Government. This being said it is necessary to find out what influences them (and who influences them) in their judgements. Any degree of inevitability in respect of their decisions will be influenced not only by the existence or not of legality in the behaviour being judged but also by considered judgements about the "politics" of the situation.

Australia is unique in that its elections are conducted and supervised by independent Electoral Commissions and voting is compulsory. The voters do elect the Parliament and Governments have to have an eye on the impacts of their initiatives not only generally but also in particular seats and regions.

Australia's bicameral Parliaments (with the exception of Queensland and the Territories) allow for different accountabilities given the presence of powerful Upper Houses within which Governments don't always enjoy a majority. The conflicts between the Government and Upper Houses over questions relating to Supply have been particularly dramatic and also illustrative of the impotence of so-called "conventions" when confronted with the reality of power and politics. Even in the absence of a Supply issue Governments have to be responsive to Upper Houses where they need the support of other Parties or Independents to pass legislation.

Although it is less common these days our Police are often put on the spot politically when claims of illegality are made about Ministers or Public Officials. It is less common because of the range of investigatory agencies that now exist in respect of political activity and public administration. There are Corruption Commissions which also investigate improper conduct (in Queensland, New South Wales and Western Australia) Auditors-General (who now look into the general effectiveness of government programs as well as financial accountability), Public Sector Standards Commissioners with a broad Terms of Reference into public sector activity if not Ministerial performance, Ombudsmen and Freedom of Information Commissioners.

These bodies have strong powers of investigation given by Statute and their Reports are given serious treatment within Parliament and the Media. It is interesting to observe that the level and intensity of accountability that exists in the three states that have Corruption Commissions is significantly greater than in the Commonwealth or the States without such Commissions.

The same applies to Commissions of Inquiry, usually set up to examine system failures or general areas of public administration and service delivery. They have sometimes used their authority to penetrate behind the screen of Cabinet confidentiality.

What all of these investigative bodies have shown is not only that Governments can be subject to intensive investigation but also that any notion of bureaucratic anonymity has well and truly passed.

Ministerial responsibility has also been undermined by the development of independent Regulators set up to ensure fair pricing and open access in respect of our major infrastructure even if some of it is still publicly owned and operated. Their independence from Ministers and what it means will be canvassed later in the paper.

This takes us to various Courts and Tribunals which can review both legislation and administration according to a wide range of principles from the Constitution, other Statutes or the Common Law. Our Courts and Tribunals are not only part of our political system in a formal sense, they are also

involved in decisions that have wide- ranging political implications for Governments and Public Servants. Decisions related to fairness and due process, anti-discrimination, racial tolerance, Native Title etc. All have a significant political impact.

Just to have a system with a written Constitution and a High Court creates a culture of judicial review. Debates about whether or not Parliament is ultimately sovereign are merely abstractions if they don't take into account the powerful and practical reality of the separation of powers in the Australian system.

Whilst these accountability agencies have enormous power and authority in our system it is often the case that the Executive Government will take them on by appealing to higher authorities in the case of court or tribunal decisions or ignore their findings if they believe them to be unrealistic and unachievable. It all depends, of course, on whether or not it is a question of legality as opposed to convention or policy.

Of the informal agencies, we should mention the following:

- The Political Parties and their supporting interests,
- The Media,
- Opinion Polls,
- The public as customers or clients, and
- Political activity generally and in all its forms.

Our Political Parties are the great engine rooms of politics. They provide the politicians from whom the Leaders are selected. They provide coherence to the process so that voters can make informed choices about people and policy. They ensure discipline within Parliament and by so doing give the Executive a chance to plan for the future and act decisively when needed.

Given the other limitations on executive power in Australia (for example the Constitution, judicial and administrative review and the Upper Houses) the role of

Political Parties is a stabilising influence. Leaders cannot take their Parties for granted but they have been given sufficient freedom to be able to operate effectively and efficiently. Freedom, of course, brings its responsibilities. If exercised well it generates more power and authority. If mismanaged power and authority are diminished.

They are both a constraint and an opportunity.

The Media and the way it operates is a major issue in modern politics. The way the Executive Government handles and responds to the Media can not only influence its political position but also affect the very way it governs and what priorities it has.

What the modern Media has done is take up much of the time of government and required certain skills of the Prime Minister, Premiers, Ministers and Senior Public Servants. So much of the day-to-day activity of Leaders and their Ministers is taken up responding to media campaigns and inquiries and seeking to ensure the Government's message is made available to the public in an

undiluted form. This emphasis on the twenty-four hour news cycle can distract governments from their longer term strategic objectives.

Ultimately, however, it is the judgement of people that matters. Those involved in the media and politics - the "activists" - can occasionally forget that the universe occupied by the voters is to a large degree independently constituted.

Whilst direct action by the citizenry ebbs and flows, the continuous polling of the public on a range of issues has now become an established part of the political process in Australia and definitely has an impact on decision-making both in its content and in its timing. For example properly conducted consultations can be very useful in fine tuning service delivery to meet special needs and interests.

An important feature of the Australian System is the requirement for a Referendum to change the Constitution. This is a considerable constraint on any executive wishing to expand its powers via Constitutional Amendment.

MANAGING ACCOUNTABILITY

What is interesting about this analysis of accountability is that it makes clear that the whole area is a major province for public sector management. A good deal of government revolves around the management of accountability. Indeed it is one of the major if not the major responsibility of the Prime Minister or Premier to see to it that the issue is managed properly.

Doing this goes to the heart of Government as Power. In order to be effective Government requires stability and continuity. Constant change brings upheaval and uncertainty for those involved, not a good recipe for effectiveness. Judgements are always being required as to when the Executive Government needs to stand up against the constant barrage of accountability claims and aspirations being put from those on the outside looking in. Governments have to govern.

It is in this context that one can see the importance of doctrines like Cabinet Solidarity and Confidentiality, executive privilege, party discipline, and bureaucratic loyalty. It is also important to note that the Government itself can use the various agencies of accountability to hold its opponents to account or to maintain control within its own ranks. In respect of the latter the use of opinion polls to maintain party discipline can be very effective.

Too often commentaries on accountability treat Executive Government as if it is a sponge for the various claims made upon it. In fact it not only absorbs but it also responds. Indeed it activates its own claims and often appeals directly to the people. Sometimes it even does this in contradiction with established rules and conventions.

Whilst there are clear limits to which this form of "executive populism" can be taken in our system - given the range of checks and balances - there is no doubt about its existence in the contemporary political scene, particularly in respect to issues connected to domestic and external order and security. In matters dealing with the relationship between the state and the individual we have seen Governments push the laws and administration into controversial and sometimes untested territory, usually with the full support of the electorate.

It is here that a tension has emerged between popular accountability and the traditions of limited government which have underpinned our whole discussion. Executive authority that is founded upon a majority of votes and a majority of MP's is a very powerful force.

An alternative to "executive populism" as a political style and management method is "executive liberalism". This is government that accepts the need for external constraint and internal discipline in dealing with popular opinion and what it might mean for policy.

The best government, of course, is that which involves both good process and good outcomes. The better the process the less the likelihood that the pursuit of good outcomes will be subject to distraction and disruption. In order to ensure this Prime Ministers need proper systems of education, monitoring of ministerial and administrative performance and a clear sense of purpose when the inevitable crises come along.

The challenges come when good outcomes require radical changes in established process that take the government into the controversial territory mentioned above.

THE PUBLIC SERVICE AND PUBLIC SECTOR

The question of the public service and the public sector more generally fits uneasily in this analysis of accountability. In times now gone it would have been viewed as an agent of accountability with a high degree of independence within the system. This was particularly the case with some of the major Government Corporations which were set up on a Statutory Authority basis and which delivered core services, like water, gas, electricity, telecommunications and transport.

The Heads of traditional Departments were seen as independent in their advice, delegates in their actions and anonymous in their political identity. Ministerial responsibility was said to imply bureaucratic loyalty and anonymity.

In recent decades this has changed as governments sought to ensure the interests of its customers were met through administrative review on the one hand and competition in the delivery of core services on the other. This may have meant privatisation but it certainly has meant the creation of a level playing field for private sector provision.

Given the extent of these changes Governments have needed to ensure that they have the power and information to deliver in the face of bureaucratic resistance. Increasingly power has shifted to the Centre of Government (away from the Ministers who may be subject to "capture") where more use has been made of private sector consultants to advise on change and its implementation.

What has emerged is a new understanding of accountability for the delivery of core services. Rather than monopoly or near-monopoly provision by Government we now see competition and diversity with Government as a Regulator (and perhaps still a Provider as well).

Interestingly the role of Regulator has been seen as too political to be left in the hands of Government so it has been given to offices more independent of the Government of the day than the major infrastructure Corporations were in the past.

Just as the private sector complained about the lack of fairness in the system before, today it complains about the heavy-handed role of the Regulators in ensuring a level playing field and open access. The check is provided by allowing for judicial review of decisions.

It has also meant that Government provision in the area may be being carried out by Corporations governed by the Companies Code and fully commercialised in their operations even though Ministerial Responsibility is still said to exist, and certainly does in relation to appointments to the Board and overall performance according to agreed targets.

Even in relation to Departments of State there has been a clear demarcation line drawn for the purposes of accountability. Most Public Service Acts today make it clear that the day-to-day management of the Department is the responsibility of the Departmental Head who is, in turn, responsible to the Minister and the Government generally. The precise responsibilities and accountabilities for departmental heads vary but do provide a clear basis for regular performance review.

In such a model the Premier and Minister can intervene by way of policy or inquiry but not through interference in day-to-day decisions. If this is to occur it might involve the removal or re-location of the Departmental Head. This often happens as a result of new policy directions recommended by Inquiries.

There still remains, however, a gap in our understanding of how the concepts of Responsible Government and Corporatized, Commercialised or Corporate management are to be brought together to ensure accountability and public confidence.

On most occasions the gap is filled in through the play of politics that often involves different forms of public pressure leading to government action by way of inquiry and/or managerial overhaul. On a more regular day-to-day basis communication of government views through meetings with Public Sector Chiefs are important.

More independent of Government, however, are the various Regulators and so should that be the case given the significant issues of interest involved and given the extraordinary level of technicality involved in the decisions about open access, tariffs, etc.

The type of system emerging involves -

- Ministers with overall responsibility,
- Public Sector Chiefs be they departmental or board members accountable to the Government (in effect to the Prime Minister or Premiers}, and
- Regulators independent of Government but ultimately accountable to the Courts in their decision-making.

Real power, however, lies with the Prime Minister or Premier. He or she stands above the Ministers and Public Sector Head and determines what sort of action is required to ensure the system is working well. It may mean Ministerial dismissal or removal; it may mean Public Sector Heads being dismissed or moved. All or some of this may happen in the context of some form of Government-initiated inquiry.

The fact is that in recent decades it has been the Public Sector Heads who more than often have had to accept responsibility for Government failure. They have become the meat in the accountability sandwich whilst the Ministers remain the meat in the Parliamentary and Media driven credibility and reputation sandwich. More often than not the political price involved in keeping a Minister has not been high enough for the Leader to enforce the traditional Westminster understanding. Today it is the Public Service Chief (or Chair of the corporatised or commercialised Board) who is regarded as the accountable officer.

Evidence for this conclusion is also provided by the extent to which government agencies today have developed their own systems of media management and public consultation independently of their Ministers. Any vestiges of bureaucratic anonymity have long since passed.

It is clear that there are many intersections and relationships involving political accountability. The Westminster concepts of individual and collective responsibility are too narrow to incorporate all that is involved in modern accountability. At best they are a useful starting point for a discussion that would have to go beyond the boundaries imposed by "Westminster" and include issues such as independent regulation, bureaucratic responsibilities, the state of the electoral cycle, political judgement generally and principles of corporate management. Important reforms such as Freedom of Information and Administrative Review have also put a different complexion on our system of accountability.

CONCLUSION

Let me conclude by summarising the major points I have wanted to make and outline some of the areas that would require more analysis should the matter be given comprehensive treatment.

Firstly, political accountability is not just an account of relations between parts of the political system it is a theory of democratic, limited and principled government. Tensions often emerge between executive concerns for "efficiency" (accountability to the people for outcomes) and the wide-ranging system accountability that now exists.

Secondly, the Prime Minister or Premier is the major source of power and authority within the Executive Government. Much of today's political executive is accountable to the Leader for position and performance. The growth in importance of the Department of Prime Minister and Cabinet and Departments of Premier and Cabinet in terms of Cabinet, policy and communication is a reflection of this.

Thirdly, there is a wide range of accountability rules and agencies that exist to constrain, regulate and influence Executive Government in Australia. The traditional concepts associated with Westminster - individual and collective responsibility - are too narrow to account for the patterns of accountability today. In Australia this has always been the case with our written constitution, our federal system and our powerful upper houses but in recent years has been added to with accountabilities associated with administrative review, open government, human rights and citizen and customer charters on the one hand and corporate management on the other.

Fourthly, that in this process, and in the context of more corporate, corporatised and commercialised government, the traditional concept of Ministerial responsibility is being overtaken by Administrative responsibility on the one hand and independent regulation on the other. The use of independent inquiries into the public sector or aspects of it has also become a form of accountability in itself.

Fifthly, one of the main responsibilities of the Prime Minister or Premier is to manage these accountabilities on a day-to-day basis and also in the event of a crisis. This involves education, monitoring and judgement about when and where the stability and continuity of Government is more important than the change and uncertainty that can come from responding to every accountability claim and aspiration placed on the table of decision by the media, the public or one of the agencies of accountability. Tensions may emerge between popular accountability and limited government, especially if the desired outcome requires a radical change in process.

Sixthly, we can see in evidence today the phenomenon of "executive populism" where the government appeals directly to the people and beyond a range of existing conventions and understandings about limited government in the name of protecting the community from crime and disorder. This illustrates well the twin pressures of "popular" and "system" accountability that are placed on all governments. In many ways it is an aspect of the long-standing debate between majoritarian democrats and liberal democrats. It is not surprising then that there is currently renewed interest in establishing a Bill of Rights in Australia. Thus far only the Australian Capital Territory has taken an initiative in this area.

Areas that ought to have been given more attention include the role of Parliament, still the primary arena within which the Executive itself is held to account, the difficult issue of ensuring that our mechanisms of accountability allow for the long-term as well as the short-term and for the rights and interests of minorities as well as majorities, what a federal system means for the application of accountability, and what we may say about the purposes of accountability particularly as they apply to the complex mix of social, economic and environmental outcomes required of modern government. This raises the issue as to whether there are objective tests available that can be used to assess the performance of the public sector. Such tests could also be used to give the customers of the public sector the chance to assess the quality and efficiency of the services they receive as was the case in the British Citizen's Charter.