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Administrative Accountability and the Rule of Law

Donald F. Kettl, *University of Pennsylvania*

In June 2008, the U.S. Food and Drug Administration rocked the food industry—and food lovers—with its warning about tainted tomatoes. Consumers in New Mexico and Texas were contracting a rare, sometimes fatal strain of salmonella and the FDA feared that salmonella contamination from tomatoes was the cause. In the weeks that followed, a major outbreak spread across the country and worried consumers abandoned tomatoes. Fourth of July cookouts were not the same, and BLT lovers complained that their favorite sandwich was impossibly dry. By the end of July, the outbreak had infected more than 1,200 persons in 42 states.

Six weeks after the nation's tomato sales dropped precipitously, the FDA discovered that the primary source for the salmonella was not tomatoes but jalapeño and serrano peppers grown in Mexico. Government investigators probing the nooks and crannies of the nation's food chain found a single tainted jalapeño pepper in a tiny McAllen, Texas, distribution facility, and they later traced the jalapeño back to facilities in Mexico. Angry tomato growers complained that the scare had cost them more than \$100 million in sales and the confidence of consumers, when peppers had been the cause.

The confusion about tomatoes and peppers was unsurprising. Determining the source of the outbreak depended on determining what consumers had eaten, but asking sick people to put together a food diary of the meals over the last few weeks was daunting. The probe frustrated investigators. Both Italian and Mexican food made heavy use of tomatoes, but the outbreak seemed to affect only Mexican food and public health officials could not find a single tomato carrying the salmonella. They asked what else went with tomatoes in Mexican food and concluded that peppers—rarely eaten separately but often mixed with tomatoes in guacamole—might be the cause. That sent investigators off in a new direction, eventually to the small McAllen distributor and then to a Mexican farm where contaminated irrigation water ended up as the source. Tomatoes had not been a bad guess—the farm grew both peppers and Roma tomatoes.

The 2008 version of the attack of the killer tomatoes became a prime exhibit of emerging challenges in administrative accountability. Consumers wanted their tomatoes back and worried about what else government might find that could hurt them. Producers complained quietly but firmly that they certainly didn't want

to endanger public health but that the FDA needed to resolve the problem quickly so they did not lose their businesses. As it was, many farmers lost a full growing season as they plowed under entire crops.

A host of government agencies shared the turf. At the federal level, the Food and Drug Administration and the Centers for Disease Control and Prevention had the lead, along with the Indian Health Service (since part of the outbreak occurred on reservations). State and local public health agencies around the country joined the network. In fact, health officials from the state of North Carolina and Mecklenburg County joined in the detective work. They used credit card receipts to create a controlled sample of those who had dined at a Mexican restaurant, between those who got the disease and those who did not. They found that the only significant difference among diners was that those who got sick had eaten guacamole, which contained serrano but not jalapeño peppers. It was pretty good work under tremendous political pressure—and it identified the trail leading back to the contaminated water that launched the outbreak.

The case frames two sharp dilemmas for administrative accountability and the rule of law. Administration is the exercise of governmental power (and there's little governmental power not exercised through administrative action). Theorists and politicians have long contended that, in an effective democracy, such power has to be limited and channeled, for anything else is the path to tyranny. The limits and channels, by lasting tradition and practice, come through the rule of law. Democracies create directives that seek to channel administrative power just as culverts direct rainfall. But, as with the contaminated peppers and many other cases, tough policy problems confound this approach by crossing over any conceivable boundary that could manage them. That frames the first dilemma: how can we create, manage, and steer an accountability system for modern government, where the problems like contaminated papers cross local, state, national, and even international boundaries and where no government agency can hope to manage or control any problem that matters?

The second dilemma: For centuries, American government has created a rule of law to enforce these accountability strategies. However, in administrative practice, we have increasingly been drifting beyond the bounds of the rule of law and, in the process, we have created increasingly difficult accountability problems. The farther we drift from the rule of law as the basis for accountability in law, the fuzzier we make the standards and the more arbitrary we make the enforcement. No government has ever been able to rely solely on a rule of law to hold its administrators accountable. However, major trends in the realities of twenty-first century public policy strain the existing legal constructs within which

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government operates. That, in turn, pushes us away from the foundation of accountability of law and toward other strategies and tactics that are hard to create and even harder to control. These twin dilemmas raise a fundamental challenge for bureaucracy in democracy, a challenge that grows ever larger as new policy challenges and more complex administrative strategies stretch the boundaries of traditional practice.

ACCOUNTABILITY PUZZLES

In the United States, the effort to resolve this dilemma has focused on three big issues: the search for legal boundaries to constrain and channel administrative action; the political challenges that have surfaced when administrative realities stretch those legal boundaries; and evolving policy problems that increasingly confound the strategies and tactics to hold government power accountable—and to ensure that administration serves the public interest.

The Rule of Law

The problem of balancing governmental power with individual freed, of course, is nothing new. When King John met England's nobles in 1215, they pledged him fealty—but only after the king agreed to be bound by limits on his power. For generations, historians have worked to disentangle the long roots and lasting impact of the Magna Carta, but two things are clear. One is that the uneasy pact forged at Runnymede helped establish the base for the modern state (Strayer 1970). The other is that the rule of law emerged as the guide for setting the balance between governmental power and individual liberty. Kings (and later queens) found power useful to work their will. Citizens sometimes found the exercise of that power overbearing and expensive. From *habeas corpus* to free trade, John and his successors agreed to accept legal limits on their power.

The rule of law thus became enshrined in English common law. In practice, the rule of the sword often pushed it aside. Kings took centuries to get used to the idea that they were not fully sovereign and that the sun did not revolve around them, but the principle endured and became the foundation for modern government. Indeed, the story of the rule of law is the story of struggle and conflict (Clark 1999). In part, the rule of law seeks to define and protect the basic rights of citizens against the risks of a too-powerful government (Weingast 1997) even though claims for its historical impact have been much exaggerated (Shklar 1987). It helps frame a system where everyone knows the rules and where the rules apply to everyone (Carothers 1998). And in part, the rule of law creates the foundation for administrative accountability. Since government in action so often is the action of administrators, the rule of law provides the mechanism for constraining how administrators exercise their power. It tells them what they can do and what will happen to them if they step beyond their boundaries (O'Donnell 2004).

This basic outline, of course, is far clearer than it ever was in practice for King John or for the sovereigns who succeeded him. The rule of law, however, provided at least a basic blueprint for the role of governmental power and it played an important role in shaping the thinking of the nation's founders. In *Common Sense*, Thomas Paine wrote that "a government of our own is a natural right," with that right protected by the law, because

in America the law is king. For as in absolute governments the king is law, so in free countries the law ought to be king; and there ought to be no other. But lest any ill use should afterwards arise, let the crown at the conclusion of the ceremony be demolished, and scattered among the people whose right it is. (1791)

The rule of law was central to the nation's founders as they tried to create their new government. Citizens could establish that government because they would also bind its power.

The Articles of Confederation proved a clumsy first effort. But the Constitution that followed is a web of crosscutting restraints on government and the basic strategy for administrative accountability in American government: give the government power but set legal bounds to limit the danger in its use. In the United States, the founders did not trust a single bulwark. Multiple backstops, through separated institutions sharing authority, provided the extra insurance that the wary founders needed (Neustadt 1960). It was an unsteady deal. In the nation's first decades, officials created a national bank only to close it, then to try again and close it again. Hamilton's powerful argument for government's help in promoting the economy repeatedly encountered a hurricane of citizen opposition.

The conflict became razor-sharp during the Progressive Era. Facing the problems posed by rising corporate power and the enormous potential of the industrial age, the Progressives faced a dilemma. They were convinced that stronger government, with new programs and stronger agencies, could drive the country forward. But they also knew that citizens would be nervous about a more powerful government, for the shadow of the American Revolution's battle against George III's tyranny has never been far from the country's consciousness. How to grow the government without creating bureaucratic tyrants? For the Progressives, the answer lay in the rule of law. As a political scientist, Woodrow Wilson famously sketched the solution:

If I see a murderous fellow sharpening a knife cleverly, I can borrow his way of sharpening the knife without borrowing his probable intention to commit murder with it; and so, if I see a monarchist dyed in the wool managing a public bureau well, I can learn his business methods without changing one of my republican spots. (1887, 220)

Wilson, along with his fellow Progressives, contended that government administrators could be empowered to do government's work without threatening individual rights because the rule of law would hold them accountable. Delegation of power to administrators from elected officials and hierarchical control through authority controlled the use of power within administrative agencies. Separating politics from administration was their strategy for an effective administrative state in a modern democracy: politicians would keep the reins of policy, and administrators would carry out that policy within the bounds elected officials set (Goodnow 1900; Wilson 1887).

The Progressives' reliance on the rule of law was an elegant solution to a very tough problem. As they peered into the twentieth century, they concluded that government would have to become far stronger. Squeezed on the one hand between the risks of growing corporate power, with railroad barons and captains of industry flexing their muscles, and on the other hand the unquestionable opportunities of the gilded age, they found in the rule of law a way to fit old theories to the new prospects. The

rule-of-law formulation was not the last word for the Progressive movement, any more than it was for King John, but it established the license for the expansion of government in the twentieth century while holding it accountable.

The Challenge of Politics

Of course, big problems soon strained this neatly formulated approach. The Hoover administration fumbled its response to the stock market crash and critics vehemently complained that Franklin D. Roosevelt's New Deal was an unconscionable (and unconstitutional) overreaching. The rule of law had real appeal, in part because its roots reached back centuries and in part because it provided a tightly logical answer to the nation's pragmatic problems. But it inevitably collided with politics, as John Gaus reminded everyone: "A theory of public administration means in our time a theory of politics also" (1950, 168). Not only did the rule of law fit uneasily between the twin pressures of governmental power and individual liberty. It rested on the inescapable reality, captured so well by Gaus, that administration is—as it always has been and always will be—about politics. Political pressures had maneuvered King John into putting his seal on the Magna Carta, and they have continued to swirl around the rule of law since.

In his 1936 essay "The Responsibility of Public Administration," Gaus noted that cracks had appeared in the rule of law from the earliest times. He described a replica for consistency of a Babylonian monolith, which has on its face a carving of the Code of Hammurabi from 2000 B.C. Above the code is a relief of Hammurabi receiving the command to establish a just law from the sun-god, Shamash. That, Gaus pointed out, established the "earliest conception of political responsibility": "Somewhere in the wisdom of God was to be found the absolute code, the fixed standard, which the ruler was to follow" (1936, 27). However, he continued,

the inadequacy of such a conception of responsibility is obvious. Responsibility is accountability, but who, under such conditions, could call power to account? Is God's will always so clear? Should not, then, His vicar interpret him? But can one be sure that the vicar is correct in his interpretation? (27)

There lies the puzzle at the core of administrative accountability and the rule of law. It's hard to best the provenance of an accountability system that flows from the mouth of God. But it's also impossible to translate, with complete transparency and total predictability, the rule of law into administrative action. As administrators interpret the rule of law, as they must to bring it to life, the law loosens its grip on their rule. Gaus concludes that "neither the electorate nor the legislature can express in concrete detail the specific policy which it desires the administrative organization to enforce" (31), so administrative discretion is the inevitable result of any administrative act. Indeed, the dilemma of building sufficient capacity to allow Congress to oversee executive branch action is a puzzle that has echoed through the American Political Science Association lectures given in his name (Rosenbloom 2001; Frederickson 1999).

What solution does Gaus offer? If forces external to the administrator cannot adequately shape the exercise of discretion, then democracy must necessarily rely on the administrators' profes-

sional norms (1936). Gaus's argument helped set the stage for one of the most trenchant battles of public administration, the 1940 debate between Finer and Friedrich on whether professional training or external controls could best hold administrators accountable. The battle built on the rule of law, as Finer made the case for the long tradition of administration held accountable by legal standards. But Friedrich echoed Gaus in making the inescapable point: if the law cannot fully control administrative action, then how can administrators be held accountable? For Gaus and Friedrich, the case for relying on professional norms was the inescapable conclusion. They argued that government had to rely on what it had.

Blended Accountability

That resort to pragmatism beyond legal strictures was perhaps inevitable, but it also set the stage for a fierce debate about administrative theory and practice. The Magna Carta was important because it established the premise that law could limit the king's power, but the Runnymede meeting did not erase the enormous pressures on the exercise of political power before or after. The United States relied on the rule of law to define and protect individual rights, but few rights have ever been absolute and the debate over how to shape them has always involved substantial cross-pressures. As governmental programs became more complex in the first half of the twentieth century, and especially as public programs embraced partnerships with other governments and with the private sector, strains on the rule of law rose to the breaking point. Gaus argued:

In a state in which the power of government intermesh widely with those of industry, commerce, and finance the traditional restraints upon the discretion of the administrator through making him responsible to the electorate, the courts, and the legislators are inadequate. (1936, 37)

The New Deal, in particular, not only reinforced the challenge of politics in accountability and pushed more reliance onto the professional norms of administrators. It also brought more players from a wider variety of organizations into the pursuit of public policy. World War II, as it spawned a massive network of private contractors to help the war effort, accelerate the trend. These steps, in turn, had two effects.

First, it made it far more difficult to rely on any single rule-of-law standard to guide administrative action. The beauty of delegated discretion within authority-driven hierarchy is that administrative decisions could be directly tracked from policy makers to those who carried out the decisions through a rule of law. Bringing multiple organizations, each operating within its own legal tradition, into close partnership made it far harder to establish and enforce a single rule of law to guide that partnership. Like many binary star systems, in which stars orbit around each other, there is a complex interaction and exchange of forces but neither star's gravity controls the other.

Second, the great variety in cultures that shape the behavior of each organization makes it hard to ensure that any single set of professional norms can shape administrative behavior. The federal government has a different culture than its state and local partners, and the cultures of each government agency often have surprising variations. Professionals in the government's private and nonprofit partners often live by far different cultures that

stretch far beyond the typical profit and public good motives presumed at the core of their missions. Community-based organizations are very different than international environmental protection organizations, and they differ tremendously from defense contractors and road builders.

It is one thing to chart the basic forces in law and culture that shape behavior and the tactics for enforcing accountability. It is quite another to determine how these forces combine to ensure that public programs, in the end, serve the public interest. The rise of multiple tools of public action, from grants and contracts to regulations and tax incentives, create very different strategies and tactics for public programs (Salamon 2002). These multiple tools, in turn, have different legal and professional structures. That makes it difficult to assert a single rule of law to define and enforce accountability. And it makes it even harder to find a robust but focused strategy of any kind to make accountability work. The rule of law, of course, was always an approach more powerful in theory than in practice, because of the pragmatic cross-pressures it faced. But the rise of multiple tools of government action undermines the theoretical crispness. It frames the puzzle of how, if no single model is likely to work, modern government can best frame a system of blended accountability.

CHALLENGES OF BLENDED ACCOUNTABILITY

Blended accountability, in fact, plays out in three ways, with three different increasingly difficult challenges in the twenty-first century. First, some administration occurs through authority-driven hierarchical bureaucracies. In much of this *direct administration*, however, top administrators often find it difficult to oversee the street-level bureaucrats who do most of the work. Second, some administration occurs through contracts, where there is a substantial body of law. In much of this *mediated administration*, however, government administrators often lack the capacity to oversee the contracts they are charged with overseeing and, therefore, to enforce the law that governs them. Third, some administration occurs through complex and interdependent systems in which nongovernmental players exert substantial influence. In this *privatized administration*, there frequently is no rule of law at all. These issues make it even harder to ensure administrative accountability.

Direct Administration

As Michael Lipsky pointed out in *Street-Level Bureaucrats*, many front-line government administrators work with modest oversight (at most) by their supervisors (1980). Teachers are usually alone while teaching in their classrooms. As they maneuver to pluck stranded sailors from marooned boats, Coast Guard helicopter crews rely on themselves and their experience. Garbage collection crews work in public view but are out of sight of their forepersons. As Lipsky found, much front-line administration works with service providers out of direct supervision by the supervisors, which makes authority-based control difficult to pursue.

Consider the case of the May 2008 beating of three men by Philadelphia police. Two days before, a city police officer had been shot and killed, and the department had launched an extensive search for his killer. In the midst of that search, a man was shot and killed in a separate incident, and a retaliatory drive-by shooting later wounded three people. Several officers witnessed that shooting and gave chase. Other members of the force joined them, eventually stopped the suspects, and pulled them from the car.

Five officers beat and kicked the individuals before dragging them off to waiting police cars. In other cases, the incident would either have attracted no attention or would have ended in a flurry of countercharges. This time, however, a local television news helicopter happened to be overhead and filmed an 11-minute video, which captured the beating and which was replayed on CNN and on television stations around the country. Faced with the video, the newly elected mayor and his newly appointed police commissioner took quick action to fire the cops.

The action was a rare case of tough accountability for street-level bureaucrats. It normally is hard, if not impossible, for top administrators to know enough about the behavior of their subordinates to hold these administrators accountable. Information asymmetries confound and cloud the accountability for much of direct administration. Superiors can't hold their subordinates accountable if they don't know what the subordinates are doing—or if they have to rely on whether news helicopters are circling overhead at key moments.

Mediated Administration

For the last generation, public administration has recognized that much governmental action does not occur through hierarchical authority (Mosher 1980; Salamon 1981; 2002; Kettl 1988; 2002). The rise of this government by proxy—contracts, grants, loans, tax preferences, and other indirect tools of government—settled slowly into the field. But with the indisputable rise of these strategies, a new form of mediated public administration arose—the reliance on intricate, non-hierarchical relationships inserted between those who made policy and those who carried it out.

This mediated administration poses three big challenges for accountability. One is its sheer size. Although many citizens, reporters, and even public officials continue to think about government administration in the traditional hierarchical sense—a kind of vending machine into which citizens insert money and from which services are dispensed (Kettl 2009)—a large, growing, but not accurately measured degree of government policy implementation occurs through these proxies. As a result, public perceptions about government often do not match the way much public administration actually happens. A second challenge is that, because of this mismatch of perception and reality, policy makers and citizens sometimes seek accountability through mechanisms, especially hierarchical authority, which doesn't match these tools, which are neither hierarchical nor authority based. A final challenge is that government must create an accountability system for these indirect tools, which is effective and can coexist in a political world that often does not understand them.

There is, fortunately, a single, straightforward answer to all of these challenges. Most of these tools rely on market-based exchanges, for which there is a well-established rule of law. Government might pay a private shipbuilder \$8 billion for an aircraft carrier, and legally enforceable contracts can control each step. Government does not need hierarchy or authority if other control mechanisms work well. But we have seen enormous accountability problems in the government contracting system. Tales of contracting waste, fraud, and abuse provide regular fodder for television news magazine shows. The U.S. Government Accountability Office has assembled a list of 28 high-risk areas—programs especially susceptible to waste. Nearly all have substantial contracting components.

The problem is not the lack of an accountability framework. The public law of contracts is well established and robust. Rather, the problem lies in the difficulty of enforcing contract law. Too often, government does not have the capacity to specify what it wants to buy or to judge the quality of what it has bought. Consider the case of the Marine Corps's new "expeditionary fighting vehicle." The Corps invested 10 years and \$1.7 billion into the new amphibious system, but it breaks down on the average of once every four and a half hours. It leaks and is hard to steer, even though the contractor, General Dynamics, received \$80 million in bonuses for its work. The Pentagon contracted out much of the design work as well as the vehicle's production. The vehicle fell woefully short of its goals, in part because the system was so complex and in part because the Marine Corps simply lacked the capacity to adequately oversee its design and production. As a result, it might have to start over with a fresh design and a new system (GAO 2008; Merle 2007).

It's a case of moral hazard on steroids. The law is clear. If the government knew enough to enforce the law—to be a smart buyer so that it knew what it wanted and could judge what it got—accountability would be straightforward. Without sufficient capacity to write and monitor its contracts, however, the gap in mediated administration between government's expectations and performance has widened. As GAO delicately put it, in a conclusion echoed throughout its work on government administration, "DOD was ill-positioned to determine whether investments in services were achieving desired outcomes" (GAO 2007). Market discipline cannot ensure accountability if the market is undisciplined.

Privatized Administration

These issues create cascading problems of accountability. We have a clear rule of law for traditional administration, but we have information asymmetries that make it hard to enforce that law. Moreover, as mediated administration has increased, administration through traditional hierarchical authority has diminished. We have a clear rule of law for mediated administration, but we have moral hazards that make it hard to enforce contract law. Thus, we have a rule of law for much of administration, but problems in enforcing that rule of law undermine accountability. These are the core puzzles of the governmentalization of the private sector.

But we also have a significant and growing area of administrative and policy action where we have no rule of law at all. These are areas where private forces shape public action: pressures toward the privatization of the public sector, which are growing and causing serious problems for democratic accountability (Ingraham 2005). We have laws but administrative challenges in enforcing them for direct and mediated administration. We have little law and even bigger administrative challenges for privatized administration.

Consider the role of bond rating agencies like Moody's, Standard and Poors, and Fitch Ratings. These private sector companies review the financial condition of borrowers and rate their creditworthiness. They are old and distinguished firms and they have played a critical role in the financial markets for a very long time. There are standard protocols by which the rating firms assess the financial condition of borrowers, and the multiple firms provide redundant checks on the system. Despite these safeguards, however, the rating firms missed the building financial crisis of the 2000s. Some private companies they rated highly

turned out to be built on junk bonds. The companies were able to continue to borrow until some collapsed and others required a massive infusion of government funds to prevent the financial catastrophe from spreading. In just a few days in September 2008, the government's commitment to plugging the financial dike exploded, from a few tens of billions of dollars to well more than a trillion dollars. The federal deficit increased from a bit more than \$200 billion in fiscal year 2007 to untold hundreds of billions in the years rolling forward.

The rising government spending, of course, is the product of public decisions reached through the standard governmental process. But overpowering forces from the private sector made those decisions inescapable. In the 2008 presidential campaign, John McCain and Barack Obama sparred over congressional pork, where the trough contained less than \$20 billion. The fallout from private-market decisions created a call on the federal budget of 50 times that—or more—with huge impacts rippling through state and local government budgets and throughout the international financial world.

In addition, how much state and local governments pay to borrow funds in the capital market, for everything from long-term obligations for new convention centers to short-term obligations to meet payrolls, is determined by their creditworthiness, as determined by the bond rating agencies. These governments have no alternative but to cultivate the rating agencies, for without them they could not borrow and without borrowing they could not operate. But private decisions determine the cost of public borrowing and, therefore, the drain on public budgets. So governments have found that private organizations play a major role in determining the cost of some of their biggest and most important financial decisions. The financial crisis that exploded in late 2008 grew out of risky decisions by highly priced executives who operated within the boundaries of the law—but the laws fell far short of what was needed to protect the public interest and in international arenas there was often no rule of law at all.

The 2008 financial meltdown is ample demonstration of the importance of privatized administration, but there are many more examples as well. Walmart has joined the Global Food Safety Initiative, in association with European food producers, distributors, and sellers, to establish mutual agreements on food safety. They have set standards, apart from the regulations of any government, and have agreed not to buy any food that does not meet those standards. The American Health Care Association, a private group, sets standards for nursing home care. Any nursing home that does not meet these standards cannot stay in business—or receive government funds. The International Organization for Standardization, a European-based private-sector consortium, has set criteria for processes ranging from environmental quality to customer service. Some American governments have submitted themselves to the organization's review to obtain private certification for their public standards. The Chicago Board of Trade has established a private market for sulfur dioxide emissions, to help private companies meet government pollution standards. The role and importance of these private sector players in shaping governmental action is large and growing.

Larry Lynn has long focused on the search for the "constitutional legitimacy of state action" (2007). In much of this bubbling arena of privatized governance, there is no constitutional legitimacy because it is largely extra-constitutional. This system of "blended power," as Jody Freeman calls it, has neither a clear

rule of law nor a clear alternative for accountability (2003, 1, 339). Private entities are developing government-like regulatory strategies in place of governmental action, private decisions are inescapably shaping key public policies (especially mega-budget decisions), and private players are devising governance strategies apart from governmental action. This is happening in ways profoundly reshaping the nature of government and creating deep challenges to accountability, all apart from a rule of law.

RETHINKING ACCOUNTABILITY

What is a twenty-first century democratic republic with a substantial administrative state to do? Given the complexity of these policy trends, and given the fact that no one really understands many of the underlying forces, it will be impossible to devise any single accountability strategy that can stretch across all of the challenges. It is clear that existing accountability strategies fall far short of the system we need, but it is equally clear that we cannot—indecided, we should not—abandon the accountability strategies that have served us for centuries.

What we need is a more robust system of *layered accountability*, which enhances the existing strategies and builds new tactics. The first layer is classical hierarchical bureaucracy. Despite its manifest problems, it remains the foundation for accountability, in organizations reaching back millennia. It falls short because it does not capture a significant amount of administrative activity and because it presents tremendous information asymmetry problems. But it does define basic organizational structure, the legal relationship between administrators, the foundation for legislative grants of power, and the way that most people outside government understand its structure and operations. It might have problems, yet like a worn but comfortable old shoe the system of hierarchical authority provides a basic and essential foundation for accountability.

The second layer comes from professional training and organizational culture. Friedrich and Finer furiously debated the role of professional norms in public accountability systems, but they fought to a standoff. Finer was right that hierarchy is the bedrock of accountability. Friedrich is right that, where authority falls short, norms provide a powerful force shaping organizational action. Their debate occurred in 1940 and 1941, but the search to balance formal structure and informal norms goes back a very long way. The Roman army made its conquests through a tremendously powerful and effective hierarchy. But the emperors could (more or less) rely on their generals, even when they were distant from the capital, because they might take soldiers far from Rome but they could not take Rome out of the soldier. Administrative theorists have always worried about relying on norms because informal norms live in a world beyond the rule of law, but to the degree that these norms reinforce the rule of law they have long proven invaluable.

The emerging problem is not only that these two layers fall short within the traditional domains of public policy. They encounter even greater problems in the “blended power” world that Freeman describes. When the forces shaping public policy cross so many boundaries, and when private forces so powerful shape public decisions, hierarchy breaks down. So, too, do professional norms, when the interacting forces involve such different professions, organizations, and sectors. The challenge is aligning such disparate action into a pattern of results that fits the public interest—that accommodates the interaction between public offi-

cial and the citizens who elect them and that also satisfies broad standards of the public interest, including equity, equality, efficiency, effectiveness, and responsiveness.

These are the largest challenges facing public administration: how to ensure that the administration of public programs (and programs with public implications) matches the public interest. What layer of accountability can we add to help plug the gaps that the existing authority- and norm-based systems leave?

The honest answer is that no one knows for sure. Just as the emerging privatized administration lies beyond the current rule of law, its complexities lie beyond the map of current administrative practice. As American government—indeed, as governments around the world—seek to redefine their relationship with the private sector and to restore financial security, they will have to define new strategies and tactics consistent with existing law but able to move beyond its constraints.

The best candidate for creating this new accountability layer is *information*. Government will need to learn to operate more like the Internet. Problems can appear on any node, and solutions need to be wired across multiple agencies. Answers need to appear as quickly as the questions, and the questions and answers rarely repeat themselves. Not only does the existing rule of law fail to fit emerging policy problems. Government’s emerging and inescapable problems require collaborative solutions that cut across organizational, sectoral, and international boundaries (Kettl 2009). Government will need to connect with and solve these problems with boundary-crossing strategies. Just as the Internet allows individuals with shared interests to connect, a problem-driven/information-based strategy can help government. It can help identify the resources that government needs to solve problems and plug the gaps in the government’s regular organizational structure and its standard operating procedures—and in the existing rule of law.

Governments’ emerging performance systems offer ways of focusing and acting on such information. Although some of the early efforts have been ragged and have generated many problems (Radin 2006), there are intriguing innovations that range from Baltimore’s CitiStat to the U.S. Environmental Protection Agency’s EPASat processes. Five steps, in fact, offer an outline for an information-based accountability system: developing *real-time data*, so government managers can act with better knowledge about the problems they face; *better program evaluation*, so government policymakers can know whether their efforts actually solve the problems put before them; a *focus on cross-cutting issues*, so government agencies can identify their individual contributions to solving complex problems that span boundaries; improved *links between organizational performance and individual performance*, so top officials can direct their employees toward high-value activities and reward them for excellence; and *transparency*, so information-based accountability does not become captive to whoever creates and owns the information.

THE SEARCH FOR ACCOUNTABILITY

We’ve stumbled into a governance system in which the policy problems are multiplying faster than our efforts to build a rule of law around them. In the classic *Roadrunner* cartoons, Roadrunner’s nemesis, Wile E. Coyote, was forever working to snare his prey with fancy gimmicks. His Acme-manufactured devices always failed to catch the bird but also regularly caused him painful wounds. As cartoons, they were funny. As a way to run

government, the humor is lost. We need a government smart enough to keep up with the problems it is trying to solve, accountable enough to avoid posing grace risks to democracy, and smart enough to avoid being crushed like Wile E. Coyote by the problems it faces.

As problems become more complex and the administrative strategies link more players from more parts of the world, there are three big challenges. The first is to determine which accountability systems work best for which problems and strategies. Hierarchical authority will remain the bedrock of the system, but the gap between its promise and its performance is growing. In the process, that is creating the need for new layers of accountability to do with it what it cannot do alone. We will need to devise new accountability systems, create a rule of law to guide them, and determine what works best when.

The second is to balance public and private influences on public action. We have long since passed the point where we could imagine drawing clear lines to separate the responsibilities of those contributing to public programs. As the lines become ever more complicated and blurred, we need to focus squarely on ensuring that public programs promote the public interest.

The third point is to make certain that, as the number of players in the game multiply, the government is not just one player among many. It will not be easy to ask non-governmental players to subordinate themselves to government. But it will be unacceptable for the government to surrender its sovereignty to private players.

These are the great challenges of public administration in the twenty-first century. Whatever doubt might have lingered about the shifting issues of accountability and the rule of law, the great financial meltdown of 2008 forever erased them. If government is to rise to the challenge of problems ranging from managing this meltdown to making sure consumers can safely buy tomatoes in the supermarket, it will need to understand how to build effective new layers of accountability supported by an effective rule of law. ■

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