

WORKING PAPER 03

On forms of accountability

Professor Vernon Bogdanor, Brasenose College, Oxford



2020 Public Services Trust
at the RSA

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Professor Vernon Bogdanor, Brasenose College, Oxford¹

1. THE DOCTRINE OF MINISTERIAL RESPONSIBILITY.

‘In every free state’, Gladstone declared in 1879, ‘for every public act, some one must be responsible; and the question is, who shall it be? The British Constitution answers: “the minister and the minister exclusively” ‘.

Traditionally, accountability for the public services has been secured through the doctrine of ministerial responsibility. ‘When a bedpan is dropped on a hospital floor’, Aneurin Bevan is supposed to have said, ‘its noise should resound in the Palace of Westminster’. The doctrine is sometimes formulated in the following way. Ministers, it is said, take the credit when things go right. Therefore, they should accept the blame when things go wrong. Civil servants often complain that their ministers are only willing to accept the first part of this doctrine!

A corollary to this formulation of the doctrine is that civil servants and also those managing the public services have no constitutional personality. Under our system of government, executive powers are, with a few notable exceptions, conferred on ministers and not on officials. Thus officials, again with a few notable exceptions, speak and act in the name of ministers. Everything that they do is done under a minister’s authority, whether express or implied. Managers are the agents, though not the creatures, of a government department. This means that they are responsible for their work only to their minister, and not to Parliament. ‘This House knows nothing of Mr. Scudamore’, declared MPs in 1864 when a minister tried to shuffle off the blame for some mishap in the Post Office, then a government department, to an official. ‘He is not responsible to us --- if we are to shuffle off these questions by saying that a clerk in the Post Office, however distinguished and disinterested he may be, is to take the burden and the blame on his shoulders,

there is an end to parliamentary government'. It follows from this that civil servants should be anonymous. It is only ministers who may be known to the public, and, since ministers are elected while civil servants are not, it is only ministers who can be made subject to public praise or blame.

This doctrine, however, has never actually been a good guide to actual practice. It hardly accords with the realities of the modern party system. A minister may make a terrible blunder, but if the Prime Minister thinks that her continuation in office is essential to the survival of the government, then the forces of party discipline will probably be enough to keep her in office. The forces making for ministerial resignation are not constitutional but political, for example, whether a minister has offended a key section of her party, or whether she has come to appear so foolish in the eyes of the public that her continuation in office would be damaging to the government. That is why so many post-war ministerial resignations have been for sexual misdemeanours rather than departmental mismanagement or fault.

But, in any case, even the most fervent advocate of a 'blame culture' would not seek to require ministers to resign for *every* departmental fault. Suppose, for example, that something goes wrong for which a minister is in no sense to blame, and which she could not have known about. It would not be fair to seek the minister's head for this, and the House of Commons would almost certainly not seek to do so. Indeed, it may be said that if a minister were to be required to resign whenever something wrong occurred in a department, there would be very few ministers left! It would be wrong for ministers to be held vicariously responsible for the actions of officials or managers.

The doctrine of ministerial responsibility, as formulated in its extreme form, as above, is perhaps peculiarly inappropriate in the case of the public services. Suppose, for example, that something goes wrong in a hospital due to mistakes made by an NHS manager. The minister, of course, might bear some share of the blame if she had any reason to believe that the official might be incompetent. But, of course, few ministers can supervise more than a minute part of their empires. It is, surely, the manager who should take the blame and not the minister. A distinction can in principle be drawn between the policy and the carrying out of the policy, the executive operation.

This does not mean that the minister has no responsibilities to Parliament in such cases. The duty of the minister is to account to Parliament, to explain what has

gone wrong, and what is being done to put things right and to ensure that mistakes do not occur again. Such **explanatory accountability** is of great importance. Resignation, however, would be an inappropriate sanction, and in any case one would almost certainly not be able to persuade Parliament to insist upon it.

Who, then, should take the blame? Clearly the manager concerned. In the past, civil servants who had made mistakes were not publicly named, although there were sometimes exceptions. But, this did not mean that they did not suffer sanctions. They almost always did in terms of damage to their promotion prospects, or, in extreme cases, dismissal. It is often forgotten that civil servants can, in fact, be dismissed for incompetence and around 100 officials are so dismissed every year. Indeed, it has been alleged that it is precisely because of fear of damage to promotion prospects that civil servants and managers are so cautious and careful to avoid risk. It is for this reason that when governments came to involve themselves in the running of industry, they did not give this task to civil servants, but to public boards, hived off from Whitehall.

There is now a considerable hiving off from Whitehall through the 'Next Steps' agencies. Three quarters of civil servants now work in these agencies, which are executive bodies remaining part of ministerial departments, but hived off from Whitehall, and with a great deal of autonomy. The Chief Executives of these agencies agree with their ministers a Framework Agreement in which certain responsibilities are specifically delegated to them. Then, so it is argued, when something goes wrong, it will be clear whether it lies within the area delegated to the Chief Executive, in which case she will be responsible; if not, then the minister will be responsible.

This distinction, however, is clearer in theory than it is in practice. It is in some ways analogous to that between 'policy' and 'administration', which governed the working of the nationalized industries. The minister, so it was said, was responsible to Parliament for policy – for example how much money would be given to the railways each year. The Chairman of British Rail was responsible to the minister, but not to Parliament, for administration. Thus, one could ask the minister why the railways were starved of funds, but not why the 8.15 had arrived late at Paddington. In practice, however, the distinction became blurred since ministers often influenced 'administration' through informal methods, not excluding arm – twisting.

In the case of the agencies, the distinction between policy and executive operations is also not as clear as it may seem. In the case of the Child Support

Agency, for example, there has been dispute since it was first set up as to whether its problems derived from incompetence on the part of the Chief Executive or mistakes in the legislation providing for child support. In the case of the prisons, there was much dispute as to whether riots and escapes were due more to poor political leadership and lack of resources rather than incompetent management. Shortly after the prison service was made an agency, the Woodcock Report in 1993 on the escape from Whitemoor prison in Cambridgeshire, declared that it found a confusion of responsibility at all levels of the prison service.

Today, there is less danger perhaps that civil servants and managers will avoid blame, than that ministers will seek to blame them for their own mistakes. In recent years, indeed, civil servants have become much more exposed since the convention of civil service anonymity, if it ever was a convention, has been considerably weakened. That is due to three factors. The first is the creation of departmentally – related Select Committees in 1979. These Select Committees frequently summon civil servants to answer questions about their activities. This means that leading civil servants become more widely known, both to MPs and to the interested public. The second factor is the creation of the ‘Next Steps’ agencies. The Chief Executives of these agencies are generally appointed following public advertisement on short – term contracts. Their names are widely known. When, therefore, something goes wrong in an agency, there is a call for the Chief Executive’s head. So it was that Derek Lewis, Chief Executive of the Prison Service, was publicly held responsible, in the 1990s, both by the Learmont report on a prison escape in the Isle of Wight, which criticized the management of the prisons, and by his minister, Michael Howard, who dismissed Lewis. Howard defended himself by saying that the Learmont inquiry had criticized management, not policy. There was public and parliamentary outcry, but, interestingly enough, Jack Straw, Michael Howard’s shadow, did not say that it was wrong to sack Lewis. Similar adverse publicity attended the first Chief Executive of the Child Support Agency, who resigned, following public criticism of the Agency’s work. The third factor, of course, is the growing intrusiveness of the media. When, in the 1960s, the ‘Observer’ established a ‘Whitehall correspondent’, appointing Anthony Howard to the post, the Prime Minister, Harold Wilson, was able to instruct ministers and civil servants to have nothing to do with him, and the post soon lapsed. Today, however, assiduous journalists are skilled at unearthing the secrets of Whitehall, discovering the outlook of senior officials, and they do not hesitate to name officials when things go wrong. This change can be particularly noticed

in the case of the Cabinet Secretary. Until the advent of Sir Robert Armstrong as Cabinet Secretary in 1979, the incumbent of this post was generally unknown even to the politically interested public. Armstrong, however, became widely known, in part through his defence of the Prime Minister, Margaret Thatcher, before a Select Committee during the Westland crisis, and in part through his unfortunate remark in an Australian court that a civil servant could legitimately be 'economical with the truth'. His position as a senior civil servant did not save him from widespread public criticism. Sir Richard Wilson, when Cabinet Secretary, appeared on television in a programme on the Blair government, and confessed that he would not hesitate to say 'bollocks' to the Prime Minister if he thought the occasion called for it. The current Cabinet Secretary, Sir Gus O'Donnell, has also been interviewed on television.

Where, then, does this leave the convention of ministerial responsibility? The doctrine, in its purist form, that ministers take the credit for what goes right and civil servants take the blame when things go wrong, was designed to protect officials and to ensure that ministers did not seek to save their political skins by blaming officials. The danger with the current position is that the doctrine can be used to protect ministers, who can shuffle off the blame by saying that a mistake was operational, rather than a result of policy. Derek Lewis, the unfortunate Chief Executive of the Prison Service, was said to have declared that if a matter was difficult, then it was operational. For, after all, it can never be policy for something to go wrong. Therefore, if something goes wrong, it must be operational!

When something goes wrong, Parliament and the public need to know whether blame attaches to the minister or the official. This means that MPs need to get behind the doctrine of ministerial responsibility so that they can ferret out who is to blame. To do this, Select Committees may need to inquire into the policy advice which officials gave to ministers. Was the minister warned of trouble to come? Did she take all relevant precautions? Freedom of information has an important role to play here. If Parliament is to have any chance of ferreting out what has happened, it is vital that freedom of information includes, as it is coming to do, the policy advice that civil servants gave to ministers. The doctrine of ministerial responsibility is sometimes brought into play in order to block the publication of policy advice. In New Zealand, however, the home of many public service reforms, which British governments have copied, freedom of information legislation includes policy advice, and this does not seem to have had any adverse effects.

2. LOCAL ACCOUNTABILITY.

It should be clear from the above that, whatever the merits of the traditional doctrine of ministerial responsibility, it does not offer very much help in the problem of allocating responsibility for the public services. It is too subject to the vagaries and vicissitudes of party politics, and too open to be misused by ministers. The doctrine often acts as a **cloak**, serving to **hide** who is really responsible. But, more importantly from our point of view, it does not resolve the problem of making those working in the public services – managers in the health service, clinicians, teachers, the police – accountable. If Johnny is not learning to read and write, or if the hospital in Nether Wallop is not functioning efficiently, it makes little sense to question the minister about it. In the public services, a large number of people, acting under delegated authority, have very considerable discretion. How are they to be made accountable?

One obvious answer is **local** accountability. In local government, by contrast with central, when something goes wrong it is usually the officers rather than the council leaders who are held to be at fault. Officers, by contrast, with civil servants, were never expected to be anonymous, and they are widely known to the interested public. They will be expected to defend controversial policies to the public. Civil servants, on the other hand, are protected from public scrutiny by distance and by time.

The two great advantages of local accountability are that it can stimulate a sense of local patriotism which can lead to the improvement of services; and that it can stimulate a democratic dialogue between the people and those who run public services. Conversely, a centralized system institutionalizes grumbling, and this must have a demoralizing effect on any organization. There was a great contrast in Oxfordshire some years ago when two controversial policies in the public services were being discussed – the closure of rural schools and the imposition of car parking charges in the John Radcliffe hospital. In the case of the closure of rural schools, councillors, together with officers from the education department, toured the county explaining the proposals and the reasons for them. Their argument was that the closure of rural schools was the least bad option, and that other cuts would be worse. This argument was in the end accepted, although of course it was not welcomed, by local communities. In the case of the car parking charges, by contrast, there was no such democratic dialogue, and a much greater degree of resentment as a result.

Local authorities are now coming to be regarded as having a role to play, not just in the services for which they are statutorily responsible, but also for the community

as a whole. They are seen as community leaders with a role in influencing the shape of their area and the services which citizens receive. They are increasingly coming to act as community representatives, even for those services, such as health, for which they are not statutorily responsible. The government is currently considering emphasizing this role by giving local authorities greater scope to scrutinize the spending and decisions of all local service providers – see the consultation document, **Strengthening Local Democracy**, published by the Department for Communities and Local Government in July 2009. Scrutiny of services provided by the local authority is now normally undertaken by ‘back-bench’ councillors, councillors who are not members of the cabinet. But scrutiny of services by other providers would, presumably, be undertaken by the whole council and be conducted in select committee mode.

There are, however, two important limitations upon local government accountability. The first is that the greater the degree of localism, the greater the degree of diversity in service provision. The whole purpose of localism is to secure diversity. Indeed, local government has been called the government of difference. It is contradictory to support localism while deploring a postcode lottery. The issue, then, is how much diversity we are prepared to tolerate in the public services. The welfare state, as conceived by Lloyd George before 1914 and by the Attlee government after 1945 was based on the principle that the benefits which individuals ought to receive and the burdens which they should be asked to undertake should be based upon need and not upon geography. That was why Aneurin Bevan legislated for a **National** Health Service, rather than English, Welsh, Scottish, Northern Irish or local health services. There were to be national standards, not local ones. Whether an individual needed treatment depended not upon where she lived but upon the nature of her illness. Most of us would agree that there is some scope for local variation, but that this should not affect fundamentals. We would not, I suspect, be sympathetic to the notion that old age pensions or unemployment benefit should vary from locality to locality. We have to ask ourselves, therefore, where the line should be drawn. That depends, in part, upon our value judgments, but also upon popular attitudes. Public services are, after all, not local but national services. This does not mean that there is not scope for local variation, but we need to be clear how much local variation we are prepared to accept.

The second limitation upon local accountability also rests upon popular attitudes. We are all too eager to want to hang a minister when something goes wrong with the

public services. When, in the 1970s, there were complaints concerning the quality of education in the schools, parents were not mollified by being told to consult their local councillors or education officers. They blamed the government and politicians began to fear that education would cost them votes. It was for this reason that the Prime Minister, James Callaghan, launched a 'Great Debate' on education in 1976, the prelude to greater centralization in the education system. It was natural for ministers to say that, if they were held responsible for poor performance in the schools, they had to acquire the powers to make that responsibility a reality. But, if we really believe in localism, we must accept that the local authority is, for many issues, the ultimate source of accountability, and not appeal against it to the minister. We must accept a self-denying ordinance and not seek to blame the minister for whatever goes wrong. That, too, depends upon popular attitudes. All too often, slogans such as 'localism' or 'double devolution' are uncritically accepted without really thinking through their implications.

3. FINANCIAL AND MANAGERIAL ACCOUNTABILITY.

Financial accountability is perhaps the most uncomplicated part of accountability. The machinery of audit and the Public Accounts Committee works well and on the whole without complications. There is a simple reason for this. It is that there is broad general agreement on what it is indeed to achieve. Whatever our political views, we can all agree that public money ought to be properly spent. Whether it has been properly spent or not is, from the auditing point of view, a primarily technical matter to be judged by qualified experts, experts whose opinion is generally accepted without question by parliament and people.

Managerial accountability is far more complicated since it is far from being a merely technical matter. This form of accountability could be secured by holding managers of public services directly accountable for the quality of service. It is exemplified by the Conservative proposal that a National Health Service Board - or perhaps various local boards - be set up so that if there are managerial mistakes in the Health Service, the Board can be held to blame, and not ministers. It is the Board or the local boards which will be responsible for the achievement of targets and performance, not the minister. The implication is that, if there is failure, or if something goes wrong in the hospital at Nether Wallop, people will blame the local Board. But this, too, depends upon a self-denying ordinance. Under a

nationalized railway system, ministers were held to be responsible for matters of policy and not operations. Yet, if my train to Oxford to London was continually late and overcrowded, I would tend to blame the wretched government, not the British Railways Board. If ministers thought that they would lose votes because of the poor condition of the trains, they would intervene with the Board, regardless of what the statute said. The same happens with politically sensitive agencies such as the Child Support Agency or the Prison Service. Ministers can never be sure that some matter of detail might not blow up in their faces and cause a political crisis. In addition, ministers can hide behind the boards when making unpopular decisions. Boards, Jeremy Bentham once said, are screens.

The Conservatives proposal for health service boards, therefore, requires a self-denying ordinance on the part of the public, which has not so far been achieved. Perhaps, despite much rhetoric about localism, the concept of ministerial responsibility has become deeply embedded in the British psyche. When something goes wrong, as Gladstone noticed long long ago, however local or detailed it is, we seek to hang the minister.

In general, managerial accountability will work best where there is no political element in a public service, and where mistakes are not likely to result in questions to Parliament. It works much less well in politically sensitive agencies such as the Child Support Agency or the Prison service where a mistake at what might be thought to be operational level can affect the political future of the minister, or even of the government.

4. PROFESSIONAL AND USER ACCOUNTABILITY.

Professionals claim, with varying degrees of success, that it is they rather than the lay public who ensure accountability through controlling standards of entry to their profession and good conduct amongst its practitioners. They are accountable, they claim, especially perhaps in the National Health Service, to their peers, and also to their patients, to those who use the service, rather than collectively to those who manage the service or to any political authority. The General Medical Council is clearly not accountable to the National Health Service. Clinicians claim that only they are qualified to assess performance. Teachers, similarly, may say that they are accountable to those whom they teach and to their parents, rather than to politicians. They are accountable, so they claim, to those who **use** the service as well as those who **finance** it. This is **user** or **consumer** accountability. The social services,

however, can hardly be responsible to their clients in this sense, since many of them cannot or do not vote. But, in any case, in a democratic society, it is difficult to accept that the determination of objectives and the assessment of performance can be left wholly in the hands of professionals. Lay people are often perfectly able to judge outcomes. 'A house', Aristotle says, 'can be understood by others beside the builder; indeed the user of a house – or in other words, the householder – will judge it even better than the builder does'. But where the line is to be drawn between policy matters and professional judgment is not always clear. There is currently a dispute between the Metropolitan Police Commissioner and the police authority on this very point. For what matters is the Commissioner responsible to the authority and who is to decide? The police insist that the exercise of police judgment must be as independent as the exercise of clinical judgment by a doctor. Further, the police service is distinctive, precisely because it is the duty of the Commissioner, of every Chief Constable, and of every policeman and policewoman to enforce the law of the land. No minister and no police authority can tell him who to prosecute, or how to handle a demonstration or a breach of the peace. With other local services, it is the relevant local authority committee which is held responsible; the role of the officers is to give advice; with the police, it is precisely the opposite – the Commissioner or Chief Constable is responsible for policing, and it is the role of the police authority to give advice.

5. CONCLUSION.

Accountability seems, at first sight, a simple and straightforward concept, and yet it is highly complex in practice. There are no simple answers. In a modern society, public services are complex and interdependent; and judgments of performance are often not easy to make. The quality of education depends not only upon what happens in schools, but also upon a host of socio-economic factors. The quality of health depends not only upon the ability of doctors but upon complex socio-economic, environmental and nutritional factors as well as clinical performance.

The conclusion must be that there is **no** single, ideal model of accountability. For the proper form of accountability will legitimately vary with different public services, depending primarily upon two factors. The **FIRST** is the degree of professionalism involved in the service. The **SECOND** is the extent to which local variation in the provision of the service is acceptable. This in turn depends upon public attitudes which are difficult to assess.

