

CHAPTER 39

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ACCOUNTABILITY, LEGITIMACY, AND
THE COURT OF PUBLIC OPINION
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**SOCIAL ACCOUNTABILITY, ACCOUNTABILITY
AGENTS, AND THE COURT OF PUBLIC OPINION**
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LIBERAL societies, and the individuals who constitute them, have long been concerned about the effective control of powerful institutions that arise within them. Their principal pre-occupation has been with controlling the actions of government. Indeed, democratic societies are often defined by a set of social structures and processes that empower individual citizens vis-à-vis government by granting constitutional rights that protect citizens from arbitrary governmental action and allow them to control what the government chooses to do and how it seeks to accomplish its goals (Cunningham 2002).

But liberal societies have also often been concerned with the actions of large private organizations that grow up in their midst. Over the last century and a half, concerns have focused on the increasing power of private corporations to shape the conditions under which individuals live, and to influence democratic political processes (Dunlop 1980; Reich 2007). To protect themselves from concentrated economic power, individuals have often looked to government, but government action has been neither necessary nor sufficient to control corporate conduct (Bardach and Kagan 1982; Braithwaite and Drahos 2000). Instead, over the last decade or so, while government has been reluctant to curb the power of private corporations, the public has sought and found ways to call corporations to account *without the mediation of government* (Vogel 2006; Peters et al. 2009; Gray, Owens and Adams 1996). Using the same political and social mobilization techniques that citizens have long used to call government to account, a social and political movement has emerged to demand—and sometimes get—corporate compliance

with standards of social accountability that are not necessarily enshrined in law. This has revealed the force of demands for social accountability that spring up in society, and are pressed in the “court of public opinion” even when such demands are neither backed by current law, nor a prelude to the passage of laws.

Think of the court of public opinion as an interested public composed of many different kinds of social actors who seek to impose external accountability on large, powerful organizations. These include individuals, the press, civic associations, political advocacy groups, and even political parties whose words and deeds target not only governments, but also private organizations including private corporations (Cohen and Rogers 1995). These actors can be defined as “accountability agents” who make public claims against other social actors. Accountability agents not only pay attention to the conduct and performance of powerful governmental and private institutions, but also make evaluative judgments about whether they are sufficiently respectful of the rights of individuals, or appropriately accountable for the effects of their actions, and more generally whether the enterprise seems legitimate or not. Having made such judgments, accountability agents give voice to their claims and rouse others to support them.

Often, such agents are self-appointed and self-authorized. They may or may not have a legal basis to press their claim, but feel they have a compelling moral claim that can get traction in the court of public opinion—at least in part because they assume that the public believes accountability is good per se. Only when accountability agents call powerful public and private organizations to account can anyone expect those institutions to act in the public’s interest rather than their own. These assumptions embolden accountability agents to press their claims.

Ironically, the social entities that think of themselves as accountability agents are often not all that different in type or form from their targets. Very often, an accountability agent that makes a claim against another social entity quickly becomes the target of demands for accountability from the organization it has confronted: “Who are you to call me to account?” What makes a social entity an accountability agent, then, is not that it is a particular kind of social entity. Government agencies can call private social actors to account as well as be called to account. Private commercial organizations can call those with whom they have contracted to account, but they can also be called to account by their contractors, the government, and what one private executive has called “three kooks with a fax machine” speaking as the voice of the public. What makes a social entity an accountability agent is simply that it seeks to influence the conduct of other social agencies by asserting a public demand for accountability (Behn 2001).

Taken all together, accountability agents constitute the external accountability structure that all social organizations face. And it is within this structure that a court of public opinion arises and begins to shape the conduct of organizations in ways that are not fully captured by an abstract ideal of accountability, nor a legal concept of accountability, nor perhaps even by a pluralist concept of political accountability. This court of public opinion is a product that springs from the collision of accountability agents with both the targets of their demands for accountability and sometimes with one another as they press more or less conflicting claims on targeted organizations.

My purpose in this essay is to briefly examine this emerging form of social accountability through both legal and behavioral lenses in order to contribute to ideas about how accountability can be created and made forceful as individuals living in liberal societies seek to protect themselves from the power of large economic, social, and political institutions.

THE LEGAL STRUCTURE OF EXTERNAL SOCIAL ACCOUNTABILITY

The structures and processes of external accountability begin with laws that give social actors (individuals and groups) outside the formal structure of existing organizations rights of action against the conduct and performance of those organizations.

The Law of Torts

Tort law provides some basic protection for all individuals who are adversely affected—whether through unsafe products, shoddy medical practices, or intrusive government security measures—by the actions of large institutions (Landes and Posner 1987). The authority of the state is engaged here insofar as state court findings will be definitive with respect to the settlement of disputes, but the activation of that state authority, like many things in liberal societies, is at the discretion of, and in service to, those who have been mistreated. For this reason, legal demands for accountability will, to some degree, follow the dispositions and capacities of individuals in a position to sue. On occasion, the individuals injured can combine their interests in class action suits (Hensler 2000). In these cases, the organizer of the collective group (the class) is often a lawyer seeking justice and compensation for his clients as well as financial returns and perhaps fame for himself! But the claim that is being represented in courts is simply the sum of individual rights.

Economic and Social Regulation of Organizations

Tort law is complemented by legislation that directs corporations to avoid actions that harm, or to take actions that advance, the public good (Bardach and Kagan 1982; Braithwaite and Drahos 2000; Mann and Roberts 2008). Sometimes such laws seek to advantage particular groups of individuals whose interests might be adversely affected by the conduct of both private and public institutions. Safety and health regulations in both private and public institutions protect workers' interests. Various regulatory regimes that impose burdens on economic suppliers protect consumers' interests. Due

process protections require government agencies to treat their clients fairly (Mashaw 1985). Limitations on what charitable organizations are allowed and required to do protect donors' interests. And so on.

While complaints from citizens often activate the enforcement of these laws, government can also act on its own to bring complaints to bear on private organizations or other governments, spending public resources to discover violations of the law without being directed to do so by a particular individual, and calling both private and public agencies to account when offenses are found (Wilson 1989; Sparrow 1994). Thus, in some cases, the collective institutions and processes of democratic governance—rather than the choices of affected individuals—determine the overall level and focus of accountability.

Mandated Transparency

Other laws structure accountability for both for-profit and nonprofit organizations by requiring them to submit information to public agencies and to the public at large describing their aims, activities, and results as well as their officers, addresses, finances, and aspects of their performance (Fung, Graham and Weil 2007). Government activity is similarly made transparent by general duties to produce reports on expenditures and activities, and more specific duties created by the Freedom of Information Act which requires government agencies to refrain from conducting business in secrecy, and to divulge records of both their deliberations and actions (Foerster 1999).

Laws like these are designed to increase the transparency of the deliberations and actions of powerful organizations. But they do not necessarily result in a legal action by someone with a right of action against the organization. In order for the laws creating transparency in both private and public organizations to have their desired effects, there has to be an interested party paying attention to take up the cause (Fung 2004). Rules mandating transparency make it easier for those who wish to call an organization to account to do so, but they do not in themselves represent a force demanding external accountability. The energy to demand accountability has to come from elsewhere.

THE SOCIAL PROCESS OF CREATING ACCOUNTABILITY

The laws set out above—those giving legal rights to individuals injured by private and public organizations, those instructing organizations how to behave in accord with the public interest, and those requiring organizations to render their activities more transparent to the outside world—create a formal structure of accountability around existing organizations. That formal structure includes: a set of social actors who have legal

standing to make a claim against a particular organization and a set of procedural and substantive claims that those actors can make on the conduct of an organization.

But the legal structure of accountability may be only the beginning of the story. The fact that these legal mechanisms of accountability depend crucially for their effect on the initiative of some agent in bringing the existing legal accountability to bear hints at the possibility for a wider, more behavioral conception of accountability. The laws merely create the potential for accountability. They do not enforce themselves. They need aggrieved individuals or groups to step forward to press their claims. Neither do these laws limit demands for accountability. Individuals without legal rights to demand accountability may nonetheless make a claim on some moral principle that has not yet been recognized in law.

To undertake a comprehensive social and empirical study on the construction of effective accountability, the examination of the formal, legal structure of accountability would be only part of the exercise. The other part would focus on the behavioral interactions of self-appointed “accountability agents” and the organizations they targeted.

Stakeholders and Affected Interests as Agents of Accountability

Scholars of institutional design, organizations, and management have terms to describe social actors who may be interested in calling organizations to account. They describe them as “stakeholders,” or actors with “affected interests,” or “political authorizers” of an organization (Freeman et al. 2010; Fung 2013; Moore 1995). Perhaps because such scholars are more empirically than normatively or legally oriented, they make no claim about the legal standing of the stakeholder or the affected interest with respect to a given organization. Of course, many stakeholders do have legal claims against organizations. Citizens have claims against government, investors and customers have legal claims they can make against business firms. But an important feature of the empirical reality of accountability is that there might well be stakeholders or affected interests who do not have legal standing to press their claims. Given that the law is at best an imperfect reflection of the moral concerns that might be important in deciding who could make a claim on an organization, and what that claim might be, it seems likely that not all morally relevant actors, nor all morally relevant substantive concerns would be reflected in the existing law. In fact, given that existing law often institutionalizes the interests of the powerful against those of the less powerful, it seems likely indeed that the existing law would have failed to recognize all the important affected parties and their interests. The inevitable result is that there will be many stakeholders who do not have the legal power to call organizations to account but—because they think they have a moral right, because they can find platforms to make their voice heard, because the public is not particularly discriminating about what constitutes a lawful demand for accountability, and because the stakeholders think moral claim might resonate with the public—will make demands for accountability without explicit legal sanction. “There oughta be a law!” they proclaim, and wait to see what happens.

The set of demands for accountability that lack legal sanction constitute a sort of anarchic penumbra of extra-legal accountability demands. It is not that the demands for accountability are illegal (though some, of course, are, and we call these demands extortion and corruption!). Indeed, in a liberal society such demands are constitutionally protected by laws that protect the right of individuals to use their voice to exercise control over large collective institutions. Amplified and broadcast by news and social media, those politically powerful but legally unsanctioned demands for accountability can put pressure on organizations even without the implicit or explicit threat of legal action.

Those who lead large private and public organizations know well that many different social actors can and do call them to account for many different aspects of their performance (Moore 1995; Behn 2001). Public officials are a bit more used to this than private executives. But both would likely testify to the extraordinary external pressure that can be brought to bear on them when self-appointed accountability agents demand changes on some dimension or another. In this way, the context of external social accountability is both broader and less disciplined than the concept of legal accountability suggests.

Practical and Moral Pressures for Accountability

It is not hard to understand why some self-appointed accountability agent would be interested in asserting a demand for accountability even if the demand would not be supported in a court of law. The more interesting question is why such a claim would bother the executive officers of an organization. They can always say (as many do) that they have done everything the law requires them to do, and that they have exercised their discretion in using the assets entrusted to them in the best interests of those to whom they owe fiduciary responsibility. Indeed, to some, it might seem morally irresponsible to respond to demands that lie outside the boundaries of their established legal responsibility because doing so might undermine their commitment to the purposes of those who do have legal claims on them. Ideally, this legal structure would properly identify the important actors who should have standing to demand accountability from organizations and give appropriate priority to the particular claims they make on the organization, allowing the organization to focus on what is important and socially valued and to ignore claims that would cause it to be less responsible and less effective in its conduct than it otherwise would be. If these were all features of the established legal structure, moral weight as well as prudential weight might well align with a felt obligation to resist extra-legal demands for accountability—even if they resonate with wider public sentiment.

But the reality seems to be that the leaders of organizations *do* feel vulnerable to these demands for accountability. They feel obligated to hear and respond to demands made in the court of public opinion. Organizational leaders in both public and private organizations know that those who may not have legal standing or practical force in one social

forum may find traction in others. Corporate executives know that such accountability agents may turn their efforts to trying to persuade customers, investors, and workers that they should not buy from, invest in, or work for a company that harms people or natural environments. Public executives know well that what is won by stonewalling or winning in court can be overturned when those who lost organize themselves politically. Given the practical threat that some accountability agents pose, leaders might wisely respond to the extra-legal demand as though they had some legal responsibility to meet it (Moore and Khagram 2004).

Beyond these practical considerations, organizational leaders may feel bound to respond to the moral issues raised by the demand for accountability. In fact, many of the practical concerns have to be gauged at least in part by a judgment about the weight, importance, and public appeal of the moral concerns raised by the accountability agents. If the moral claim is weak, or idiosyncratic, it will probably not have much economic, social, or political resonance. If it is strong, then morality will come down on the side of prudence and cause the leaders to act as though there were a legal claim. A moral claim asserted by an outside stakeholder may even stir the hearts and minds of executives and workers within the organization. Executives may feel morally compelled to use their office to express that moral commitment.

It is these practical and moral judgments that make the social penumbra of accountability as potentially important in regulating the conduct of organizations as the legal structure of rules. If what is important about external accountability is its real capacity to guide organizations towards the protection of individual rights and the achievement of the public good, then any institutional analyst or designer would have to look at the behavioral impact of the court of public opinion as well as the court of law.

The Risks and the Opportunities of Wide Social Accountability

Suppose that the observations made above are empirically true: that the actual social processes of creating and demanding accountability often slip their legal moorings and become far more anarchic, unpredictable, and dynamic than we usually imagine, or than the legal system can manage. How should one who is interested in using the idea of accountability as a guide to improving the conduct of large organizations view such a situation? Is the anarchy and dynamism good or bad for the cause of accountability and the hope that properly constructed accountability might not only meet normative demands linked to fiduciary responsibilities, but also to improved organizational performance in the pursuit of the public good?

From the point of view of those outside of organizations who either fear or hope to improve the conduct of an organization (i.e., potential accountability agents) the loose structure of accountability seems like a good thing. They can feel free to press their claims without particular concern about what the law says or the claims being made by other accountability agents. They can stand on their God-given right to demand accountability to them and their values.

Many others who have less specific interests but share concerns about the potential power of large organizations may also come down on the side of a relatively loose and free flowing process of accountability. Constraints on demands for accountability that permit only certain actors to make them, or only certain substantive concerns to be the focus of accountability, signify the danger of large organizations that have the power to manipulate the law to protect their interests over other important interests and values.

From the point of view of those inside an organization, or those hoping that the organization (whether private or public) might produce something valuable for individuals and the society at large, however, wide-ranging and unpredictable demands for accountability create a potential hazard. They worry that those who lead powerful organizations will be distracted from their focus on producing something of value. They will be forced to be all things to all people and risk their effectiveness as producing organizations. From this perspective, responding to new and unpredictable demands for accountability—particularly on relatively narrow and idiosyncratic dimensions of performance—comes at a high cost reckoned in terms of responsiveness to more established claimants or more important social purposes.

Both these points of view have their merits. A loose system of accountability could increase the social performance of an organization by enabling it to become more responsive to a wider range of stakeholders and helping it understand the consequences of its current conduct (Ebrahim 2005). One can also see how a system of accountability in which the penumbra of extra-legal accountability was strong relative to the tighter legal structure could create serious difficulties for those trying to run organizations efficiently and effectively to achieve a simple, established set of valued results. How, then, to advise those who manage organizations, those who wish to call them to account, and all the rest of us who are interested in having a system of accountability that would allow us to gain the advantages that come from both a strict and a looser idea of accountability?

THE PURSUIT OF LEGITIMACY AS A COMPLEMENT TO MEETING THE DEMANDS FOR ACCOUNTABILITY

If the system of accountability that emerges in a liberal democratic society is anarchic and only imperfectly tamed by a legal structure that gives specific social actors legal rights to press specific claims, then it seems clear that we citizens cannot rely only on stricter enforcement of a legal structure of accountability to ensure the performance of our large institutions. We might be forced to rely more on efforts to establish principles of good practice in negotiating accountability among interested parties than legal structures and processes that permanently fix the structure of accountability (Moore and Brown 2001).

In doing so, of course, we might have to give up the idea of accountability as a fixed legal ideal, and think of it, instead, as an emergent process in which social collisions and processes of negotiating and mediating those collisions create a shared sense of accountability and concern for the overall performance of the organization among those demanding accountability and those subject to those demands. This may be a much messier, less rigorous, and less satisfying form of accountability, but perhaps comes closer to the way the world really works, and might move us towards a better way of meeting the demand for accountability as an important value in itself, and as a device that can improve the social performance of large organizations.

Instead of thinking about how we could legally control the conduct of those leading powerful organizations and, through them, the conduct of the organizations themselves, it might be useful to focus on what all of us who have an interest in their performance really want those leaders and their organizations to do, all things considered. We might decide we want to encourage executives to reach for a kind of social legitimacy within which legal accountability was just one important element. Social legitimacy could be founded on shared moral concerns *and* prudential interests as well as legal liability. Instead of talking about controlling these organizations with legal rules, we might want to encourage them to develop and use practices in managing relations with those who call them to account that would build a shared understanding about the important terms of their accountability and anticipate a new legal structure of accountability that could begin doing its work before it was established in legal form. The goal of enhancing the social legitimacy of organizations might be both a virtuous act for those leading organizations as well as it is practically valuable to them in their roles.

Developing and propagating practices that allow the officers and leaders of powerful organizations to engage the anarchic world of accountability agents could help create a court of public opinion in which the plaintiffs are also part of the jury. In essence, instead of trying to resolve the issue of accountability by simply rank ordering the legal claims made against the organization, some kind of deliberation among those demanding accountability could be carried out in which each accountability agent would see the claims of others, and understand that they might have to adjust their claim in light of those claims of others. With no legal platform beneath them, or with an understanding that the existing legal platforms cannot resolve the issue, accountability agents might be more inclined to accommodate one another, and a better structure of accountability be created. Preferences might be altered and improved in this deliberative frame rather than hardened, and a more stable and reliable consensus might emerge (Cohen and Rogers 1995). Meeting undisciplined demands for accountability may feel like a thankless task. Finding the means to increase the social legitimacy of a collective enterprise and its actions, however, might be the kind of task that could attract the commitment of both practical and fair-minded leaders.

Holding out the idea of advancing social legitimacy might be particularly important if meeting the demands for accountability was neither necessary nor sufficient for the creation of legitimacy. It might also be an important shift in perspective if success in increasing the legitimacy of an enterprise might improve its functioning—partly by

giving the enterprise more standing and credibility, and partly by allowing those outside and within the organization who support its functioning to support it more wholeheartedly. So, while the leaders of organizations can be *forced* to meet demands for accountability, they might actually *want* to find the means to increase their organization's legitimacy.

Social Accountability versus Social Legitimacy

In order for this argument to be plausible, there has to be some important difference between the idea of social accountability on one hand, and social legitimacy on the other. Many writing about the importance of creating powerful external accountability systems think that there is a very close relationship between the two concepts (Bovens 2005). To them, meeting legally sanctioned demands for accountability is the very definition of social legitimacy. Others, more behaviorally oriented, would say that meeting such demands for accountability is a necessary but not sufficient path towards the creation of social legitimacy (Moore and Brown 2001).

Two important questions about the idea of legitimacy lie in this difference. The first is whether legitimacy is understood as an idealist concept or a psychological judgment by those observing the conduct of an organization, or some combination of the two. By an idealist concept, I mean that an organization can be said to have the quality of legitimacy independent of the views of those who observe, oversee, or interact with the organization as investors, workers, or clients. If the organization measures up to some objective standards of conduct that define legitimacy, then the organization has legitimacy regardless of how individuals distributed across these different positions vis-à-vis the organization would evaluate its conduct and performance. In contrast, if legitimacy is in the eye of the beholder, the only way an organization can be said to have legitimacy is if it is deemed legitimate by individual members of a society who interact with that organization in various different roles.

A combination of the two would suggest that there were some idealist concepts of legitimacy that many particular individuals use in their evaluations, but that these idealist conceptions do not completely dominate individual conceptions of legitimacy. Instead, individuals in different roles, challenged to make judgments about the legitimacy of organizations and their operations, would adapt idealist concepts of legitimacy to fit the particular occasion. In deciding what is socially legitimate, many accountability agents might well be unduly influenced by their own interests at the expense of all others, and also perhaps by relatively idiosyncratic views of the public good. But perhaps some of the special interests and idiosyncrasy can be scoured away through a process that presses individual claimants to use general principles in justifying their claims and exposes them to the more or less reasonable demands of others. Ideally, this sort of process could help transform the clamorous demand for social accountability into a competent court of public opinion that would allow leaders to gain legitimacy for their organization.

The second question about our ideas of legitimacy is whether the concept is primarily concerned with deontological concerns about the degree to which an organization and its leaders conform to right fiduciary relationships with those to whom they owe legal and moral duties of loyalty and care; or with more utilitarian concerns about how well the organization performs in producing or acting in accord with a particular set of values that citizens want to see realized in operations. To some, the only important question about legitimacy is whether an organization has met its fiduciary responsibilities to report, explain, and be accountable. To others, organizations may acquire legitimacy through demonstrations of efficient and effective performance even if they depart somewhat from ordinary expectations of accountability. The end results may secure social legitimacy even if the organization did not conform to fiduciary demands for accountability. This would not be because the organization sacrificed some important value associated with a proper accountability structure, but because the accountability structure itself drew resources from the operations of the organization, reduced the flexibility in methods it needed to achieve its goals, and blunted the organization's initiative (Moore and Gates 1986; Moore 1993).

If the idea of legitimacy is both a legal and psychological concept, and if it refers to both the maintenance of proper fiduciary relationships and the real performance of the organization relative to the expectations and aspirations of those whose interests are affected by it, then there is much more room for the construction of a socially responsive structure of accountability that delivers legitimacy than there is if the idea of accountability is tethered to a static, legal idealist, view of legitimacy. A process of discussion and deliberation among accountability agents might produce a different and stronger social mandate for organizational performance than the legal system of accountability.

The Pursuit of Legitimacy as a Better Way to Promote Social Accountability

It is possible, of course, that creating a discussion about the social legitimacy of an organization's conduct and performance might be every bit as chaotic as the penumbra of demands for accountability itself. Each accountability agent may stand on his or her right to demand accountability, and to expect the organization's conduct to conform to that idea. But if particular accountability agents can come to understand that they are one among many stakeholders, if they can be reminded that they and the other claimants have an interest in the overall performance of the organization, and if they come to see that performance both advancing and behaving in accord with several different dimensions of value that are important to them and others, then the way is open to create a kind of accountability that resembles a court of public opinion rather than a babble of self-authorized accountability agents.

If there is a wide public discussion about the legitimacy of a given organization, or a particular class of organizations, and if that discussion settles into a clear set of informal standards, then being accountable to those standards could be seen as the

only way an organization can become legitimate. Yankelovich (1991) makes an important distinction between mere public opinion which is superficial, chaotic, and unanchored in social deliberation, and public judgment which is deeper, more settled, and more deeply rooted in a shared social understanding. He describes the process of coming to public judgment as one that depends crucially on individual reflection and social discussion. It seems reasonable to hope that, with some help, a public could come to a public judgment about the standards of accountability that could guide an organization. It is that process that would make the crucially important connection between the idea of legal accountability on one hand, and legitimacy for an organization on the other.

Needless to say, this does not happen often. As a practical matter, then, a gap remains between the idea of accountability and legitimacy. It is in that gap that the issue of legitimacy is fought out. The gap forms the arena within which diverse accountability agents make their claims—confident that they have both a right to do so and a reasonable chance of success. In this world, meeting the legally established demands for accountability does not necessarily produce legitimacy, though it can be helpful. The more difficult but ultimately more valuable path is to engage those who demand accountability in a more collective public discussion designed to properly weigh and integrate the competing demands in an effort to construct social legitimacy for the organization's operations. Such a discussion might well end up transforming the structure of legal accountability over the long run as society and its influential organizations come to understand the values at stake. But in the short run, the pursuit of legitimacy might move organizations towards improved social performance without having to change the legal structure of accountability.

CONCLUSION: CREATING A COMPETENT COURT OF PUBLIC OPINION

The argument, then, is that while thinking about accountability as a legal concept, and using that concept as a principal social mechanism for controlling the conduct of powerful organizations in liberal societies has a long, honorable, and important pedigree, it has always faced some conceptual and practical problems. More importantly, given its illustrious record in reducing organizational misconduct, the concept may cause us to miss the opportunity that lies in focusing attention other ways to construct social legitimacy in a pluralist, dynamic world.

In that contentious world, legitimacy is constructed in the first instance by taking the demands of self-appointed accountability agents seriously: not because they have a legally supported right to demand accountability, but because the basis of legitimacy in a democratic society is the degree to which powerful organizations whose actions have direct impact on the public (even if their auspices are private) is the degree to which

individual citizens grant them legitimacy. From this perspective, *any* complaint is worth taking seriously—at least until we all get a chance to look at, and test its empirical and moral importance against the many other claims made on the performance of powerful organizations.

Legitimacy is thus constructed in the second instance through processes that test the empirical and moral importance of these claims and complaints. Is it true that the organization has inflicted unrecognized losses on individuals? Are the losses consequential in either a utilitarian welfare calculation or in a deontological inquiry into what principles of justice and fairness require? How big were the losses compared with the protection or advancement of other important social values? Were the losses necessary to achieve these larger utilitarian or justice aims? Could some compensation be made if the losses were necessary?

Such a process could build social legitimacy for powerful organizations through adaptation of two different kinds of mechanism that are at the core of democratic theory. There is the idea that legitimacy is built through consultation and the consent of the citizens. That gives powerful organizations a reason to be interested in and responsive to claims made against them even though they seem frivolous at the outset. The point of such consultation, however, is not simply to hear and evaluate competing claims from an executive position, but instead to use executive leadership and skills to turn the consultation process into a deliberative one in which those representing particular interests are called upon to hear and understand the claims of others (Fung 2004; Moore and Fung 2012). In such a process, self-interested or idiosyncratic ideas of the public good can become more considered public ideas of the common good.

Then there is a judicial system in which competing interests clash and are resolved in accord with some principle of justice or fairness or the public good. The process permits only certain kinds of arguments and evidence, is regulated by an impartial judge, and the verdict is rendered by a jury of peers. Obviously, not all of this apparatus of a real court can be constructed to adjudicate competing demands for social accountability. But the idea of an impartial magistrate and a jury of peers might help guide those seeking to create a deliberative process among accountability agents.

John Dewey (1927) argued forcefully (and at length!) about the importance of calling into existence a public that could understand and act on its own interests. There are many different occasions when democratic societies need to call a public into existence to legitimate social action taken by both public and private bodies. There are many different ways in which a public can be constructed (Fung and Wright 2003). But one of the important arenas for calling a public into existence is that arena in which accountability agents make claims on organizations. We can try to organize that process as a straightforward legal process. But it might be better to think of it as an occasion for deliberation. And in the background of that deliberation—creating the context for the deliberation—is a public acting as impartial magistrate and jury on the important question of what values ought to be reflected in the conduct and performance of powerful organizations.

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