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Excerpt

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Introduction

Accountability and Democratic Theory

Democracy appears to be the master concept of the world of politics today. Yet a treacherous terrain confronts those who would understand it – whether as students and theoreticians or as participants and practitioners, and equally in societies long known as “democracies” as in those newly embarking on “democratization.” This book investigates a neglected phase of the history of ideas which can supply a useful compass for navigating the rough country of democracy and the scholarly literatures devoted to understanding it. It is based on research into various texts of the early and middle seventeenth century relating to colonization and constitutional design in the English-speaking Atlantic world. The magnetic north it proposes for democratic theory is the principle of accountability.

I will show how the principle of democratic accountability was adapted for and applied to modern political conditions, arguably for the first time anywhere, in England and America in the middle 1600s – perhaps surprisingly, in the colonies fully a decade prior to the metropolis. These conceptual developments accompanied and facilitated the founding of new states on the American continent by way of written constitutions. Some of these earliest colonial constitutions attempted to construct forms of government that may be regarded as genuinely democratic in modern terms: elective, representative, and constitutionally limited, but above all seeking popular control through non-electoral institutions of accountability. And the political debates of some of the colonists reveal, to an extent much underestimated before now, the theoretic underpinnings of these constitutional constructions.

These colonial American developments arguably represent the birth of modern democratic theory. At the very least, they gave rise to what has become the cardinal proposition of modern democratic thought – but also

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to an important alternative. Conventional thinking about democracy today rests on what might be called the electoral thesis of accountability: a democratic constitution is one that confers power on representatives who are held accountable to the people by regular elections. This proposition is most often associated, historically, with the revolutions and ensuing constitutional debates in America and France in the later eighteenth century. As I will show, however, it was originally the product of an ironic sequence of debates which began in New England in the 1630s. There the advocates of non-electoral forms of accountability were attacked by the self-conscious opponents of democracy with the notion that elections alone are sufficient to make officers accountable. Subsequently this anti-democratic argument was broached by radical elements in old England for their schemes of constitutional reform, over a century before it was eventually revived in the period of the great modern revolutions. In short, the cardinal proposition of modern democratic thought was originally designed to abort democracy's modern rebirth.

These seventeenth-century origins, specifically the colonial American democrats' alternative to the electoral thesis of accountability, should give today's student of democratic politics pause, for they supply resources for restoring the idea of popular control through non-electoral institutions of accountability from the margins of democratic theory to its center. These conceptual resources are encapsulated in three distinct models of accountability – the classical, the ecclesiastical, and the fiduciary – which I will briefly describe below and develop further throughout this book.

Resetting the compass of democratic theory by reference to the principle of accountability would reorient the field in several key respects. It would change the shape of debates around electoral arrangements generally, since they would be unburdened of a job of popular control to which they have in any case proved inadequate. It would lower the stakes for debates around representation more specifically, since the descriptive characteristics of a discretionary agent decline in (all but symbolic) importance when constituents acquire the means to hold that agent accountable. It would remove one of the leading arguments against rotation in office, or "term limits," since non-electoral means of popular control operate whether or not a representative is able to seek re-election. And it would bring to light, and might help to dissolve, lingering if often tacit worries about democratic participation, since it imagines forms of popular agency lying somewhere between the impotent act of voting and the improbable vocation of professional citizen.

In the bigger picture, the new historical light shed by this story of colonial American origins illuminates the considerable distance that democratic theory has traveled since its modern rebirth: away from popular control

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toward popular consent, away from accountable toward discretionary forms of authority. In this connection it not only reinforces a growing scholarly trend toward designing non-electoral democratic institutions but also shows the importance as well as the limitations of recent “deliberative” and “contestatory” elements of that trend. By depicting some of the grand rivalries of earlier eras – *logos* versus *kratos*, reason versus power, deliberation versus contestation – my analysis will help to clarify the moral and institutional stakes associated with their echoes in leading debates today. If the perspective of the first modern democrats arouses any sympathy at all, it appears that their insights must be incorporated in a quite different democratic theory from those versions that currently hold the field.

Historical Synopsis

Democratic norms and practices were in a deep sleep for almost two millennia between their ancient birth and modern rebirth. The primary normative requirement of popular control over public affairs was common to both moments of origin. Among the discrepancies between the two, however, the large territorial and demographic scale of modern states was not as significant as the language of legitimacy, consent, and representation in which their activities had come to be understood. If ancient democracy rested in part on the principle of accountability, modern democracy emerged from a new conceptual partnership of accountability with popular sovereignty.

The story of the colonial American origins of modern democratic thought begins, in Chapter 2, with the European context from which the first English settlers in America came. The ancient rivalry between discretionary and accountable conceptions of political authority, typically conducted in the language of “trust,” was regularly rehearsed in sixteenth-century European debates on sovereignty and resistance and again in seventeenth-century England. During the English Civil War the accountable conception of trust was used, by the so-called Levellers, to develop the first political theories that were both distinctively modern and genuinely democratic. The Levellers’ key theoretic moves were to orient the accountable trust toward genuinely popular bodies and to transfer it from the domain of war and resistance to regular constitutional processes, including elections. Whereas the English nation as a whole was to hold its parliament accountable through regular elections, local constituencies were to conduct recalls, audits, and impeachments of individual representatives by citizen juries.

But by the 1640s the institutional state of nature created by civil war in England had already been met by Englishmen in America. The process by which Anglo-American colonists came to anticipate key elements of the

democratic revival begins, in Chapter 3, in the unlikely commercial colonies of Virginia and Bermuda. Settlers there and observers in England used the language of trust to understand both moral and institutional features of colonial life, and debate revolved, accordingly, around rival accounts of the virtue of fidelity and the principle of accountability. One plan for reorganizing Virginia's government, by John Bargraves in 1623, applied the principle of accountability to the colonies' internal government for the first time by proposing that officers in Virginia be subject to trials for state crimes by a kind of representative jury.

The classical-humanist dream of founding new commonwealths had played a significant role in the thinking of those associated with the Virginia Company, as of their Elizabethan predecessors, but conceiving American colonies in terms of the principle of popular sovereignty required the interaction of other intellectual traditions. The "Pilgrims" of New Plymouth, as Chapter 4 will show, combined the commonwealth values of classical humanism with conceptual tools taken from Bodinian jurisprudence and Calvinist ecclesiology. The result was a theory of church government which rendered officers accountable to the whole congregation, as typified by the writings of John Robinson, the "Pilgrim Pastor." Robinson explicitly compared these arrangements to ancient Athens and described them in the Bodinian language of a "popular state," and the Plymouth colony adopted similar institutional forms for civil government.

In Massachusetts Bay, meanwhile, lively debates over the colony's constitution gave rise to a persistent reform movement that pressed for non-electoral institutions of accountability, as Chapter 5 will explain. Opposition deputies at Boston championed, on the one hand, classic Athenian practices like the auditing of magistrates and rotation in office; and, on the other, institutional features adapted from the most radical theories of congregational churches, notably a unicameral voting assembly as the ultimate power in the community. John Winthrop and the Boston elite denounced these demands as "democratic" even while skillfully moderating and co-opting them. By the end of Winthrop's reign the government of Massachusetts had evolved into an elective and bicameral constitution of the familiar modern sort: two separate voting assemblies, each possessing a veto over the other, and no accountability between elections. No one in New England mistook this regime for a genuine democracy.

Connecticut and Rhode Island, by contrast, were the first fully developed modern democratic states, and they are the subjects of Chapter 6. Their governments were set up by the voluntary and involuntary exiles from the Bay colony and were deeply marked by the Massachusetts opposition's

reform program. Connecticut's leading figure, Thomas Hooker, directly challenged Winthrop's discretionary conception of political trust, and the colony's founding document instituted key reform proposals that had first been broached at Boston. Rhode Island's chief statesman, Roger Williams, presided over the establishment of a self-proclaimed "democratic" constitution which made representatives strictly accountable to the citizens of federated towns. Thus the New England democratic movement anticipated the Levellers' pioneering application of democratic accountability to representative, constitutional government.

The leading lessons of these stories of the first adaptation of ancient democratic ideas for modern settings have to do with the principle of accountability and its non-electoral institutional forms, especially audits and impeachments. Popular sovereignty was a necessary but not a sufficient condition of modern democratic thought; the principle of accountability was also needed. Accordingly, the parallel processes of consent and authorization, whether by regular elections or extraordinary ratifications, are necessary but not sufficient for a genuinely democratic theory; regular mechanisms of scrutiny and sanction are also needed. Even if perfect procedures of deliberation and consent could be obtained, or even if perfectly representative bodies could be assembled, no democracy could exist in the absence of regular accountability. This historical lesson has rather stark implications for the current priorities of academic political theory, as I will explain further below.

The centrality of accountability and of seventeenth-century Anglo-Americans to the origins of modern democratic theory also has implications for how key figures in the history of political thought are understood. Some famous names must be re-evaluated and other more obscure ones better illuminated. Bodin and the Levellers assume greater stature than is usually accorded them, while Hobbes and Locke appear just as significant for what was derivative and responsive as for what was innovative in their thought. Certain figures who loom large in colonial American history but not in the history of political thought – especially Capt. John Smith, John Winthrop, Thomas Hooker, and Roger Williams – must have both the nature and the importance of their political ideas re-evaluated. And other more obscure figures – especially John Bargraves, John Robinson, and Israel Stoughton – appear to deserve more scholarly attention than they typically receive.

The telling of this story, as of any episode of intellectual history, is circumscribed by certain parameters and shaped to some degree by previous tellings of similar stories. Before elaborating the current issues in political and legal theory on which I believe this story has special bearing, I must

explain the conceptual parameters and the historiographies that frame the story itself.

Form and Substance

The crucial contribution of the seventeenth-century Anglo-American democrats has to do with a particular aspect of democratic thought which might be called formal rather than substantive: with “democracy” as a system of rule, not a way of life. This qualification is important because the heavily substantive character of thinking about democracy today has tended to obscure the seventeenth-century contribution.

There are two kinds of substantive criteria which have misled scholars in their assessment of modern democracy’s theoretic origins: democracy as necessarily predicated on a liberal or inclusive conception of membership, in other words of the community’s matter or substance; and democracy as necessarily embodying substantive ethical principles of liberty, equality, and rights. These two criteria refer to fundamental questions of democracy as a way of life: Who are we? How ought we to live together? Focusing on these questions allows us too easily to dismiss modern democracy’s seventeenth-century origins because, for example, universal suffrage and religious toleration were ideas widely abhorred, or at best applied unevenly, prior to the later eighteenth and early nineteenth centuries.

Democracy as a system of rule may be considered an altogether less grand notion: not quite a way of living, merely a way of institutionally structuring relations of authority. The importance of institutionalized authority to social life is what makes democracy not merely an ethical but also a political concept. Famously, the ancient Greek inventors of the term differed among themselves and over time about how broadly or narrowly political membership should be drawn. They usually defined it more narrowly than the modern legatees of Judeo-Christian culture have done, but it would be absurd to allege on this basis that the Greeks misunderstood their own concept. What is distinctive about democracy on this view, and what could in principle unite it across ancient and modern differences on substantive questions of membership, are the formal principles of institutional structure by which power (*kratos*) may be said truly to belong to any given people (*demos*).

My analysis of the theoretic origins of modern democracy revolves around just such a formal principle. The adaptation for and application to modern political life of the ancient idea of democratic accountability – this is the key theoretic move in the story I tell. And this is the step for which the seventeenth-century Anglo-American democrats deserve credit.

One assumption about the origins of democratic theory which is entailed by the formalistic parameters of my study may seem counter-intuitive: the restrictive suffrage qualifications and illiberal social legislation of the seventeenth century are not particularly relevant considerations. They are relevant to other concerns and inquiries, of course, and I would not in general deny the interest of universal suffrage and cultural pluralism for political theory. But I hope my study will illustrate how we lose rather than gain understanding of modern democracy by ruling the seventeenth century out of court on substantive grounds.

The Concept of Accountability

The concept of political accountability has received no general scholarly treatment to compare with the attention lavished on representation (e.g. Pitkin 1967), for instance, even though it appears to be in equally wide use today in various discursive contexts. For the purposes of this story, “accountability” can be defined in both historically and theoretically useful terms by reference to the ancient Greek practices (see Roberts 1982) that have come to be known by that modern Latinate term. Those practices, as we will see in more detail in Chapter 2, involved *scrutiny* and *sanction*: a cognitive or discursive act followed by a punitive act. Officers of government at Athens were subject to the combination of these two, apparently, in order to confer on the *demos* some measure of control over their conduct. To the extent that popular control was the etymological and remains the conceptual core of democracy (see Pettit 2008, 46), the concept of accountability must be regarded as essential to democratic thought.

Thus *accountability*, especially in its sanctioning mode, works directly to confer control, but it must be distinguished from *selection*, whose relation to control is more tenuous. Selection is an *ex ante* procedure involving a kind of scrutiny or judgment followed by a moment of choice; accountability is an *ex post* procedure in which scrutiny is followed rather by sanction. Whereas selection confers authority and grants license toward future conduct, accountability rewards and punishes past conduct. Despite some similarities, then, selecting is analytically a different thing from holding accountable (Fearon 1999, 58).

Yet *control* itself is only one facet of power; as we moderns are acutely aware, *consent* is another. The former uses rewards and punishments to give governors incentives to act in certain ways; the latter authorizes or legitimates their acting at all. The difficulty in distinguishing selection from accountability arises from the former’s occupation of a region of conceptual overlap between consent and control (see Figure 1.1): authorizing one actor

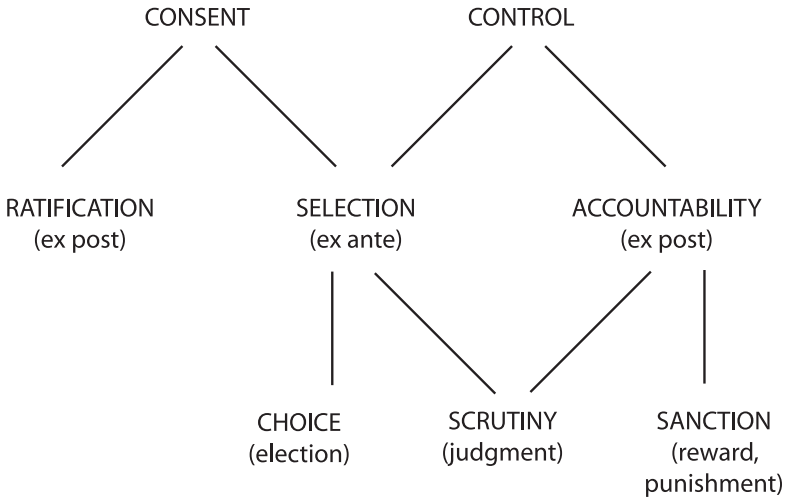


FIGURE 1.1. Conceptual elements of popular power.

rather than another may be one way of exerting control over the actions that will ultimately ensue, but this is a fairly weak form of control compared to the alternatives. The early-modern democrats may provide an antidote to the late-modern dependence on this conceptual confusion. They were not satisfied with popular consent via ratification and selection, and they were not convinced that selection secures popular control. The distinctive lesson of their story is that even if plebiscites or referenda secured *ratification*, and even if elections secured *selection*, democracy would still require other procedures to secure *accountability*.

In light of the dubious potency of selection procedures generally, and periodic elections specifically, as mechanisms of control (Fearon 1999, 56, 68–9; Manin et al. 1999a, 50), moving accountability back to the center of democratic theory has not only historical but also contemporary warrant. The political ideas of the first modern democrats offer resources toward understanding and institutionalizing accountability on three conceptual registers: the *mechanics* of scrutiny and sanction as means of control, the composition of the *agency* charged with performing scrutiny and sanction, and the *rationale* or purposive force behind scrutiny and sanction.

Three mechanisms of accountability will emerge from the texts under consideration below: (a) *special inquests* into officers' conduct, such as periodic audits or episodic impeachments; (b) *general liability*, as when persons of authority are subject to the normal legal processes that apply to ordinary subjects; and (c) *deselection*, in other words revocation and

replacement. Of course (c) carries elements of both consent and control, at least under conditions in which the bare revocation of power is construed as a harm with deterrent potential. These conditions involve peculiarly modern institutional and psychological assumptions: the conferral of authority on particular persons must be considered appropriately done by deliberate choice (election as opposed to lottery), re-eligibility must be favored, and selection and deselection must be perceived as significant forms of reward and punishment, respectively. These three assumptions cannot all be taken for granted for the early-modern period, and the last is particularly hard to gauge. But we will see that some thinkers began to bring these assumptions together and to apply the distinctively modern logic of elections as a mechanism of accountability. Equally significantly, however, other non-electoral mechanisms played a more important role in the first modern democratic theories.

Second, the composition of an agency performing scrutiny and sanction may vary from (a) a *universal* body (including every member of a political community) to (b) a *class-specific* one (either popular or elite, for instance) to (c) a *representative* one (a microcosm of the universal); class and representative bodies, in turn, may be selected by random sample (lottery) or election, or some combination of the two. Though the calling to account of governors by representatives or elites on behalf of the people has at times been called “democratic,” my historical analysis will meet a more exacting standard by showing thinkers who proposed making representatives or elites themselves accountable to popular bodies. This issue of composition brings substantive questions of membership and the franchise into contact with the formal principle of accountability. One of the lessons of my analysis is that defining a regime according to how widely consent is solicited, or by who may vote, is no more important than doing so according to who has the right to exert more direct control over persons of authority, or by who may serve in agencies of accountability. On this view excluding any class of persons from service in agencies charged with the scrutiny and sanction of political officers would be just as anti-democratic as denying that same class the right to vote in elections.

Third, the *rationale* behind accountability might be popular control for its own sake, arising from a moral or ideological commitment to democracy itself, or it might rather revolve around higher ideals of truth, justice, righteousness, and so on. It is possible, of course, to make the first instrumental to the second: a government may for various reasons be considered more likely to pursue just or righteous policies if it is effectively subjected to popular control. But, as the stories below will illustrate, shifting the rationale

	MECHANISM	AGENCY	RATIONALE
CLASSICAL	special inquest	representative (election) or popular (lot)	public liberty
ECCLESIASTICAL	special inquest, deselection	universal	metaphysical truth
FIDUCIARY	special inquest, deselection, general liability	popular or universal	democratic legitimacy (et al.)

FIGURE 1.2. Three models of democratic accountability.

behind democratic accountability away from popular control itself toward higher substantive ideals tends to lead accountability away from its sanctioning component and more exclusively into its scrutinizing component – and ultimately away from control altogether and more exclusively into consent. This movement is arguably, as we will see below, what has happened recently as “accountability” has been reduced to a conceptual adjunct of “deliberation.”

Three Models of Accountability

The assumptions, conceptions, and logics by which these various aspects of accountability relate to one another can be encapsulated in three recurring bundles of theoretic tendencies, or models of democratic accountability: the classical-republican, the ecclesiastical, and the fiduciary-legal. These may be taken as yesterday’s offerings to today’s conceptual toolboxes, and I will suggest further below some ways in which they might bear on current debates around elections, deliberation, and constitutional design. For now I will merely outline the three models (see Figure 1.2), but they will feature in greater detail throughout this book.

The *classical*-republican model of accountability drew its inspiration from historical examples of republics, usually ancient Greek or Roman, in which different political agencies check one another, by means including relations